

Product Liability Group Of The Year: Covington & Burling

By **Kelcee Griffis**

Law360, New York (January 17, 2017, 11:41 AM EST) -- From taking up Takata Corp.'s defense in a massive litigation over potentially explosive air bags to wiping out more than 1,000 suits over Mirena IUDs, attorneys in Covington & Burling LLP's product liability practice group were busy in 2016 defending high-profile corporations, earning it a spot among Law360's Practice Groups of the Year.

The group also continued steering government contractor KBR Inc.'s defense against service members' claims that they were exposed to toxic fumes from a burn pit in Iraq and got claims trimmed from a suit accusing Hewlett-Packard Enterprise Services of negligence in the 2013 shooting rampage at the Washington Navy Yard.

The firm's range of work showcases its diversity of resources, said Paul W. Schmidt, one of the leaders of the product liability practice group, which includes a dozen senior attorneys and about 30 junior attorneys.

He said the firm specializes in taking on cases that require intense coordination and multiple layers of guidance — such as large multidistrict litigations involving different kinds of injury claims or coordination with the government.

When the group was asked to take over the nationwide defense of Takata Corp. in wide-ranging litigation accusing it and several automakers of producing potentially explosive air bags, they took it “as a vindication of our work,” Schmidt said.

He said the appointment meant they're recognized as being able to handle complex, high-stakes litigation.

“To be able to do that kind of work, you have to have top practices in every area,” Schmidt said.

The Takata MDL is in discovery mode now, said Michael X. Imbroscio, another of the practice group leaders. The firm is collecting depositions from automakers, he said, “heading toward resolution of trial issues.”

The complexity of the case is compounded by the sheer number of plaintiffs plus the split between



drivers bringing economic loss claims and others bring personal injury claims. The MDL also overlays government investigations, further heightening the stakes.

“Coordinating all of that has been an unbelievable challenge to keep it all going,” Imbroscio said.

The firm additionally succeeded in 2016 in shutting down multidistrict litigation over Bayer Healthcare’s intrauterine device Mirena.

In July 2016, a New York federal judge granted Bayer summary judgment, wiping out more than 1,200 suits alleging harm from the Mirena IUDs. The judge concluded that the absence of expert testimony makes it impossible to prove that Mirena can cause injuries after insertion.

The grant of summary judgment ended the litigation alleging that Bayer failed to warn women that Mirena could perforate the uterus subsequent and unrelated to insertion.

“It’s a pretty unusual thing when a judge makes a determination that the science is such that nothing in the MDL can be supported,” said partner Phyllis A. Jones.

Now, it looks like the plaintiffs will challenge that decision at the Second Circuit, she noted.

She said the firm scored another victory when the Judicial Panel on Multidistrict Litigation decided it wouldn’t bundle claims by plaintiffs who said the device gave them a type of hypertension to create a new MDL. The panel decided the claims were still limited enough to coordinate informally, she said.

Jones noted that a different plaintiffs’ firm filed a second petition with the JMPL at the end of the year, again seeking to centralize the cases.

Covington is also notably defending Hewlett Packard Enterprise Services LLC in eight actions asserting tort claims for wrongful death and injury arising from the mass shooting at the Washington Navy Yard in September 2013. The gunman, Aaron Alexis, was a civilian employee subcontractor performing IT services for the Navy.

After the shooting, the firm said, Covington conducted an internal investigation for HP and helped the contractor with government-related inquiries. The tort actions are now pending in D.C. federal district court.

Covington is also representing government contractor KBR in multidistrict litigation involving 250 plaintiffs from 42 states, who claim KBR’s open-air burn pits for battlefield waste disposal injured service members stationed in Iraq, the firm said.

The court was set to consider whether these claims are viable in a “landmark” hearing originally set for December that has now been pushed back to March, Schmidt said.

“There’s been a very heavy round of discovery that’s been undertaken,” he said. “The hearing is going to be a pretty important hearing on the immunity defenses that KBR has asserted.”

The KBR case is a good example of the type of work Covington product liability attorneys do, Schmidt said: using highly specific knowledge and legal strategies to work toward clearing their clients’ names and covering new ground in the process.

“Those cases involve issues of law that you really don’t see in any other setting,” Schmidt said.

--Additional reporting by Jeff Overly, Kat Sieniuc, Emily Field and Suevon Lee. Editing by Emily Kokoll.

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