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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Product Liability Group Of The Year: Covington & Burling

By **Hannah Meisel**

Law360, Springfield (January 30, 2018, 5:08 PM EST) -- Covington & Burling LLP's continued defense of Roche's Accutane and its leadership in guiding air bag giant Takata through its massive recall litigation helped land the firm's product liability group a spot among Law360's Practice Groups of the Year.

The attorneys who make up the practice's tight-knit group have been pioneers in trying defense cases instead of automatically settling, the group's two co-heads told Law360 earlier this month.

"It's a pretty new group, relatively speaking, and a younger group," New York-based partner Paul Schmidt said. "Our practice probably started 10 years ago and has really been completely built into a top-tier practice over that time-frame. … I think that gives us a certain nice energy."

And that energy and willingness to navigate litigation — even litigation that goes on for years — has served Covington well, especially through one of its longest-running defense cases: representing Hoffman La-Roche Ltd. in litigation over its acne medication Accutane, which Covington has been involved with for 13 years.

The firm recently persuaded the New Jersey Supreme Court to review a pair of midlevel appeals court decisions that involve the drug: one over pharmaceutical warning labels and one that reinstated 2,076 cases from individuals alleging they developed Crohn's disease.

Also in the pharmaceutical arena, Covington represents pharma giant Eli Lilly & Co., defending erectile dysfunction medicines Cialis and Pfizer's Viagra in multidistrict litigation alleging the drugs can lead to melanoma.

Covington also represents drugmaker Bayer in litigation alleging the company's intrauterine device Mirena causes a rare form of intracranial hypertension.

Schmidt and his colleagues are not blind to criticism of “Big Pharma,” which has grown louder over the last decade. But they told Law360 that they find product liability defense work “tremendously rewarding,” especially in the pharmaceutical world, as they often defend “medicine that literally saves people's lives."

"We've worked on cancer medicines; we've worked on reproductive freedom choices that are attacked through lawsuits," Schmidt told Law360. "Even a medicine like Accutane — you hear it's about acne, but it's about a form of acne that literally in 30 years of science nothing else has been able to treat. It affects the psychology of kids who have it because it's so severe and scarring."

In steering Takata through litigation stemming from its massive recall of air bags, Covington has been able to resolve personal injury claims while helping the company's employees find solid ground.

Product liability co-chair and Washington, D.C.-based partner Mike Imbroscio told Law360 that it was important to the firm to consider the human side of the case.

"Obviously the problems facing Takata were really overwhelming and probably never really experienced by any company in the history of companies," Imbroscio said. "Basically their entire existence was at stake."

Imbroscio praised his colleagues Keith Teel and Shankar Duraiswamy for their strategy, which will allow Takata's workforce to keep working as the company's assets are acquired by fellow Japanese Company Key Safety Systems under Takata's Chapter 11 bankruptcy plan.

"They were really masterful in guiding the company through the litigation process, which had many, many aspects to it in federal court: injury cases, economic loss cases," Imbroscio said. "It's really about the survival of that aspect of the company's operation. The scope and magnitude of it had really never been experienced before."

D.C.-based partner Phyllis Jones said the practice group benefits from attorneys who deeply understand the industries in which their clients are major players. She told Law360 that it's that expert-level understanding that allows Covington to not just take a "mechanistic" approach to litigation.

"Whenever we take on a matter…we're always thinking more broadly: What does this mean for the industry?" Jones said. "What are the implications?"

In the last few years, Covington has had to adjust to new trends in the product liability space, including plaintiffs attorneys taking advantage of social media to aggregate clients for cases that would not have risen to the level of legitimate litigation before Facebook ads, according to Imbroscio. He also said to look out for more cases of innovator liability, in which name-brand drug companies are sued for liability over the generic version of their drugs.

"We're also seeing third-party funding as well," Imbroscio said. "Third-party funders that will basically underwrite the cost of bringing these kind of cases in return for some share of any settlement or resolution. There are significant legal questions as to whether that's appropriate under many states' laws."

But whatever comes in the product liability space, Jones said she and her colleagues will weather together.

"I think we legitimately like each other," she said. "There is something unique about being with a group of folks you trust and respect their judgment and actually enjoy their company. … It means at end of the day I think we come from a basic place of respect. There are not two people I'd rather try a case with

than Paul and Mike."

--Editing by Jeremy Barker.

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