

MVP: Covington's Paul Schmidt

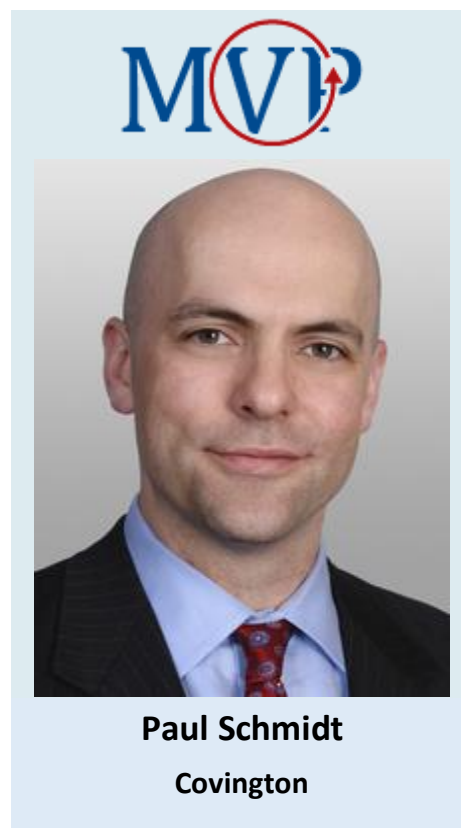
Law360 (November 28, 2018, 10:18 AM EST) -- Paul Schmidt of Covington & Burling LLP has had a big year, stamping out thousands of suits against Accutane maker Hoffmann-La Roche Ltd. with a major win in the New Jersey Supreme Court and racking up multiple trial wins in other pharmaceutical cases, earning him a spot as one of **Law360's 2018 Product Liability MVPs**.

HIS BIGGEST ACCOMPLISHMENT THIS YEAR:

Schmidt said 2018 had probably been "the biggest year of my career," spanning three separate favorable state supreme court rulings, several trial victories and even a few motion practice wins. On the day Schmidt spoke with Law360, in fact, U.S. District Judge Paul Engelmayer issued a 156-page opinion blocking the testimony of seven expert witnesses for the plaintiffs in multidistrict litigation against Schmidt's client Bayer AG over its Mirena IUD.

But Schmidt said the two cases that really stand out this year are the New Jersey Supreme Court's August ruling in the Accutane mass tort case, and the three back-to-back bellwether trial wins he racked up for Boehringer Ingelheim Pharmaceuticals in a consolidated state proceeding over its blood thinner Pradaxa.

The state high court's ruling single-handedly put to rest thousands of cases alleging Accutane maker Hoffmann-La Roche Ltd. failed to warn of the acne drug's gastrointestinal side effects, by reversing the Garden State's formerly lax expert testimony guidelines and endorsing — if not full-on adopting — the stricter federal standards. In the Pradaxa cases, the plaintiffs claimed the drug was defectively designed and could cause harmful bleeding.



"The first Pradaxa trial win we had this year resulted from the death of a woman, which makes things very emotionally fraught, but we were able to convince the jury that Pradaxa was not the cause," Schmidt said. "So that was very gratifying, and we hope those trial wins will shape the remainder of the cases."

"But the New Jersey Supreme Court decision in the Accutane cases was really something," Schmidt said. "Getting a ruling that will allow for meaningful expert standards gets rid of a lot of cases in all kinds of product liability cases right off the bat, so that was pretty groundbreaking."

HIS BIGGEST CHALLENGE:

Perhaps unsurprisingly, Schmidt said his biggest challenge this year was the work that went into his biggest win: the New Jersey Supreme Court's Accutane decision.

"In the original case, we believed that the science supported our arguments, but it was still extremely challenging, because we had two very well-credentialed experts on the other side who came forward and gave very detailed explanations for their opinions on Accutane, why they rejected the science that we had presented, and why they found causation between Accutane and the alleged stomach problems in other parts of the existing science," Schmidt said. "We won that case following an evidentiary hearing, but then the Appellate Division reversed it in a unanimous opinion, which is how it ended up at the Supreme Court."

"So we had to argue against the concept advanced by the Appellate Division, which was that you don't want to deny plaintiffs their day in court by setting the standards too high on expert witnesses," Schmidt continued. "That was an uphill battle, but ultimately we received a unanimous opinion in our favor from the Supreme Court, which said the state's trial courts have to meaningfully look at how experts reach their opinions. That's a pretty material change."

HIS PROUDEST MOMENT AS AN ATTORNEY:

Schmidt said the moment that jumps out as the accomplishment he's most proud of came in 2015, when he and his colleagues won three trials in the span of a few weeks over the withdrawal effects of Eli Lilly & Co.'s antidepressant Cymbalta. In each case, Schmidt and his partners successfully argued that Eli Lilly had not tried to hide the dangers of withdrawal from users of Cymbalta.

"The reason it was so gratifying was just having the ability to do three trials back to back to back," Schmidt said. "All of them had different facts, and it was very challenging to get us to that point, but once we won all three, it effectively shut down the litigation."

Schmidt said the Accutane decision is a close second, however.

"I was extremely proud of that, just because we'd been litigating those cases for so long across the country, upwards of 10 years," Schmidt said. "So to finally get before the New Jersey Supreme Court and execute on a 10-year legal strategy that will shape that state's law going forward, that's something I'm very proud of."

WHY HE'S A PRODUCT LIABILITY ATTORNEY:

Schmidt said he was drawn to product liability and chose to make a career out of it for three main reasons.

"First of all, it's all real-world cases, and by that I mean every case involves complex scientific issues, but it also involves individuals and the facts of their lives, and I find that aspect very interesting," Schmidt said. "The second is that it's got a lot of what always excited me as an attorney: litigation, trials and appeals. Most cases really go through the whole life cycle."

"But also the fact that I've been lucky enough to work on cases involving products that I really personally believe in," he added. "Pradaxa literally saves lives, for example, while Mirena really is a very effective IUD and a very important device in terms of reproductive health and reproductive freedom. Accutane is the only acne drug that can really cure most types of persistent, serious acne, and that has helped a lot of people."

— *As told to Ryan Boysen*

Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2018 MVP winners after reviewing nearly 1,000 submissions.