

Product Liability Group Of The Year: Covington

By **Mike Curley**

Law360 (February 4, 2019, 3:56 PM EST) -- Covington & Burling LLP ended 13 years of litigation over Hoffmann-La Roche Ltd.'s acne drug Accutane, won bellwether trials for Boehringer Ingelheim Pharmaceuticals over blood thinner Pradaxa and resolved hundreds of suits over a Bayer-made IUD, earning it a place among Law360's Product Liability Groups of the Year.

With five partners, two full-time counsel and between 20 and 25 associates in the group, working out of Washington, D.C., and New York, partner and group Co-chair Paul Schmidt said product liability is one of the top practices within the firm, even as it's new and growing.

"It didn't exist in the same way 20 years ago, but it's been a major focus of the firm over the past decade and has grown into one of the firm's top practices," Schmidt said.

Michael Imbroscio, another co-chair of the group, said all five partners and counsel are "Covington lifers," saying the group's goal is to continue growing organically among the younger lawyers at the firm.

The Accutane litigation, in which the New Jersey Supreme Court scuttled more than 2,000 cases against Hoffmann-La Roche Ltd., represented a sea change in New Jersey law, Imbroscio said, calling it a "major step forward" in how expert witnesses are evaluated.

In the August decision, the judge ruled that courts need to assess the scientific reliability of evidence before a jury gets to see it, tightening the standards for expert witnesses.

Imbroscio said the decision, along with wins in other Accutane cases in Nebraska and New Jersey, represented one of the firm's top achievements last year.



"Any of them on their own would be a major victory, but the fact that they were, all three, in the same year is really remarkable," he said.

Schmidt, who argued all three cases, said it was a good year, and the first New Jersey case represented an important decision in the New Jersey pharmaceutical industry.

Co-chair Phyllis Jones said the Pradaxa bellwethers were another highlight of the year, adding it was gratifying to defend a product that benefits patients.

Pradaxa, a blood thinner produced by Boehringer Ingelheim, is the subject of litigation by patients who claimed the bleeding risk posed by the drug was responsible for strokes and other injuries. Covington won three bellwether trials in March, May and October, and is set to continue representing the company in further cases going into 2019. Jones said the key to the case's strategy was that the drug's labeling was clear to doctors about the risks to their patients.

"In each one of those cases, there's a story that has to be explained to the jury in terms of why the patient took the medicine in the first place, why his or her doctor thought it was an appropriate option for the patient and the extent to which the patient and the patient's doctor understood the risks," Jones said.

In the cases over Bayer's Mirena IUD, a win over expert witness testimony brought down hundreds of suits before they could make it to trial, as Covington's strategy was to build its own expert record to undermine the plaintiffs' witnesses, Imbroscio said.

The litigation revolved around claims that the Mirena birth control device causes idiopathic intracranial hypertension, or IIH, a condition in which pressure builds in the spaces around the brain and spinal cord.

Imbroscio said the firm focused on establishing core scientific facts to establish that there was overlap in the populations prone to the disease and the people who would use the IUD, and on putting together arguments to demonstrate that the plaintiffs' experts were unreliable.

An Alabama court handed Covington a win in other litigation over the IUD in September, and a New York federal judge in October excluded all the plaintiffs' expert witnesses in a multidistrict litigation over the IUD, effectively ending the suits in a 156-page order.

The judge's decision "accepted all of our arguments and systematically addressed and dismissed and excluded all their experts," Imbroscio said. "That was an example of the front end, of cutting off the litigation before it got to trial. That's one of the areas we're especially good at."

Imbroscio said the success this past year was a culmination of what the practice group has been doing for the past 16 years.

Regarding the Accutane litigation, he said the firm's and Hoffmann-La Roche Ltd.'s persistence paid off, adding that while other clients may have settled, Hoffmann-La Roche Ltd. felt very strongly about its product.

Imbroscio also said the young lawyers supporting the firm are another aspect that sets the firm apart.

"They come, they want to work in our group, they're really terrific, they do great work," Imbroscio said, adding he and the other partners in the group similarly came up through the firm as associates. "They really are the ones that have let us achieve the results we've achieved."

--Editing by Nicole Bleier.