THE AMERICAN LAWYER | THE AM LAW DAILY
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Break Out the Org Chart: How Covington Is Managing Its Opioid Docket for McKesson

Paul Schmidt, Andrew Stanner and Laura Flahive Wu of Covington & Burling discuss the challenge of staying on top of the all-encompassing assignment that's called on 50 lawyers at any given time.

By Ross Todd
May 25, 2022

How sprawling is the assignment of representing McKesson Corp. in litigation stemming from the opioid crisis?

The team at **Covington & Burling** representing McKesson has created an org chart just to track the roles and responsibilities of the 50-plus lawyers working on the matter at any given time.

Perhaps calling it a single "matter" doesn't fully capture the nature of the beast: Over the course of about five years, Covington lawyers have helped McKesson navigate a Congressional investigation, as well as a multi-state investigation led by dozens of states' attorney generals. That's on top of representing the company in more than 3,000 lawsuits, three of which made it to trial over the past year, with two more scheduled on the horizon this summer.

Let me catch my breath after that last paragraph.

The Litigation Daily last week checked in with **Paul Schmidt**, **Andrew Stanner** and **Laura Flahive Wu**, three litigation partners who have prominent positions in that Covington/McKesson org chart, to discuss the challenge of staying on top of such an all-encompassing assignment.

"We don't have the luxury in this litigation of just having the same three lawyers who can become experts in this, and I think that's a good thing," Stanner said. "In any given week, we might have to interact with Congressional committees in D.C., and a dozen different state attorney general around the country, the federal MDL in Cleveland, and then any number of judges in different state courts — some of whom are elected judges in the county or state where the case is being brought on behalf of the county or the state," Stanner said.

Courtesy photos

(L-R) Paul Schmidt, Laura Flahive Wu, and Andrew Stanner of Covington & Burling.

Everything about the assignment has been further complicated by different rules applying to the investigations and the civil litigation—and everything moving forward concurrently. But let's just hone in on the trial work: Since October 2019, has put together eight trial teams. Granted, five of those cases settled on the eve of trial, including the first case that was

scheduled to go to trial in the MDL, which settled in October 2019. But over the course of the past year-plus, Covington has had three cases that have made it through opening statements — including cases that were running concurrently in federal court in West Virginia and in New York state court — and two that have made it to the close of evidence.

In the West Virginia case which wrapped up in July 2021 after a 40-day bench trial, McKesson and its distributor codefendants Cardinal Health and AmerisourceBergen are awaiting a decision from Senior U.S. District Judge David Faber. Meanwhile, the three distributors reached a $1.1 billion settlement last July with the New York attorney general nearly a month into a civil trial against them and opioid makers in Suffolk County Supreme Court. (The jury there later found drugmakers created a public nuisance through their role in the opioid crisis and the companies face further proceedings on damages.) Most recently, Covington sent a team to Seattle, Washington, where after six months of trial McKesson, AmerisourceBergen and Cardinal Health agreed to pay $518 million over 17 years — well short of the $96 billion payable immediately that the Washington attorney general was seeking at the trial's onset.

"In any lawsuit, you're always looking ahead to a trial and how can you defend yourself," said Schmidt who has been lead or co-lead on the cases that have made it to trial so far. "In these cases, it's literally arguably one of the biggest, if not the biggest societal issue, the opioid crisis, where every judge and every jury we're in front of comes into the case with pretty strong opinions on it."

"On the client-side, I think McKesson has shown that you've got to have the courage to try cases to get good outcomes — and when you do, you can get good outcomes," Schmidt said.

On the firm-side, Flahive Wu said the lesson has been that litigation, especially at this scale, is "a team sport." She and a group kept things running in the West Virginia bench trial while Schmidt and Stanner peeled off last year for the start of the New York trial.

"I have been so thankful for the fresh thinking of associates, paralegals, [and] partners coming together over a course of weeks and months to bring new energy to a case that's been going on for years," she said.

Flahive Wu herself is preparing for another trial in West Virginia set to push off on July 5, the same month Stanner is set to handle a trial in state court in Brunswick, Georgia, in a case brought under the state's Drug Dealer Liability Act.

Stanner points out that when a portion of the McKesson team at Covington is engrossed with trial, other cases are still proceeding through motions practice and discovery. But, he added, the way the firm is managing the overall assignment means that trial teams don't have to "jump right back into" cases after their trial wraps. "There are other teams that are picking up other workstreams and developing the same expertise and the same relationships, whether that's with the client or with the joint defense group," Stanner said. The set-up, he said, means that trial team members get to catch their breath and recover a bit to ward off exhaustion.

What have the Covington lawyers learned thus far from their work for McKesson?

"Sometimes an investigation is not just an investigation," Stanner said. "And sometimes the litigation is not just the litigation." He said the firm is learning to identify the hallmarks of companion litigation and investigations and the different sets of legal problems they present.

Flahive Wu said she's keeping her eye on the close ties that have developed between some public entities and the private bar in the opioid cases, which she expects may give rise to additional partnerships in the future.

"The opioid litigation may embolden plaintiffs to bring new types of claims in order to address purported social ills," she said.

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