

## Product Liability Group Of The Year: Covington

By **Mike Curley**

*Law360 (March 1, 2023, 2:03 PM EST)* -- Covington & Burling LLP this year helped McKesson Corp. win the only trial against distributors in the sprawling opioid multidistrict litigation and secure a victory in the first multiplaintiff trial over Roundup for Monsanto, earning it a spot among Law360's Product Liability Practice Groups of the Year.

Paul Schmidt, co-chair of the firm's product liability practice, said Covington's broad range of capabilities, complete with a deep bench of 11 top-flight trial attorneys and appeals experience, has been key to the results seen this year.

He added that the group is unique because it was started by the lawyers currently in the group, with all but one of the 11 being homegrown at Covington. Before the product liability group was formed, he said the firm took isolated cases in the field, but it has really taken off in the past two decades.

In the McKesson trial in West Virginia, which was listed as one of Law360's **top product liability cases** last year, Covington won a full victory after a 40-day bench trial in a case brought by one of the regions hardest hit by the opioid epidemic.

Schmidt called it a high-stakes case, as the plaintiffs were seeking more than \$2 billion in damages, and the West Virginia setting made it more difficult given how much the state has been affected by opioids.

"If a lot of people think about the opioid crisis, they think about West Virginia," he said. "There's no doubt that West Virginia has suffered really serious consequences as a result of people struggling with both prescription opioid abuse and illegal drug abuse, and we wanted to be thoughtful about that and sensitive to that, while also vigorously defending against the claim that our client was responsible."

He said the trial attorneys were able to convince the judge that McKesson, as a distributor, was not responsible for the harms the state has seen, while also remaining respectful to the residents who were most affected by the drug.

That trial victory helped lead to another good result in opioid litigation for McKesson in Washington state on similar allegations, Schmidt said, where the state was seeking nearly \$100 billion, but ended up with \$518 million in a settlement.



Schmidt called the relief sought "staggering" and hard to picture, saying the firm did a great job of challenging it. He pointed out that the claims came in two categories — the cost of addressing the crisis and the number of law violations — and through questioning the causation expert, his firm was effectively able to cut the latter in half by showing that the expert couldn't opine that the company had any improper shipments in violation of the law.

"To be able to do a cross-examination that wipes tens of billions of dollars off the table is pretty unique," he said. "You don't see that in many trials."

In the Roundup case in St. Louis, which concerned whether the herbicide's active ingredient glyphosate causes non-Hodgkin's lymphoma, Schmidt said they had faced an uphill battle, as prior juries had been awarding escalating, multimillion-dollar verdicts against Monsanto. But after a monthlong trial, Covington secured a win for the company.

While Schmidt said he wasn't as involved in the Roundup case, as he was working the McKesson cases, he said the firm's ability to do two high-stakes, high-profile trials at once is one of its strengths.

"I think a lot of firms, a lot of practice groups, just couldn't do that in terms of having the trial lawyers who can do that, having the range of trial lawyers that requires and being able to show the clients that they're getting equally top-notch defenses across two very different litigations proceeding at the same time," he said.

The trial's nature as a multiplaintiff case made it more challenging in terms of sorting through the evidence and making it clear to the jury where claims for one plaintiff ended and another began, he noted, but the practice group was able to highlight the critical facts for the jury.

After only two and a half hours of deliberations, the jury came back with a victory for Monsanto in its home city, where other multiplaintiff, mass tort trials have come back with large verdicts for the plaintiffs, Schmidt said.

--Editing by Steven Edelstone.