

Trials Group Of The Year: Covington

By **Chris Villani**

Law360 (January 31, 2023, 2:02 PM EST) -- A victory for McKesson in a high-profile, landmark opioid suit and a string of wins for Monsanto in the ongoing and widespread Roundup litigation are two reasons why Covington & Burling LLP's trials group has earned a spot among Law360's 2022 Trials Groups of the Year.

Of Covington's 1,400 attorneys globally, nearly 800 are litigators. The firm is in trial regularly, having taken more than 50 cases to a judgment in the past three years, even as the total number of trials generally declined. Covington's specialty practice areas, a willingness to take cases all the way and its versatility in numerous jurisdictions are a few factors that have led to its success in front of juries and judges, according to John Hall, the chair of the global litigation practice.

"We don't fear taking hard cases to trial," Hall said. "Really tough, hard cases are where we have had success at trial, and the results we achieved are because we were willing to take the cases to trial."

Hall also touted the firm's comfort working in a wide array of forums, including state courts where BigLaw firms are occasionally less experienced, relative to federal courts. The nimbleness of the trials group has been on display in the Monsanto cases.

Monsanto has been hit with suits across the country, with some named among Law360's top product liability cases of the first half of 2022. The cases claim that the active ingredient in Roundup causes various forms of non-Hodgkin's lymphoma. Some trials have produced eye-popping verdicts of up to \$2 billion in damages.

But starting with a Covington defense verdict in California in October 2021, Monsanto won five straight defense verdicts in a row in various courts. Covington co-tried a suit in Monsanto's hometown of St. Louis in August 2022, and the jury returned a verdict for the defense in less than two-and-a-half hours after closing arguments.

"We have a large group of trial lawyers at Covington, and the work is spread around across a pretty relatable group," Hall said. "We have people who were born and raised all over the country, and all of whom strive to be the person they are: honest, straightforward, direct."



Hall added that it helps to have good local counsel, especially at the start of a case when a judge might not know the out-of-town lawyers in the room.

"Then you build your own credibility with the court over time," Hall said. "I'd like to think we are pretty good at that."

Perhaps Covington's signature win came in a 40-day bench trial in West Virginia, in which the firm represented McKesson in a \$2.5 billion suit brought by the county and the city that were the hardest hit by the opioid crisis.

Paul Schmidt, the lead trial counsel in the case, said his team was tasked with the challenge of openly acknowledging the seriousness of the crisis while also mounting a vigorous defense against the claim that the pharmaceutical company was to blame.

"There were a lot of very compelling witnesses from within the jurisdiction that we didn't take on because we didn't have an issue with what they were saying about the opioid crisis," Schmidt said, adding that some of those witnesses were not cross-examined. "Those who said we did something wrong, those are the ones we forcefully took on in terms of telling our story."

In the end, the judge found that the plaintiffs failed to prove that the distributors were at fault and that the central liability theory underlying the claims was inconsistent with the "historical and traditional" legal notions of the public nuisance law. The closely watched case was considered a bellwether for other opioid litigation around the country.

Covington also led Merck to a win in a \$1.4 billion cyber insurance coverage suit in New Jersey state court in December 2021. A month earlier, the firm scored a summary judgment win for Facebook in a California class action alleging that the company misrepresented that advertisers will not be charged for clicks on their ads from fake accounts. The plaintiffs sought to recover refunds for more than one billion ad impressions.

A team of Covington patent litigators prevailed against Sandoz and Zydus in federal litigation, with the judge finding in September 2021 that the generic-drug makers infringed several of Amgen's patents for its blockbuster psoriasis drug Otezla. Hall said Covington's skill in patent cases is yet another reason why it has kept such a busy trial schedule.

"There are a number of patent cases that are just hard to settle and hard to resolve," he said.

In 2023, Covington expects the slate to continue to be full. Hall cited the still-existing backlog of cases, including high-profile matters, that have been slowed due to the pandemic. The opioid litigation is an example of another brewing trend he sees in the years to come.

"What I think we will start to see, but are probably still a few years away from this coming to full fruition, is just increasingly creative use of the law to pursue societal problems through litigation," he said.

Schmidt said, even as the cases change, Covington's approach of being able to communicate with a wide range of judges and jurors will continue.

"Being direct and genuine is a huge part of it," Schmidt said. "It's about trying to understand where your jury is coming from and trying to address that."

--Editing by Steven Edelstone.

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