

Product Liability Group Of The Year: Covington

By **Mike Curley**

Law360 (December 14, 2020, 11:23 PM EST) -- Securing a precedential win for Boehringer Ingelheim Pharmaceuticals Inc. in litigation over its blood thinner Pradaxa and ending nearly 20 years of lawsuits against Hoffmann-La Roche AG alleging that its acne medication Accutane causes bowel disease have earned Covington & Burling a spot as one of Law360's 2020 Product Liability Practice Groups of the Year.

Michael Imbroscio, co-chair of the product liability group, told Law360 that the group, which includes about 30 lawyers, is a key component of the firm and a focused subset of its broader litigation practice.

He said the attorneys work in all five domestic offices — Washington, D.C., New York, San Francisco, Los Angeles and Palo Alto, California — and the group has largely grown through internal promotions.

That practice of building from within has resulted in successes for the firm's clients, Imbroscio said, including the May 2020 decision at the Connecticut Supreme Court that upheld a decision finding that Boehringer couldn't be held liable for not having released a counteragent to Pradaxa.

In the suit, the family of Mary Boone had argued that she was prescribed Pradaxa, and she bled out because the company did not have an effective countermeasure, but partner Shankar Duraiswamy said the firm was able to tackle the complex scientific and medical issues to secure a victory.

The firm has a deep understanding and expertise in the federal regulatory regime, he said, and an ability to break down complex scientific and medical concepts and explain them to judges and juries in a way that makes them more digestible.

"It's a testament to our industry knowledge and our ability to get deep into the facts, that we were able to analyze those issues and articulate them within the legal framework in a way that convinced so many different courts to dismiss plaintiffs' claims without getting to a jury," Duraiswamy said.

Similarly, the Accutane decision for Hoffmann-La Roche depended on getting the courts to understand the science at hand, Imbroscio said, calling the case the biggest highlight for the group, as they were able to close out nearly 20 years of litigation, including reversals of all adverse verdicts, to the tune of



\$100 million in reversed judgments.

In the end, he said, the cases hinged on showing the court that there wasn't any science linking Accutane to either ulcerative colitis or Crohn's disease, and an important step in that was convincing the New Jersey Supreme Court that the trial courts should take an in-depth look at novel scientific claims in order to evaluate the quality of expert witnesses on the Daubert standards.

"Convincing New Jersey to take that leap forward into adopting the Daubert factors was really a remarkable achievement," he said. "And, we think, the right one, and the right one for the industry."

In particular, he said, the firm was able to get the plaintiffs' expert opinions thrown out by showing that none of them could reliably draw a connection between Accutane and the bowel diseases.

"The Accutane example is a good example of focusing on what matters and focusing on the key expert issues, and convincing courts, demonstrating to courts, showing the courts that what they're trying to do here is just unreliable, inconsistent with good science," Imbroscio said.

Duraiswamy added the firm has demonstrated its ability to win cases at every stage of litigation, from the motion to dismiss stage to summary judgment to post-trial motions to getting cases reversed on appeal.

Looking ahead, Imbroscio said he expects to see the group continue to grow in response to the demand they're seeing, especially as the group expands outside of its traditional life sciences and pharmaceutical work, adding that they already have more work than they can handle with current numbers.

Duraiswamy added the firm's mass tort capabilities extend beyond the prescription drug and medical device industry, including representing Takata Corp. in litigation over its airbag recall.

Imbroscio said that while a lot of practices grow through lateral acquisitions, Covington has resisted that model, resulting in a very collaborative firm that has a proven ability to work well together and add value for the companies they represent.

"All of the partners in this group, certainly all the core partners doing the work, are all homegrown," he said. "What that really shows is how close we are, how close we work together. We're not just colleagues, but we're really good friends as well. That unique dynamic, which you don't see very much in today's world, sadly, really provides a different experience for our clients as well."

--Editing by Jay Jackson Jr.