

Product Liability MVP: Mayer Brown's Hank Bullock

By Juan Carlos Rodriguez

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Mayer Brown LLP's Henninger "Hank" Bullock had a big summer, with a victory in the Sixth Circuit protecting Eli Lilly & Co. from multidistrict litigation over injuries allegedly caused by generic painkillers and a win at the Iowa Supreme Court that cleared Schwarz Pharma Inc. of injury claims stemming from generic versions of a nausea medication, earning him a spot as one of Law360's Product Liability MVPs.

Both cases involved the so-called "innovator liability" theory, under which plaintiffs attempt to tie injury claims suffered from generic drugs back to the brand-name manufacturer. Bullock, a partner in Mayer Brown's litigation and dispute resolution practice and co-head for both the New York office's litigation practice and the firm's product liability and mass tort practice, said he considers the Iowa high court's decision in *Huck v. Wyeth Inc.* the high point of his year thus far.

He said the cases are so important because brand-name manufacturers spend huge amounts of time, money and effort developing drugs, of which only a few ever actually make it out for sale to the public. Plaintiffs say that because generic manufacturers are mostly protected because they have to rely on brand-name labels for warnings, injuries should therefore be linked to the original product developer.

Companies have expressed concern that if plaintiffs who pursue the innovator liability theory are able to succeed, it could create devastating economic repercussions

"The fear is that could chill innovation and force brand-name manufacturers to decide whether to continue to manufacture and market their product even after it goes off patent when they would become subject to this potentially new liability," Bullock said.

The Iowa Supreme Court found that the plaintiff's state common law tort claims over the generics maker's allegedly insufficient warnings were not preempted where the maker did not issue the stronger



Hank Bullock

warning that federal regulators had approved in 2004. The brand name drug at issue there was Reglan, a nausea and esophageal reflux treatment.

Bullock said the ruling was a relief for companies that had been worried after a negative ruling from the Alabama Supreme Court, which in 2013 allowed such claims to proceed. That court upheld its decision in August, giving both sides ammunition for a battle sure to continue across the country.

“Every victory we get is helpful. But because Huck was a state Supreme Court decision and the highest potential authority under Iowa law on the issue, it adds even greater weight in support of our argument,” he said.

Working cases all over the country has turned Bullock into something of an expert on product liability laws and theories from a wide variety of states. He said the cases are demanding because so much preparation has to go into them, and state judges expect a high degree of familiarity with their jurisdiction’s laws.

“These arguments get very focused, and when you get in front of an appellate court on these issues, you get really tough, focused questions, so you have to know it. I basically now know the major cases under tort law for the state Iowa, and Texas and Louisiana, among others,” Bullock said.

Bullock, who hails from New York and Pennsylvania, said he tries to avoid the stereotype of a “New York lawyer” when he’s working around the rest of the U.S.

“Every courtroom is different and every state or federal courthouse is different. So you find yourself on your feet in a lot of different places. That’s what keeps it fun for me,” he said. “You definitely try to find a way to be as warm and open and as accepting as possible so you can play in all fronts.”

Another big feather in Bullock’s cap this year was the Sixth Circuit’s decision to toss multidistrict litigation over injuries allegedly caused by generic versions of the painkillers Darvocet and Darvon.

The plaintiffs had appealed a 2012 ruling that dismissed a total of 68 personal injury suits, from 22 states, over the medications. The suits had targeted both generics makers including Teva Pharmaceuticals Inc. and branded-drug companies including Eli Lilly and Xanodyne Pharmaceuticals Inc.

“It was particularly gratifying result for me given the amount of time it took to familiarize myself with the laws of all 22 states,” Bullock said.

The Sixth Circuit’s decision was also notable because it rejected an Illinois federal judge’s finding that the plaintiffs could proceed with their suits under that state’s law. So although the issue could end up back before the Illinois Supreme Court or the Seventh Circuit, the Sixth Circuit’s decision lends further weight to the arguments of companies like those Bullock represents.

--Additional reporting by Sindhu Sundar. Editing by Patricia K. Cole