

## Product Liability Group Of The Year: Mayer Brown

By **Sindhu Sundar**



*Law360, New York (January 23, 2015, 10:25 PM ET)* -- Mayer Brown LLP was behind some of the year's biggest pharmaceutical decisions, including the Sixth Circuit's rejection of multidistrict litigation over generic versions of the painkillers Darvocet and Darvon and an Iowa Supreme Court ruling shielding branded-drug makers from injuries caused by generics, landing the firm among Law360's Product Liability Groups of the Year.

The firm's product liability and mass torts practice, which has roughly 30 attorneys in the U.S. — and 75 in total around the world — is driven by its work in medical device and pharmaceutical litigation, which continues to be a growth area for the firm, according to its practice group leaders. The firm has counseled companies including pharmaceutical giant Eli Lilly & Co., which it brought a victory in June in the Sixth Circuit appeal involving painkillers Darvocet and Darvon.

That case, in which the federal appeals circuit rejected what branded-drug makers call the "innovator liability" theory, involved the appeal of a 2012 ruling by the Kentucky federal judge overseeing the multidistrict litigation over the propoxyphene-based drugs. The judge had dismissed dozens of personal injury suits over the drugs' alleged heart health risks, and the Sixth Circuit ruled that the plaintiffs had not shown that the branded-drug makers' drugs caused their alleged injuries, as required by the law of 22 states that the claims involved.

"We had seven minutes to argue the law of 22 states, and we were lucky enough to obtain a positive ruling affirming the lower court's decisions," said Henninger "Hank" Bullock, a co-head of the firm's product liability and mass tort practice.

"It was a huge win for the industry, that everyone was pleased with, because it reaffirmed what we thought we knew about the law — and in some instances the ruling addressed state laws where there previously had not been an appellate decision," he said.

The firm, whose U.S. product liability attorneys are concentrated in Chicago, New York, D.C., Los Angeles and Palo Alto, is often enlisted to handle multijurisdictional litigation, and it often approaches individual cases with an eye toward their future progression toward MDLs or appeals disputes.

Its product liability attorneys coordinate their efforts with its appellate practice even when cases are at the trial court stage, in order to create the most advantageous legal record possible for defendants, firm

attorneys say.

The firm has been among the major players in Reglan litigation, and in July, it persuaded the Iowa Supreme Court that branded makers of Reglan, the nausea medication metoclopramide, aren't liable for injuries caused by its generic versions. The high court's ruling affirmed the trial court's summary judgment finding on behalf of the brand-name makers.

Allegations over injuries caused by generic Reglan have ensnared branded-drug makers including UCB Inc. and its subsidiary Schwarz Pharma Inc., for which Mayer Brown is national counsel.

"We're often dealing with litigation where there are tens of thousands of plaintiffs, each of whom brings a far different set of facts, in terms of how they used the products and what warnings they were given," Bullock said. "In that respect, we look at the litigation from a more macro legal standpoint looking for broad based, wide-swath cutting ways to resolve the litigation."

"In the Reglan cases, for example, we looked at it from a large-scale perspective and said: 'What are the legal issues, either at the trial court or appellate level, that can have the broadest application?'" he said.

Part of its litigation strategy is also to help develop testing to obtain more data to support its arguments, firm leaders said. In asbestos litigation, for example, the firm has worked with clients to help them remanufacture historical products using their historical formula, in order to test its potential to expose users to asbestos.

The firm has also used genetic testing in defense of birth defect cases, an important tool "in cases where people are asserting harm that might have a genetic basis," said Dan Ring, who co-leads the firm's product liability and mass torts practice.

"It's quite powerful to have the ability to not only review or critique what's out there, but to have real data instead of allowing the other side's experts to fill a void," Ring said.

--Editing by Jeremy Barker.

All Content © 2003-2015, Portfolio Media, Inc.