

Product Liability Group Of The Year: Covington

By **Mike Curley**

Law360 (February 26, 2024, 3:01 PM EST) -- Covington & Burling LLP's product liability group helped McKesson Corp. notch a trial win in the nationwide opioid litigation and secured a dismissal of claims against Hain Celestial Group Inc. over allegations that their baby food contained dangerous amounts of heavy metals, earning the group a spot as one of Law360's Product Liability Groups of the Year.

Mike Imbroscio, co-chair of the practice group, told Law360 that among the strengths of the firm are its trial lawyers and a unique strategic perspective that stems from experience both in mass tort litigation and the industries the firm represents.

"I think we know the playbook of the mass tort plaintiffs bar, and we can help counsel clients in responding to that playbook and in helping them develop arguments that demonstrate that their actions were appropriate and that they should prevail," he said.

He highlighted the Hain case as an example, saying that they were in a tough jurisdiction against some of the best plaintiff attorneys in the business, but were able to stay "laser focused" on the themes and aspects of the case, particularly rebutting the plaintiffs' expert testimony and focusing on the facts of the case.

The suit claimed that heavy metals in Hain's baby foods caused the young plaintiff to develop autism, Imbroscio said, but through the case, Covington's attorneys were able to show that the plaintiff's condition developed along the same lines as is typical for autism, and the judge found that there wasn't evidence for general causation.

Partner Andrew Stanner, who worked with partner Emily Ullman on the McKesson case, said the firm's strengths similarly shone through in that first-of-its-kind trial, which put to the test whether Georgia's Drug Dealer Liability Act, meant to provide civil remedies against illegal drug dealers, applied to licensed wholesalers.

The firm took the case to a verdict. After three and a half weeks of trial and a day and a half of deliberations, the jury returned a full defense verdict on both the DDLA and racketeering claims.

"It's the kind of win that should have an impact beyond this single case," Stanner said. "We know other



plaintiffs lawyers were watching, and certainly other wholesale distributors were watching to see how it would go."

Stanner said the firm has represented McKesson for six years in the opioid litigation and has had a lot of success that helped lead to the trial win, such as experience dealing with plaintiffs' experts, which prepared the firm to rebut them in front of the Georgia jury.

He added they were able to help the jury understand that McKesson, while it delivers medicines that include opioids, is not an opioid company, and that its licensed sales and deliveries are far from the illegal drug dealers the DDLA is meant to target.

Stanner further touted the firm's unique mix of lawyers across practice areas, saying they really work well together. On large cases, it's important to be able to rely on colleagues across the firm, he said.

The firm's understanding and familiarity with case law also helped it notch a win for Bayer when the firm secured dismissal of claims that its Lotrimin and Tinactin products contained dangerous amounts of benzene, Ullman told Law360.

The suit was spurred by a voluntary recall of the products, she said, and combined product liability with economic claims. The case was dismissed when the judge found that the plaintiffs needed more than notice of a recall to support their claims, Ullman said, adding they were able to show the court that there's "nothing to see here."

"I think that's very important, in educating a court, to the extent you can, given the procedural posture, to give a court comfort that they are doing right by the consumers who are bringing the claims," she said.

In addition to the experience behind the group, Imbroscio said that watching younger lawyers come up through the group has been one of the most rewarding aspects of leading the team.

Ullman echoed him, saying as someone who grew into the group since arriving at the firm as an associate, the group's leadership and training of junior attorneys and collaborative culture is what makes the group as strong as it is.

"They are some of the best mass tort lawyers of their generation, and that brings me tremendous pride in the practice that we've developed and what we can offer to clients," Imbroscio said. "That's really gratifying and really satisfying, as I look back over the building of this practice."

--Editing by Dave Trumbore.