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## Trials Group Of The Year: Covington

By Christine DeRosa

*Law360 (March 4, 2024, 3:24 PM EST)* -- Covington & Burling LLP's trials group successfully represented major companies such as TikTok, The Hain Celestial Co., McKesson and Merck last year in courts across the country, earning the firm a spot among Law360's 2023 Trials Groups of the Year.

Covington has more than 700 litigators, and they work out of every office in the firm. John Hall, chair of the global litigation practice, told Law360 they pride themselves on exceptional courtroom advocacy, but that to succeed at trial, there has to be rigorous fact-finding, outstanding case management and creative legal arguments.

What also sets Covington apart, he said, is its enviable mix of specialty practice areas, its versatility in numerous jurisdictions and something Hall has come to call the "Covington Plus" factor.

"It is this thing that has always distinguished us: our close collaboration with our industry and regulatory enforcement specialists, working hand in hand with those folks to get the unique insights and to be able to make the very best arguments when we're standing up in court," Hall said.

Hall said another element that distinguishes Covington is the ability to take advantage of colleagues in specialty areas, something that's only possible because of the way the firm operates.

"We are truly one firm, a single-tier equity partnership with no origination credits," Hall said. "There are no individual clients at Covington. There are only firm clients, and because we don't have the internal jealousies and competition that tends to be generated by those compensation models, everything we do is designed to incentivize lawyers to bring the right person to the job," he said. "Otherwise, you couldn't have a system where you're asking regulatory lawyers to pair with litigators and come up with the very best arguments."

Hall said this structure has allowed them to build a tremendous group of trial talent, and he believes Covington has one of the strongest cohorts of young litigation partners in the country because of this model.

Last year, Covington worked on cases throughout the country, including social media giant TikTok's trial in Indiana.

Hall represented the company when it was sued by Indiana's attorney general, who alleged TikTok



violated the state's Deceptive Consumer Sales Act by making inaccurate or misleading statements about the age-appropriateness and content of the platform, he told Law360.

The judge dismissed the suit, determining that the case was not sufficiently linked to Indiana and that the attorney general had failed to state a claim under the DSCA.

"One of the things I'm most proud of here is we won a case and ... prevailed against the Indiana attorney general in Indiana state court with strong, solid, well-supported arguments and terrific advocacy," Hall said. "And those arguments have stuck."

Covington represented The Hain Celestial Co., maker of Earth's Best baby food, in a lawsuit alleging that heavy metals found in the food caused the plaintiffs' son's autism spectrum disorder. The parents sought \$31 million in compensatory damages, plus pain and suffering and punitive damages, in the Texas federal court case.

Mike Imbroscio, partner and co-chair of the firm's product liability and mass torts practice group, told Law360 by email that throughout the case, the firm focused on the fact that as food grows, it takes up small amounts of metals, and that the food is safe and families eat it daily.

"We focused on this central fact throughout our case — that no one, including plaintiffs' counsel, would argue that simply eating food — e.g., buying a sweet potato, cooking it, and mashing it up for your toddler — would present any risk," Imbroscio said.

In March 2023, U.S. District Judge Jeffrey Vincent Brown ruled in Hain Celestial's favor, giving Covington a midtrial win by agreeing that the plaintiffs hadn't offered evidence showing that heavy metals in the food caused their son's disorder.

Judge Brown said the parents didn't provide any testimony from a qualified expert that the ingestion of heavy metals can cause the symptoms that their son experiences.

"The court's ruling reflected the culmination of our strategy from the very beginning to focus on the implausible proposition that eating food can cause autism, and it was especially significant because this was the first baby food case to reach this stage and be so directly rejected by a court after a full airing of the scientific evidence," Imbroscio said.

Also in March 2023, Covington partner Andrew Stanner helped secure a victory for McKesson Corp. in a first-of-its-kind trial after families sued drug sellers under the Georgia Drug Dealer Liability Act and the Georgia Racketeer Influenced and Corrupt Organizations Act.

The plaintiffs alleged that Cardinal Health Inc., McKesson Corp. and Smith Drug Co. distributed opioids illegally — without monitoring and investigating clearly suspicious pharmacy orders — causing pain and misery in their lives after their family members became addicted to the drugs.

Stanner told Law360 that until that case, the law had never been used to sue a licensed, registered wholesaler of prescription medicine like McKesson and that he doesn't believe the law does or was intended to apply to wholesalers.

"The fact that the jury reached a unanimous verdict in McKesson's favor after nearly a month of evidence shows clearly that they did not believe McKesson did anything wrong," Stanner said. "It also

suggests that they did not agree that the law should be used to target licensed wholesalers, whose role is limited to delivering bulk orders to pharmacies and hospitals."

Covington also served as lead counsel for Merck & Co. Inc. in New Jersey state court in a \$1.4 billion cyber insurance coverage suit against 32 of Merck's property insurers, seeking damages from losses due to the 2017 NotPetya cyberattack.

Anna Engh, partner and co-chair of Covington's insurance practice group, told Law360 that the team rallied to move the case forward for Merck from the initial status conference to the close of fact and expert discovery in two years.

The insurers had denied coverage, arguing that the Russian military had launched NotPetya, and the resulting losses were caused by "hostile or warlike action" excluded by the policy. The trial court ruled for Merck and rejected the insurers' defense as a matter of law. More than 20 insurers settled, but the remaining seven insurers appealed the decision to the state Superior Court Appellate Division, where Covington briefed the case and led the arguments.

In May, the appeals court affirmed the ruling on the war exclusion. The insurers then appealed to the New Jersey Supreme Court, and the case was fully settled shortly before oral argument in January, Engh said.

"Covington's litigation team successfully navigated the tasks and challenges presented by this large litigation to achieve this result, underscoring Covington's strengths as policyholder counsel in large, complex litigation," Engh said.

--Additional reporting by Allison Grande, Cara Salavatore and Lauren Berg. Editing by Linda Voorhis.