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LITIGATION

PRODUCT LIABILITY

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A FRESH APPROACH

Covington succeeds with innovative thinking and tactics.

FROM LEFT Raymond Biagini, Phyllis Jones, Michael Imbroscio, Paul Schmidt, Shankar Duraiswamy

A Fresh Approach

Covington succeeds with innovative thinking and tactics.

By Susan Beck

WITH A STRING OF BIG VICTORIES IN TRIAL AND APPELLATE courts, major settlements, plus a creative strategic edge that sets it apart, Covington & Burling wins our product liability contest. What's remarkable is that Covington's group beat two powerhouse product liability firms—Reed Smith and Shook, Hardy & Bacon—even though it's much smaller and has focused on this field for less than a decade.

"Covington excels at litigation strategy," says Mary-Alice Barrett, assistant general counsel at Genentech Inc., who has overseen litigation over the Accutane acne drug made by parent company Hoffman-La Roche Inc. "It's more than strategy in the courtroom on a given day. To me, they exhibit the highest level of big-picture strategic thinking."

"I think the youthfulness of the practice distinguishes us," says 35-year-old Covington partner Phyllis Jones. "We look at things differently." Jones and Covington partner Paul Schmidt, 45, this year won the first three cases to go to trial over Eli Lilly and Co.'s antidepressant drug Cymbalta. More than 900 plaintiffs have sued after allegedly suffering severe reactions when they stopped taking the medicine, and plaintiffs lawyers have threatened to file another 4,000 cases. Covington's pretrial strategy included focusing on the merits of cases early, and thwarting the formation of coordinated multidistrict litigation.

In one Cymbalta case involving a sympathetic wheelchair-bound veteran who had served in Afghanistan, Covington convinced the judge to allow it to depose the patient's prescribing doctor and get the plaintiff's medical records sooner than usual. The defense lawyers discovered that the doctor was aware of Cymbalta's risks. "We got to that in four months, not four years," says partner Michael Imbroscio, 47, who was part of the team that won summary judgment for Eli Lilly.

"The string of recent major wins in the Cymbalta litigation is highly unusual," says Eli Lilly assistant general counsel Christopher Gramling. "Trying and obtaining favorable verdicts in three trials, against four plaintiffs, in a four-week time frame shows real discipline and flexibility."

Covington started its product liability practice eight years ago by leveraging its expertise in Food and Drug Administration matters. Since then, clients have turned to Covington for some of their thorniest matters. "Our niche is high-stakes cases—when a company is in major trouble," says Imbroscio. When German drugmaker Boehringer Ingelheim faced nearly 5,000 claims of serious medical problems caused by its drug thinner Pradaxa, including 765 deaths, it brought Covington in to

replace Butler Snow as lead counsel. In May 2014 Boehringer Ingelheim reached a \$650 million settlement, for an average of \$141,600 per claim.

For Hoffmann-La Roche, Covington has dramatically turned around troublesome litigation over Accutane. For 10 years the company had been hit by a series of adverse rulings and verdicts in cases alleging that the acne drug causes Crohn's disease and other severe intestinal problems. After the company asked for the recusal of the New Jersey state judge overseeing the cases, and the judge was assigned to an appellate court in 2014, Covington started repairing the damage. With a new judge, the firm eliminated half the 7,000 cases filed by plaintiffs around the country by discrediting the plaintiffs' scientific evidence that the drug causes Crohn's disease. The firm has also notched 12 straight appellate wins, including reversing Accutane judgments totaling more than \$42 million since 2009.

Imbroscio points out that Covington's tight group is homegrown: All 12 partners have been with the firm their entire career. (The firm is open to bringing in some laterals, he says.) One reason for the group's fresh approach is that these partners

don't just do product liability cases. Schmidt, for example, has represented the National Football League in litigation; Jones has handled insurance disputes; and Imbroscio has a background in white-collar defense work. Says Jones: "We see lots of different ways of doing things and don't get locked into a model."

In the team's biggest loss, a jury awarded \$1.5 million to a woman who claimed that Accutane caused her inflammatory bowel disease. The woman had won a \$10.5 million verdict in 2008, but Covington got that result reversed.

In recent years, Covington has ventured outside its self-described "sweet spot" of pharma work. In one of its newest assignments, Takata Corp. brought in the firm to be co-lead counsel with Dechert for the escalating litigation associated with its airbags, which have been linked to eight deaths. More than 30 million vehicles in the U.S. have been recalled to replace these airbags, which in rare cases have shot shards of metal into drivers and passengers when the bags are inflated.

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Department Size and Revenue: Partners 12 Associates 22 Counsel 8

Department as Percentage of Firm 4.6% Percentage of Firm Revenue, 2014 2.7%