

Product Liability Group Of The Year: Arnold & Porter

By Emily Field

Law360 (February 1, 2019, 6:37 PM EST) -- In the bellwether case in a multidistrict litigation alleging that a testosterone replacement therapy injured patients, Arnold & Porter's product liability group secured a win for Endo Pharmaceuticals, one of the achievements that landed them among Law360's Product Liability Groups of the Year.

The firm was the lead trial counsel for Auxilium Pharmaceuticals in a seven-day trial in November 2017 alleging that the testosterone drug Testim caused a man's heart attack. The jury took only three hours to decide that it wasn't.

Following two large punitive damage awards against a co-defendant in the same MDL, practice group Co-chair Pamela Yates credits the win with helping turn back the momentum of the litigation — which included more than 6,000 cases at one point — and resulting in a favorable settlement for their clients in February.

"That truly is a product liability group achievement," Yates said, noting that the trial team was staffed with all Arnold & Porter attorneys.

"In today's world of mass torts, often you'll see firms joining together, but this was an all Arnold & Porter trial team, so that was particularly special for the firm," Yates said.

Arnold & Porter was also able to build on its 2017 win at the U.S. Supreme Court, in which the high court ruled that nearly 600 non-Californians can't pursue claims in that state over Bristol-Myers Squibb Co.'s blood-thinner drug Plavix. In August, the New York Supreme Court dismissed about 75 remaining cases when it granted the firm's motion to exclude expert testimony and for summary judgment.

The New York Supreme Court's decision ended years of litigation that never saw a trial, according to the firm.

"The trial aspect of what we do is obviously very important, but the other thing that I think Arnold & Porter is known for is the strategic insights we bring to a litigation and the Plavix litigation embodies that," practice group Co-chair Anand Agneshwar said.

In June, Arnold & Porter notched a win for Bayer in a case involving an overdose of its low dose aspirin



when the Ninth Circuit affirmed a lower court's ruling in favor of the company.

That was an interesting case, Yates said, because the science and the plaintiff's claims developed in different directions.

"The claim really was that the plaintiff had taken the medicine as recommended, so had not exceeded the dose, and had this awful, toxic reaction, but when you look to the science and you look to the aspirin levels, it seemed pretty clear that actually this was a likely case of overdose," Yates said. "So it came down to two competing issues: Is there a duty to warn if somebody says they took the recommended dose but at the recommended dose there has never been this type of reaction, and/or we already warn of overdose."

Agneshwar said the practice group "runs the gamut" and is a "go to" for pharmaceutical and medical device cases, toxic torts, as well as FDA and government investigations.

"What we bring to bear is an interdisciplinary approach to managing these cases where we draw on our white collar teams, our FDA teams, which are unparalleled," Agneshwar said.

In August, the group was retained as national counsel in litigation over claims that Monsanto's weedkiller causes cancer. There are more than 8,000 cases across the country, chiefly in consolidated proceedings in state courts and in a federal MDL in California, and trial dates are slated for February and May.

"We anticipate a very busy year," Yates said.

--Editing by Nicole Bleier.