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SPECIAL
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◆ LITIGATION PRODUCT LIABILITY FINALIST ◆

SHOOK, HARDY
& BACON

◆ LITIGATION DEPARTMENT ◆ of the YEAR

THIS IS OUR FIFTH BIENNIAL Litigation Department of the Year competition. It has become a cliché to note that we've never had a tougher time picking finalists and winners from the scores of submissions. Nevertheless, it's true. The last two years have been a time of unprecedented upheaval for American businesses—and for the lawyers who serve them. To quote a partner from one of our finalist firms, the economic meltdown resulted not just in litigation, but in conflagration. The firms we chose in the overall contest and in the three practice area competitions—product liability, labor and employment, and intellectual property—didn't just survive this trial by fire. They were forged into stronger, faster, smarter litigation departments.

As before, we invited every firm in The Am Law 200 to report on litigation activities in a 19-month period, this time January 1, 2008–July 31, 2009. Every submission was read by at least three *American Lawyer* journalists. We vetted the strongest entries with calls to clients and opposing counsel. Panels of reporters and editors picked finalists in each category and invited those firms to our offices in New York to plead their cases. At the end, we arrived at the results that follow: four winners, 12 runners-up, and 24 honorable mentions. Congratulations to all of them.

—ALISON FRANKEL



Everything's Up to Date

By Ben Hallman

The 120-year-old
SHOOK, HARDY
continues to rack up
trial wins—
at affordable rates.



BEFORE 2006, WHEN THE Centers for Disease Control and Prevention reported a link between ReNu Moisture Lock saline solution and a fungal eye infection called fusarium keratitis (prompting recall of the product), Bausch & Lomb Inc. had never been the target of mass tort litigation. It had also never hired Shook, Hardy & Bacon, the venerable Kansas City, Missouri-based product liability firm.

"It was important to find a firm that could support the defense of multiple actions in multiple jurisdictions," recalls A. Robert Bailey, Bausch & Lomb's general counsel. Shook won the work over better-known East Coast firms, he says, because it "has a deep and broad bench." It also helped, he says, that the firm, which pushed hard for the assignment, was "more cost-efficient" than its competitors.

Shook, Hardy is a finalist in the product liability division of our Litigation Department of the Year contest for the breadth of its work, from wins in traditional one-off cases for clients like Kia Motors America, Inc., to its role in managing the massive Engle tobacco litigation in Florida for Altria Group, Inc. Shook is also a finalist because more than any other firm in the product liability competition, it tries and wins cases. (Firm lawyers tried 32 cases, winning 27 of them, over the last two years.) Shook has the biggest stable of product

liability lawyers—more than 300—and an impressive roster of institutional clients, such as Philip Morris USA Inc., which the 120-year-old firm has represented for a half century. Yet it approaches potential new clients with an underdog's attitude and a honed sales pitch that calls attention to the firm's experience handling litigation as effectively as the New York firm next door, but for less money.

The go-get-'em attitude starts at the top, with chairman John Murphy. Ask about his business strategy, and Murphy's likely to bring up the failure of Heller Ehrman. The San Francisco litigation shop collapsed in 2008, in part because several big cases settled at the same time. Murphy, who also runs a litigation firm that doesn't have the luxury of hedging its bets with other big practices, has taken the Heller lesson to heart. "You don't want to wait until a downturn to find new litigation," he says.

Finding new litigation sometimes means finding new ways to structure billing arrangements. Five years ago, Shook pitched, and won, a flat fee deal to handle all of Tyco International Ltd.'s product liability cases. David Nicholas, Tyco's senior litigation counsel,

FROM LEFT:
Frank Kelly,
Kenneth Reilly,
Robert Adams,
Hildy Sastre,
Harvey Kaplan

says the company reduced its outside counsel list from hundreds of firms to one. "Because of Shook, Hardy's presence, we don't have to try that many cases anymore," Nicholas says. Shook's trial success has scared off some would-be plaintiffs, he explains. (Tyco recently re-upped its flat fee deal with Shook.)

The decision to go with Shook paid off for Bausch & Lomb as well. In the past two years, Shook lawyers, led by partners Eric Anielak, Harvey Kaplan, and Marie Woodbury, settled more than 600 fusarium claims, for a reported \$250 million. (Bausch & Lomb declined to comment on the settlement.) Shook also shut down a potentially damaging new set of cases related to ReNu Moisture Lock, brought by users who suffered from other types of eye infections that were not related to the specific fungus identified by the CDC. In 2009 a New York state judge ruled that there was no scientific evidence to link the ReNu product to these other eye infections, leading to the dismissal of most of the cases.

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PRACTICE GROUP SIZE	Partners: 121
	Associates: 138
	Of Counsel: 49
PRACTICE GROUP as Percent of Firm	67%
ESTIMATED PERCENT of Firm Revenue 2009	68%

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