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ALM

SPECIAL
ISSUE

LITIGATION PRODUCT LIABILITY WINNER

Shook, Hardy
& Bacon

LITIGATION DEPARTMENT of the YEAR



THIS IS THE FOURTH TIME we've chosen a Litigation Department of the Year, a now biennial undertaking that has acquired a life of its own. We invited the Am Law 200 firms to compete for the overall title as well as laurels in one of three specialties: Intellectual Property, Labor and Employment, and Product Liability.

We asked the firms to report on their litigation records between January 1, 2006, and June 30, 2007. Specifically, we asked for no more than five examples of "significant achievements" in six categories, ranging from pretrial work to appellate to pro bono. The responses filled two dozen crates and have occupied most of our waking hours since the August 1 deadline.

We read them all, the clear and the confusing, the witty and the turgid. We whittled down the entries to a short list of finalists and then invited each to come to New York to plead their case. Oral argument, as it were, helped some firms. Others should have stayed home. Also, once again, we asked for client references. Note to law firms: Next time, check to make sure these folks actually think as highly of your work as you believe they do.

In the end, our four panels of judges concluded that we were most akin to admissions committees at very select colleges: At a certain point, you get used to rejecting high school valedictorians. This was a remarkably close competition. In our special report we present the four winners, the runners-up, and, in the Department of the Year contest, 18 more who merited special attention. Congratulations! And let the appeals begin.

—ARIC PRESS



PHOTOGRAPHS BY MIKE MCGREGOR

Pharm Team

Shook, Hardy built its reputation on tobacco litigation, but these days, drugmakers are bringing in much of the work.

By Julie Triedman

IN EARLY 2006, a *New York Times* article described a small case study that purported to link Ambien, the nation's best-selling prescription sleep aid, with bizarre nocturnal behaviors, including driving or binge eating while seemingly asleep. Within days, some 500 plaintiffs had signed on to the first federal putative class action. They were seeking damages related to the company's alleged failure to warn of potential side effects, as well as for injuries they allegedly sustained while using Ambien.

Bypassing other regular outside counsel nearer New York, where the class action was filed, Sanofi-Aventis U.S. LLC called on Kansas City, Missouri's Shook, Hardy & Bacon. Led by Harvey Kaplan, chair of the firm's pharma products team, Sanofi was able to snuff out the challenge definitively. On May 29, 2007, before a motion for class certification had even been filed, plaintiffs voluntarily withdrew the claim. No new claims have since been filed. "It was a truly phenomenal result," says Laurie Polinsky, associate general counsel for U.S. litigation at Sanofi-Aventis.

The result underscores the fact that Shook, with its half-century history of tobacco defense work, has become a go-to firm for major pharmaceutical and medical device litigation. Since 1970, the firm has defended an unusually long list of products and clients in this area, serving as national counsel or national coordinating counsel for 31 drugs and medical devices marketed by 13 companies. (Add on its roles as regional counsel, national trial counsel, or co-national counsel, and the product list grows by 16.)

"There is no short list for national counsel of a major pharmaceutical company that doesn't include Shook," says Pfizer Inc. general counsel Allen Waxman, who tapped the firm as one of Pfizer's preferred outside counsel in late 2005. Pharmaceutical product lia-

bility "is central to what they have done, even before it was in vogue. It's [become] their bread and butter."

Indeed, Shook has made product liability defense the focus of the entire firm. It has built the deepest bench of product liability talent anywhere: 322 of its 440 lawyers spend at least three-quarters of their time on product liability matters. "People call Shook the world's largest boutique firm," says one in-house litigation counsel. "They pretty much do product liability everything." During our submission period, Shook tried more products cases to verdict than any other contender—23—and won 15 of them.

Early on, the firm built a scientific infrastructure that is still paying off. Some 100 experts are on staff, including 14 doctorates in molecular virology, human genetics, biology, biochemistry, and physiology. There are also experts with graduate degrees in such areas as nursing, mathematics, and environmental science. "Shook has real depth in the science area," says Ezra Rosenberg, a product liability partner at Dechert, one of our finalists.

Clients trace Shook's pharma success to Kaplan. In 1970, his first year at the firm, Kaplan worked on the firm's first personal injury case for Eli Lilly and Company. His subsequent work on several high-profile trials in the seventies—including one of the first pharmaceutical mass torts, a case alleging that the synthetic hormone DES caused cancer in the children of women who had taken the drug—earned him a reputation as "one of the godfathers of product liability law," says Polinsky, echoed by several others.

Kaplan has cultivated a substantial group of talented trial lawyers. One of the most prominent is Timothy Pratt, who oversees Guidant Corporation's defense of more than 5,000 federal and state claims arising from the recall of implantable defibrillators. He teamed with

Andrew Carpenter recently to nip some major liabilities in the bud. In April 2007 they won dismissal of secondary and third-party payer claims. Three months later, Pratt also negotiated resolution of 8,550 individual claims; as a result, trials scheduled to begin that month were suspended.

Despite its dominance in pharma, Shook hasn't let its tobacco work slide. In January 2006 Philip Morris USA Inc. tapped Gary Long, chair of the firm's national product liability group, to lead the company's defense in two class actions in New York and Boston; both are medical monitoring claims, which seek an award for the cost of periodic medical exams and health tests for smokers. It is also handling most of the roughly 200 individual smoking and health claims filed in Florida. The claims were precipitated by the Florida Supreme Court's July 2006 decision to toss a record-setting \$145 billion punitive verdict and decertify a 700,000-member Florida class of smokers.

The firm's ability to utilize its vast tobacco database and trial playbook has come in handy as the smoking and health docket blossoms overseas. In France, for instance, the firm was

PRACTICE GROUP SIZE Partners: **143**
Associates: **123**
Of Counsel: **56**

PRACTICE GROUP AS PERCENT OF FIRM **73%**

ESTIMATED PERCENT OF FIRM REVENUE 2007 **70%**

ON THE DOCKET Helping defend Philip Morris in the first health care reimbursement case filed in Israel; coordinating the defense of hundreds of suits stemming from problems with ReNu MoistureLoc contact lens solution and several hundred cases involving the antiepileptic medication Neurontin.



brought in to help develop substantive trial strategies in the first non-U.S. health care cost recovery class action against the company. “The feeling was, Shook’s ‘been there, done that,’ ” recalls Olivier Debouzy, name partner at Philip Morris’s French national litigation counsel August & Debouzy. Last May, after a hearing before France’s highest court, the plaintiff, the Caisse Primaire d’Assurance Maladie de Saint-Nazaire, withdrew the suit. No new claims have been filed. “Together, we killed it off,” says Debouzy.

Due in part to that representation, Shook was appointed Philip Morris International’s worldwide coordinating litigation counsel in 2004. “They have an institutional knowledge of our litigation that is unsurpassed,” says

John Mulderig, associate general counsel of the company’s corporate parent, Altria Group, Inc. “They have worked on more class actions than anyone else, and my hunch is, they’ve tried more cases than anyone, period.” As of last month, Shook lawyers were coordinating and assisting national counsel through trial and appeals in 150 pending international matters.

Shook lawyers project a folksy style that juries like, say clients and opposing counsel. The firm’s Kansas City base also allows it to bill at least a quarter less than coastal competitors. Some 29 percent of the firm’s work is covered by alternative billing arrangements.

New matters keep rolling in. Shook was re-

From left: Robert Adams, Marie Woodbury, Timothy Pratt, Harvey Kaplan, Gary Long

cently appointed to oversee several hundred cases involving allegations that the antiseizure drug Neurontin triggered suicide attempts. And new client Bausch & Lomb Incorporated tapped it to coordinate the defense of hundreds of suits prompted by eye infections allegedly linked to contact lens solution. In a shifting torts landscape, one sure bet is a steady flow of cases claiming damages from new drugs. Another is that Shook lawyers will be ready to defend them.

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GROOMING AND MAKEUP BY MARTHA FRIEDLANDER

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