

Product Liability Group Of The Year: Shook Hardy

By **Steven Trader**

Law360, New York (January 29, 2016, 9:33 PM ET) -- After scoring victories on behalf of Philip Morris both overseas and domestically, as well as the continued success at trial representing Boston Scientific Corp. in its pelvic mesh litigation in 2015, the product liability team at Shook Hardy & Bacon LLP nabbed a spot among Law360's Product Liability Groups of the Year.



In one of the first so-called Engle progeny trials of 2015, the team at Shook Hardy, acting as lead counsel, helped Philip Morris USA Inc. duck a \$29 million liability suit brought by a former smoker claiming the cigarette maker's product caused his laryngeal cancer. The firm's success only continued from there, convincing a jury to side with the tobacco giant in two other trials, and limiting the amount of damages in at least one more.

Shook Hardy, whose product liability team of 329 is the largest in the world, also found success on behalf of Philip Morris overseas, convincing an Israeli district court judge to dismiss a proposed class action of "lights" smokers who claimed they were tricked into believing they were smoking healthier cigarettes. After the group appealed to Israel's Supreme Court, Shook Hardy won that argument as well.

John Murphy, chairman of the firm, said the key to the firm's success defending clients, whether it be Engle progeny or in the pharmaceutical or automotive fields, is being more prepared for cases as well or better than anyone else in the country.

"We're trial lawyers first, and I also think that our ability to engage with jurors is very important and very critical, and I think makes us very successful," Murphy said. "We've always been able to take complex cases, complex themes and make them simple for jurors. That's always been a hallmark of ours."

It can be a particular challenge when you're on the corporate side and facing off in a courtroom against someone who's been harmed by smoking or any other product, where the sympathies of the jury may first lie with a plaintiff, Murphy said.

"But I think we've always recognized that you have to humanize your corporate client, and that's something I think we've done very well," Murphy said. "I don't know if it dates back to our Midwest beginnings, but there's always been a certain attitude I think permeates our trial lawyers regardless what office they're in, there's not an arrogance there, and I think that comes across to jurors."

In October, the Shook Hardy team helped Boston Scientific fend off a suit by a woman who claimed she was injured by one of the company's vaginal mesh products. The firm convinced a North Carolina **federal jury** that Martha Carlson hadn't proved her design defect or breach of warranty claims related to Boston Scientific's Uphold Vaginal Support System, which was marketed as a thinner and lighter alternative to synthetic mesh devices.

The case had been remanded to North Carolina from the West Virginia federal court overseeing multidistrict litigation against the company. In late 2014, Shook Hardy won two similar jury verdicts. Of the 14 mesh cases tried to jury verdict, Shook Hardy has achieved three of the four defense wins, the firm said.

"I think those are cases where we've typically excelled," Murphy said. "Products cases involving science, engineering and health issues have always been our strong point. And the fact that, of the defense cases that have been won there, we've been involved with 75 percent of them, I think that's important."

Murphy said one of the key factors that differentiates the firm is its team of 115 professionals with advanced degrees in biology, chemistry and biochemistry, among others, that make up what's called its analyst program, which the firm started in the 1970s. That team helps litigators formulate discovery and trial theories, evaluate scientific and technical issues and identify and prepare experts — a godsend as part of a trial team, according to Murphy.

That bodes well for a firm that acts as national counsel for nine or 10 pharmaceutical and medical device companies. The national counsel role has allowed the firm to spot trends with respect to issues like food product liability, how plaintiffs' lawyers may want to attack particular aspects of a company's product, and has allowed them to be very proactive with clients in a counseling role, Murphy said.

"You want to be in a position where I think we are, where you have the trial lawyers that have the street credibility to be able to successfully try the case in a courtroom," Murphy said. "But you also want to be in a position where you can proactively advise your client, work with them so that the courtroom never becomes a battleground, and we continue to do that."

--Editing by Aaron Pelc.
