

THE AMERICAN LAWYER

americanlawyer.com

JANUARY 2012

SPECIAL
ISSUE

Litigation Department OF THE Year



WHEN WE STARTED our Litigation Department of the Year competition ten years ago, we weren't sure if it would catch on. We knew we were asking a lot from firms—requiring them to sift through their litigation matters, choose the best results, and summarize complex cases succinctly. But a decade later, here we are presenting the results of our sixth biennial competition.

As usual, the task of picking winners and finalists involved some excruciating decisions. The submissions—which covered the two-year period ending July 31, 2011—were impressive, and stand as a testament to the excellent work done by the firms of The Am Law 200.

For the first time since we started this project, we changed the format for all four competition categories: general litigation, product liability, labor and employment, and intellectual property. We gave firms more flexibility to select the cases they wanted to present, and we asked each firm to submit an essay on why it should be a finalist. We also invited firms to nominate a partner as Litigator of the Year.

After months of reading, vetting, and interviewing, we arrived at four law firm winners, 11 runners-up, and 14 honorable mentions. We also chose three lawyers for Litigator of the Year, and five as finalists. Congratulations to all of these firms and individuals, and our thanks and appreciation to all the firms that participated in the 2012 contest.

PHOTOGRAPHY BY MIKE MCGREGOR



All in a Day's Work

A deep bench of first-chair trial lawyers has given **SHOOK, HARDY** the ability to try multiple cases around the country simultaneously and in a variety of fields, from tobacco to pharmaceuticals.

SHOOK, HARDY & BACON LAWYERS try cases wherever they're needed. On a single day in October, the firm achieved defense verdicts for client Philip Morris USA Inc. in two separate cases in Florida, while also representing the tobacco company at trial in an Alaska town that is only accessible by boat or plane. And on the same October day, the firm was preparing for trial in New Jersey for Tyco International Ltd., another longtime client. "I don't think that was a unique day," says Shook chair John Murphy.

For many years the Kansas City, Missouri-based firm has had a deep trial bench and the ability to simultaneously try cases all over the country. Shook currently has 58 lawyers with first-chair experience trying product liability cases, and has long been a go-to firm for clients including Ford Motor Company and Pfizer Inc. Given that track record, it's not surprising that Shook has been a regular in the product liability section of the Litigation Department of the Year contest. A finalist in 2010, it won the product liability competition in 2008.

What separated Shook from the pack this year, and helped it take top honors again, was the additional trial load represented by the string of cases in Florida against cigarette manufacturers. The cases, which number over 8,000 and are referred to as "Engle progeny cases," are the remnants of a class action brought by smokers and their families. In a 2006 ruling, the Florida Supreme Court barred the action but allowed members of the class to proceed to trial on an individual basis. At press

time 53 Engle progeny cases have gone to trial. More of those trials—22—have been defended by Shook than any other firm. Representing Philip Morris and Lorillard Tobacco Company, Shook has achieved clear defense verdicts in 11 cases. While compensatory damages were awarded in the remaining 11, punitive damages were tacked on in only three. (Nine of Shook's defense wins occurred during the consideration period for the Litigation Department of the Year contest.)

The Engle cases provide defense lawyers with an especially daunting challenge. The Florida Supreme Court ruled that a list of findings must be accepted by juries as fact. These findings include that nicotine in cigarettes is addictive, that defendants placed cigarettes on the market that were defective and unreasonably dangerous, and that defendants agreed to conceal and omit information regarding the health effects of cigarettes. The findings also list the diseases and chronic illnesses caused by smoking cigarettes.

"It's difficult to defend large corporations in product liability cases and even more difficult to defend tobacco companies," says Shook partner Kenneth Reilly. "But these preconditions represent the most difficult hurdle that we have to overcome in these cases."

As Shook's record suggests, however, the firm has figured out how to try Engle cases. According to Reilly, who won three cases in 2010, the key has been to challenge aspects of the case that each plaintiff has to prove, such as

By
**DREW
COMBS**

that the smoker was addicted to tobacco and that this addiction caused the injury for which damages are being sought. "We have won cases on statute of limitations grounds and by proving that the smoker wasn't addicted or didn't have a smoking-related injury," says Reilly.

Shook's success in the cases also stands out because of lean staffing that has resulted in some trials being defended by a single attorney. According to Reilly, the trials are never defended by more than two attorneys. Murray Garnick, associate general counsel at Altria Group Inc. (Philip Morris's parent company), says that it was natural to turn to Shook to handle the cases in the aftermath of the Florida Supreme Court decision. "These cases command a lot of case management attention because there are so many of them, but since we are trying them, they also require trial skills," Garnick says. "Shook has delivered for us on both fronts."

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|----------------------------|------------------------|
| Practice Group Size | Partners: 142 |
| | Associates: 112 |
| | Of Counsel: 49 |

| | |
|--|------------|
| Practice Group as Percent of Firm | 71% |
|--|------------|

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|-------------------------------------|------------|
| Percent of Firm Revenue 2010 | 78% |
|-------------------------------------|------------|

On the Docket: Fosamax litigation for Mylan, Inc.; litigation involving dye used in MRI procedures for Covidien plc; \$100 million case regarding paint on a yacht for Akzo Nobel N.V.



The firm has been able to deliver in part because of the sheer size of its product liability practice, which comprises the bulk of its attorneys. Shook counts 303 product liability attorneys, who make up 71 percent of the firm's total head count. In 2010, 78 percent of Shook's \$337 million revenue came from product liability work.

The revenue was generated by a product liability docket that has included a wide array of class action and individual matters over the past two years. The firm has represented Pfizer in several matters during the past two years, including a case in Alabama brought by third-party payers seeking reimbursement for the price of unused Duract, a pain medication that was withdrawn from the market. In January 2010 the state's supreme court reversed the trial court's class certification. Shook also achieved a favorable ruling

for Pfizer in July 2010, when a Missouri court refused to certify a statewide class action of plaintiffs who alleged that they paid too much for Pfizer's antiepilepsy drug Neurontin because it was ineffective. For Mylan, Inc., Shook successfully opposed class certification efforts in federal district court in West Virginia by plaintiffs claiming economic loss involving Digitek, the company's heart medication.

Shook has been equally effective in one-off product liability cases. In November 2010 the firm secured a jury verdict for a division of General Dynamics Corporation in a strict product liability case involving an explosive ordnance in Hawaii. The plaintiffs included the widow of a soldier who died when a mortar prematurely detonated during a live-fire training exercise, as well as three other sol-

FROM LEFT:
*Walter Cofer,
Lucy Mason,
Madeleine McDonough,
William Geraghty,
George Wolf*

diers who were also injured in the explosion. General Dynamics manufactured the explosive and hired Shook after the firm was successful in getting codefendant Lockheed Martin Corporation dismissed from the case. After three days of deliberations, the jury rejected the plaintiffs' \$29 million damages request and returned a unanimous defense verdict. (The case is being appealed.)

In November that case against Philip Morris in Alaska also concluded in a defense verdict. In the first individual health liability smoking case in the state to go to trial, a jury in Bethel, Alaska, found that Philip Morris wasn't liable for claims connected to the lung cancer-related death of the plaintiff's common-law husband. For Shook, it was all in a day's work.

Shook,
Hardy &
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