

Product Liability Group Of The Year: Shook Hardy

By **Shayna Posses**

Law360, New York (January 20, 2017, 2:15 PM EST) -- From continuing its successful representation of Philip Morris in Florida tobacco suits to gutting multidistrict litigation over Bayer Healthcare's intrauterine device Mirena, Shook Hardy & Bacon LLP's product liability team has cemented its spot among Law360's Product Liability Groups of the Year for the second year in a row.

The firm boasts likely the largest product liability practice in the country, if not the world, putting 329 attorneys to work securing victories for major players in a slew of industries, from auto giants like Ford to all of the top 10 drug companies in the United States.

Getting to know their clients' companies and industries has been a longtime priority for Shook Hardy, firm Chair Madeleine M. McDonough said.

"One of the things that I think set us apart decades ago — and it's just continued every year since — is we get to know them, their product, the industry, whatever's going on in their world," she said.

Another defining characteristic is the firm's employment of about 111 nonattorney analysts and experts with advanced degrees in fields like genetics, toxicology and biochemistry, partner Robert T. Adams said.

These professionals really set the firm apart to clients and are a tremendous tool for attorneys as well, serving as in-house experts who can develop a wealth of information about the issues at hand and track down the foremost experts in the field to help achieve great results, Adams said.

McDonough added, "They're just remarkably valuable to help attorneys get up to speed on the specifics of the case and then to really dig into the science right away. It really gives us a leg up on these litigations that are so scientific and technological."

Securing tremendous results in complicated litigation is an area where the firm excels, evidenced by Bayer's July 2016 victory in multidistrict litigation brought by women claiming they were injured by its Mirena device.

The Shook Hardy team first helped secure an order excluding the women's general and specific



causation experts, with U.S. District Judge Cathy Seibel concluding in March that they were unqualified or unreliable.

This set the stage for the final blow: In July, the New York federal judge held that the lack of expert testimony made it impossible to prove that Mirena can cause injuries after insertion, wiping out the MDL's more than 1,200 suits.

Also in the medical device realm, the Shook Hardy team continued its successful representation of Boston Scientific in sprawling litigation involving its pelvic mesh products. Boston Scientific has been the most successful of all the mesh manufacturers facing claims, with Shook Hardy serving as lead counsel for the company on a number of cases, Adams said.

Of the 17 pelvic mesh cases that have been tried to verdict so far, Shook Hardy teams have secured four of the five defense verdicts, including two over the past year, according to the firm.

Adams tried one of those cases before a Missouri state jury, a suit brought by a woman named Eve Sherrer alleging that Boston Scientific's Solyx device and C.R. Bard's Align device left her incontinent and suffering from pain and other ailments.

It was a strong case for the plaintiff pending in a difficult jurisdiction for defendants, the attorney said. But Shook Hardy helped land a favorable verdict in February 2016, with the jury finding that the companies weren't liable.

"The Sherrer case was really an important win, not only for Boston Scientific, but really for all companies that produce mesh," Adams said. "I think it sent a pretty good message that these cases can be tried and won in extremely difficult jurisdictions."

The Shook Hardy team also continued its successful representation of Philip Morris in so-called Engle progeny cases in Florida, often helping the company escape, or score significant reductions in, liability with its work on nine trials over the past year.

The suits are among the thousands that stemmed from the Florida Supreme Court decertifying the Engle class action in 2006 and overturning a \$145 billion verdict.

In doing so, the justices allowed scores of plaintiffs to rely on the jury's findings to file suits of their own and gave them "tremendous advantages that they wouldn't ordinarily have the benefit of in a regular tobacco case that might get filed anywhere else around the country," said partner William Geraghty, who regularly handles Engle cases for Philip Morris.

At the same time, the defense attorneys are up against some of the best plaintiffs' lawyers in the state of Florida, Geraghty said.

"The odds are stacked against us, so whenever you get a very good result, it's a rewarding experience," he said.

This spirit of wanting to try and win big cases is one of the things that attracts clients to the firm, Adams said.

"Frankly, there's such a culture here focused around litigation and trial practice, regardless of whether

its products liability or other litigation... that exists," he said. "And I think it drives people to achieve great results."

--Additional reporting by Jeff Overley, John Kennedy and Brandon Lowrey. Editing by Jack Karp.

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