

Product Liability Group Of The Year: Dechert

By Rick Archer

Law360 (February 5, 2019, 3:48 PM EST) -- Racking up defense wins in some of the year's most complex and far-reaching product liability cases and plunging into the nationwide multidistrict opioid litigation, Dechert LLP has earned a place as one of Law360's Product Liability Groups of the Year.

Attorneys in the firm's product liability and mass torts practice attributed the company's success at complex cases to a strong, experienced bench developed by winning complex cases.

"I think we're fortunate to be involved in the hardest cases, the most complicated cases," practice Co-chair Sheila Birnbaum said.

Birnbaum was one of a 29-member team who left Quinn Emanuel Urquhart & Sullivan LLP for Dechert in June and July. The transition, which both sides said at the time was promoted by conflicts between Quinn Emanuel's plaintiff and defense clients, was very smooth, Birnbaum said.

"We seamlessly integrated into the larger group," she said. "We never missed a beat."

They said the firm's experienced bench has worked to their advantage in securing many of their multidistrict wins this year: defending summary judgments for Pfizer Inc. in the Zoloft antidepressant MDL in the Pennsylvania Supreme Court, winning a stay of litigation against AbbVie Biotherapeutics in MDLs over its testosterone replacement products, and ending MDL claims against Pfizer over its Lipitor cholesterol drug.

"We took them through the Daubert phase, we got the experts stricken, we got summary judgment," Birnbaum said of the Lipitor case.

Counsel Rachel Passaretti-Wu said the huge volume of materials in the Lipitor case on a "significantly tight schedule" was a particular challenge, which they dealt with by focusing on using the scientific evidence to knock out the plaintiffs' experts.

"Where we really excel is trying to be strategic at every turn," Passaretti-Wu said. "It allows us to plan and make decisions and find the best path forward."



They said the firm has been on the cutting edge of the law in a number of cases, with partner Douglas Dunham emphasizing winning a case of first impression in the Second Circuit barring claims against State Farm for millions of dollars over allegedly defective house foundations in Connecticut. Partner Douglas Fleming also advised in toxic torts over perfluorooctanoic acid, an ingredient in Teflon that he said was a "ubiquitous" chemical that has historically not been regulated and is still the subject of scientific study.

"It's really an emerging chemical. It's a focus of the plaintiffs' bar," Fleming said.

The firm is also at the forefront of the 2018 opioid multidistrict litigation, which Birnbaum called "the most complicated MDL anyone had seen."

"It truly is the litigation equivalent of a world war," partner Hayden Coleman said.

The firm is leading the team responsible for the defense of Purdue Pharma in more than 1,400 state and federal lawsuits over the marketing of opioid pain medications filed by plaintiffs ranging from state attorneys general to local ambulance services.

Coleman said representing Purdue has been a particular challenge, because the company is the creator and manufacturer of OxyContin, the drug that has become the public face of prescription opioids thanks to the use of its active ingredient, oxycodone, in drugs manufactured by other companies.

"In reality, Purdue has a very small percent of the market. But the name became the Kleenex of the market. Our product is being associated with products we never made," he said.

Another challenge has been the shift from the individual plaintiffs that had been involved in prior opioid class actions to the government agencies in the current one.

"You could raise powerful defenses of causation and the people's history," Birnbaum said. "Now you have cities and counties and municipalities. It raises different questions of proximate liability. It changes the entire approach."

She said because of the way it bypasses common defenses, she expects to see this sort of public nuisance approach taken in a growing number of product liability cases in the future.

"The plaintiffs' bar is very creative," she said. "They are constantly reinventing the law and the way you handle cases."

--Editing by Nicole Bleier.