

Life Sciences Group Of The Year: King & Spalding

By **Danielle Nichole Smith**

Law360 (February 11, 2020, 2:23 PM EST) -- King & Spalding LLP has helped pharmaceutical companies — such as Johnson & Johnson, Actelion and Galderma — fight product liability claims, defend against government investigations and protect their drug products, making it one of Law360's 2019 Life Sciences Groups of the Year.

With about 300 lawyers across the globe, the life sciences and health care industry group at King & Spalding has set itself apart from its peers through its well-rounded practice and talented attorneys, partners at the firm said.

Nikki Reeves, the group's co-chair, said they're able to take on a wide array of areas, including intellectual property, U.S. Food and Drug Administration regulation, government investigations and product liability.

"It's an A-team in all of these big practice areas," Reeves said. "Not just one, and not just two — it's all of them."

King & Spalding has demonstrated its prowess in the intellectual property space by beating back competition for Galderma Laboratories LP's rosacea treatment Oracea in what partner Gerald J. Flattmann Jr. called a "a long-running successful series of patent litigations."

"We've been able to successfully defend their patents over the course of three trials and several inter partes reviews at this point, such that they will have no generic competition through the end of 2025," Flattmann said.

In September, the firm led Galderma to a trial victory before U.S. District Judge Leonard P. Stark on its claims that Sun Pharmaceutical Industry Ltd. encroached on its rosacea drug with a biosimilar.

According to Flattmann, Sun had made a "pretty creative attempt" at designing around Galderma's patent claims, so that the formulation still satisfied the FDA's requirements while still looking quite different, "at least to the naked eye."

"We had to develop a unique strategy that involved some intense use of experts and demonstratives to make it clear to the trier of fact, Judge Stark, that even if this superficially appeared to be different, it



nonetheless infringed under a doctrine that people haven't used very much recently — the doctrine of equivalents," Flattmann said.

Ultimately, the firm was able to convince the judge that the biosimilar not only infringed under the doctrine of equivalents but also infringed literally, Flattmann said.

King & Spalding also helped Amarin Corp. protect its omega-3 drug Vascepa by obtaining favorable settlements for the company in May in two suits brought against Coromega Co. Inc. and Omax Health Inc.

Amarin had accused the companies of latching onto a prominent clinical trial linking Vascepa to a reduced risk of heart attacks and strokes to unlawfully market their own products. In the two settlements, the companies agreed to issue corrective statements and stop making certain promotional claims.

Last year, the firm also racked up wins for Johnson & Johnson, as its California coordinating and trial counsel in suits alleging the pharmaceutical company's talc-based powder products caused mesothelioma.

For instance, a California jury let Johnson & Johnson off the hook in October after a retrial of Carolyn Weirick's case, which had initially resulted in a mistrial in 2018. And in April, the company escaped claims from Robert Blinkinsop when a jury returned a verdict in its favor after deliberating for less than a day following a roughly five-week trial.

"We've been very successful so far with representing J&J in the California talc litigation," Reeves said. "I know there are other cases that are being brought around the country, and by comparison, I think we've performed really well. And I have to give all the credit for that to our very strong product liability practice."

Another major case for King & Spalding in 2019 was its representation of Actelion Pharmaceuticals US Inc. in an investigation into whether the company ran afoul of the Anti-Kickback Statute and False Claims Act with certain charitable donations.

The investigation was part of a larger industrywide probe by the U.S. Department of Justice, which has been turning to the Anti-Kickback Statute more and more for enforcement, according to Mark A. Jensen, the managing partner of King & Spalding's Washington, D.C., office.

The case was interesting because it raised questions about the statute and charitable giving that were both novel and complex, Jensen said. And the investigation also reflected an ongoing shift away from off-label promotion as the primary theory of enforcement, he said.

"Everyone is acting in good faith trying to figure out how to navigate this complicated regulatory issue using a fraud statute," Jensen said. "As a result, you see settlements as opposed to trials and that's what we saw in this case as well."

In December 2018, Actelion reached a \$360 million settlement with the DOJ without admitting to any wrongdoing. The firm said it was the largest agreement that came from the agency's broad investigation into drugmakers' donations to patient assistance charities.

The firm also has a women's health initiative and represents clients that have products in that space. One such client is TherapeuticsMD Inc., which King & Spalding helped commercially launch its first two prescription drugs — Imvexxy and Bijuva.

According to Reeves, attorneys in the life sciences and health care industry group are spread across the globe in a number of locations, including Atlanta, Los Angeles, San Francisco, Houston, Austin, New York City, Frankfurt, London, Brussels and Dubai, United Arab Emirates.

Reeves said King & Spalding wants to continue to expand its international capabilities, noting the firm intends to further develop life science client relationships from its Tokyo and Singapore offices. California clients are also a focus for the firm, and they are working to build out the life sciences transactional practice in the Golden State, she said.

Although the group is quite large, its attorneys are able to work collaboratively — another factor that helps it stand out from the crowd, Jensen said.

"It's one thing to have great lawyers, it's another thing if those lawyers are siloed. We have no silos at our law firm," Jensen said. "We work well together. Clients can feel that, and it's one of the reasons that they hire us."

--Additional reporting by Jeff Overley, Cara Salvatore, Lauren Berg and Dan Siegal. Editing by Orlando Lorenzo.