

Product Liability Group Of The Year: King & Spalding

By Daphne Zhang

Law360 (December 15, 2020, 9:45 PM EST) -- King & Spalding's product liability group notched victories this year, such as erasing a \$454 million defective medical equipment verdict against Kimberly-Clark Corp. at the Ninth Circuit and helping Honda toss \$1.7 billion worth of defect claims, landing the group a spot among Law360's 2020 Product Liability Groups of the Year.

Andy Bayman, head of the firm's trial and global disputes practice group and a product liability lawyer himself, told Law360 that product liability is "a big and important practice" of the firm. The practice group's 170 lawyers, with more than 60 partners, work from nine of the firm's offices, including locations in Atlanta, Houston, Los Angeles and New York.

Bayman said the group is eyeing continued expansion in California, Florida and Texas. The team is also going to add more product liability lawyers in the firm's 3-year-old Chicago office, he said. In the past year, the practice also brought a large group into New York to do trial work for Johnson & Johnson's case over its baby powder and allegations of mesothelioma.



"One of the things that sets us apart is we are big and we try a lot of cases. I think we probably try more cases than any other big firm in the country in the product liability world," said Bayman.

In July, the group secured a big win on behalf of Halyard Health Inc. and Kimberly-Clark when the Ninth Circuit vacated a lower court's judgment, erasing what was once a \$454 million verdict, and decertified a class of California hospitals and health care providers. The suit, brought by Michael Avenatti and a lead feature on "60 Minutes," alleged that the companies' MicroCool surgical gowns were unsafe and falsely advertised during the Ebola crisis.

"That is a very significant win both at the trial demonstrating our trial capabilities and our win at the appellate level. It is the type of high-profile and significant litigation that [King & Spalding] has frequently been involved in," said Susan Clare, co-chair of the firm's automotive litigation team.

In September, the group won summary judgment for Honda in a proposed class action alleging transmission defects in 2011-2016 Honda Odyssey vehicles. The Ninth Circuit adopted a lower court's ruling to strike a plaintiffs' expert who claimed that the consumers had overpaid for their cars by \$1.7 billion.

"We were able to successfully convince the judge that that methodology was unreliable," said Clare. The plaintiffs' experts' analysis failed to account for the supply-side consideration in terms of whether any manufacturers would be willing to sell the vehicle as plaintiffs contended. The analysis also used an invalid survey design that obtained irrational results, she added.

The practice group continues to represent R.J. Reynolds in "Engle progeny" tobacco litigation in Florida. In April, the Florida Supreme Court reversed a \$42 million trial verdict, ruling that the lower court erred in preventing the tobacco company from arguing that the sole legal cause of a deceased smoker's injuries was her decision to continue smoking.

"It was obviously a huge victory for our client, both in terms of wiping away a large verdict, but also in establishing a lot of the area of the trial court that has diminished our ability to represent or defend the client at trial," said Randy Bassett, head of King & Spalding's tobacco and consumer products trial team.

The practice group also continues to represent J&J in talc litigation involving allegations of cancer-causing asbestos in the baby powder. The team has successfully tried a number of the cases on behalf of J&J in California state court, according to Bayman. In October 2019, the team won complete summary judgment for J&J days before the start of the trial.

"The plaintiffs have to prove that they used Johnson's baby powder as opposed to some other kind of powder," said Bayman. "We've been able to prove that they didn't take Johnson's baby powder, but rather somebody else's talcum powder."

"They are challenging cases because unlike prescription products, people buy Johnson's baby powder just over the counter and they don't have receipts," Bayman said. The team conducted discovery based on plaintiffs' description of what the baby powder bottle looks like and what color it was among other things, he added.

When asked about the product liability group's particular strength, Bayman said that the team is proud of its diverse and talented lawyers at different ages that "appeal to a lot of different types of people who tend to be on juries." The group is also good at "putting a human face" on their clients.

"We humanize our clients. It's difficult to represent large corporations who are viewed as just large, big companies, faceless companies."

--Editing by Jay Jackson Jr.