LAW360

2014 Rising Star

Michael D. Shumsky

With a significant hand in a major U.S. Supreme Court victory for the generic-drug industry and a continued go-to role for the industry in many other cases, Kirkland & Ellis LLP's Mike Shumsky has earned a spot on *Law360*'s list of top life sciences attorneys under 40.

The 36-year-old Shumsky had a number of significant professional accomplishments over the past year, with his continued good work earning him an elevation to equity partner by Kirkland in February and putting him on *Law360*'s list of Rising Stars for the second year in a row, joining three other life sciences attorneys.

Shumsky told *Law360* that he enjoys his work, the challenges it presents and the deep thought that those challenges require, and put his promotion down to the nature of his firm, saying he had been "very lucky" to have joined a firm structured like Kirkland, which is not afraid to give young attorneys opportunities to shine early in their careers.

"It's a very special place," he said. "The firm puts an awful lot of trust in young attorneys and gives them a platform for showing their skills."

Of course, those skills must still be put into practice, and Shumsky had provided several good examples for the firm over the past year, headlined by a key role in the Kirkland team that helped generic-drug manufacturer Mutual Pharmaceutical Co. Inc. secure a hard-fought U.S. Supreme Court victory in a design-defect case, *Mutual v. Bartlett*, in June.

In that case, the high court decided by a 5-4 margin that the plaintiff in the original case, who had suffered a severe reaction to the company's anti-inflammatory drug sulindac, could not bring a state-law design defect claim against Mutual, as under the federal Hatch-Waxman Act, generics manufacturers cannot change a drug's design.

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The victory echoed a similar Supreme Court case where Shumsky had also played a significant role, taking the lead in drafting the brief for Pliva Inc. in *Pliva v. Mensing*, a 2011 case also decided 5-4 in the company's favor, with the majority ruling that Hatch-Waxman preempts state-law failure-to-warn claims over generic drugs because manufacturers are required by law to use the same warning label as brand-name companies.

The Bartlett case had been very challenging, and helping to secure a win had been a "huge accomplishment," according to Shumsky, who noted that while the

decision had in some ways followed directly from the Mensing case, there were also broader issues involved.

"It wasn't just Hatch-Waxman and [U.S. Food and Drug Administration] law involved, but far-reaching constitutional law as well," he said.

After the hard work done on that case, generic-drug makers had seen dividends since, according to Shumsky, including in a January Fourth Circuit decision affirming the dismissal of another product liability case against Pliva — one of a number of such cases brought to the firm by generic-drug makers following the Mensing decision — which he had argued on behalf of the company. A particularly satisfying aspect of the Fourth Circuit's decision in that case was the broad view it took of the significance of both the Bartlett and Mensing decisions, when a number of other courts hearing similar cases had taken a more narrow view, Shumsky said.

"It was very interesting to me to be in the middle of the crossfire between the two parties," Shumsky said of sitting witness for a House Energy & Commerce Subcommittee hearing.

"The court really understood the breadth and logic of the [Supreme Court's] decisions in Mensing and Bartlett, and relied on them to knock out a whole bunch of claims, which was heartening," he said.

In the wake of the Mensing and Bartlett decisions, the FDA has proposed a rule allowing generic-drug makers to independently update their product labels, leading to push-back from the industry and giving Shumsky a chance to add further to his eventful year, appearing before Congress earlier this month after congressional staffers called on the firm to weigh in on the issue.

He sat as a witness for the House Energy & Commerce Health Subcommittee hearing, saying that while the process was well outside his normal work as an attorney, he had enjoyed it.

"It was very interesting to me to be in the middle of the crossfire between the two parties," he said. "It was an eye-opening experience."

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