

Catherine Mullaley

Catherine “Kate” Mullaley of Kirkland & Ellis LLP helped Johnson & Johnson win personal injury trials over its baby powder and vaginal mesh products while at a prior firm, and she is trial counsel for Snap Inc. in a suit claiming its social media platform is defective, earning her a spot among the product liability law practitioners under age 40 honored by Law360 as Rising Stars.

Her biggest case:

Mullaley told Law360 that the biggest case of her career was defending J&J in a multiplaintiff trial led by plaintiff Victoria Giese while Mullaley was an associate at Skadden.

In that case, the plaintiffs each claimed J&J’s baby powder caused their ovarian cancer, and Mullaley was lead associate on the trial team for the three-week trial, which ended in a unanimous verdict for the pharmaceutical company.

She said it was challenging because of its nature as a multiplaintiff trial — those are often prejudicial to the defendants because plaintiffs have the opportunity to plead a ready-made causation case and make that case in front of a jury without a lot of scientific support based on the claim that all the plaintiffs used the same product and were diagnosed with the same disease.

The team spent a lot of time working out how to combat this, Mullaley said. The team decided to embrace the nature and structure of the trial, and focus on each plaintiff having a

different subtype of cancer, each with different causation mechanisms and risk factors. So the claim they all had the same cancer was belied by the science, Mullaley added.

Also making the case challenging was that the trial was one of the first held after the start of the COVID-19 pandemic while there was a surge of cases, so the jurors were masked and seated in the distant gallery rather than the jury box, she said.

“One of your jobs at trial is to watch the jurors’ expressions and try to be responsive to what you’re interpreting the jury might be thinking or feeling during trial,” she said. “The fact that they were seated out of the jury box, with masks, made that aspect of trial challenging.”

In addition, the trial came after the U.S. Supreme Court declined to review a prior baby powder case that ended in a multibillion verdict against J&J, which Mullaley said added to the pressure, as it signaled that some avenues of appeal were foreclosed.

The trial also had an unusual aspect, she said, as the estranged husband

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of one plaintiff contacted the team, and she took his deposition in which he said he never saw baby powder in the house and claimed his wife’s allegations were false.

Mullaley called that testimony one of the highlights of her career, noting that because he was still married to the plaintiff, he could have benefited from any judgment against J&J.

Her most interesting case recently:

Mullaley said the Snap case is particularly interesting because it involves an intangible service rather than a physical product and is one

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of the cases at the forefront of determining the scope of Section 230 of the Communications Decency Act, which immunizes service providers against claims over third-party content hosted on their sites.

In that case, the plaintiffs have claimed Snap is designed to be addictive in a way that is harmful to teenagers’ mental health, and Mullaley has a leadership role on the Kirkland team overseeing discovery.

She said the bellwether trial pool has been selected to go to trial in November.

“It’s always intellectually interesting to begin to prepare your defense and your case at trial for a bellwether since it’s the first,” she said.

Her proudest moment:

The proudest moment of Mullaley’s career has come not from her product liability cases, but her pro bono work, in which she secured asylum for a client who had suffered years of gender-based violence in her home country and had fled to the United States to escape abuse from her gang-affiliated partner.

Mullaley said the judge granted asylum at the merits hearing based on briefing, without needing to hear her client testify about the violence she endured.

“I was honored to help her and her child as best as I could,” Mullaley said.

She added she tries to do a lot of pro bono work in the immigration space as it is particularly important right now.

What motivates her:

First and foremost, Mullaley said, it’s her family that motivates her, including her husband, parents and sister, who have all been supportive and encouraging of her career.

“They inspire me to be a good, a kind and a hardworking lawyer,” she said. “My dad displayed such integrity and kindness in his career, and that’s something that I continually strive to emulate.”

Her nearly 2-year-old son is also a big motivator, she said, calling it challenging and rewarding to be both a new mother and to continue to work on high-profile trials and cases. She said she hopes he’ll be proud of her accomplishments as a lawyer.

Why she’s a product liability attorney:

Mullaley said she “accidentally fell into” product liability practice.

When she started as a legal assistant at Skadden, she recalled, she hadn’t heard of mass tort suits before she was assigned to the group, and found the work fascinating. It motivated her to go to law school and come back as a product liability attorney herself, she added.

She said she particularly enjoys the complicated science inherent in her cases, a lot of which come down to debunking plaintiffs’ speculative theories and other misleading science.

“Most of the cases that we work on involve really complicated science, and I really enjoy learning about the science and learning about how products work,” Mullaley said. “I think one of the parts I like the most is figuring out ways to make the science understandable to jurors at trial.”

On how the industry will change in the next 10 years:

As an attorney whose work revolves a lot around science, Mullaley said she thinks tech is going to continue to evolve trial practice, particularly as artificial intelligence becomes more of a presence in the legal profession, used to review the large volumes of documents involved in mass tort cases, where the number of pages can reach the millions.

“We really rely on review and understanding of science, and I think our practice is going to continue to keep appropriately leveraging technology to more effectively and efficiently conduct expert research and witness research,” she said.

Mullaley added it’s an exciting time for the practice at Kirkland in particular as her team now includes her mentor Alli Brown and continues to expand to include other renowned litigators as they continue to defend their clients.

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