

UNRIVALED
HONOREE



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Lisa Helem, Executive Editor | Andrea Platten, Editor | July 8, 2026

You led the trial team representing Abbott Laboratories in a California consumer class action over labeling on Abbott’s PediaSure’s nutrition drinks for children. Plaintiffs sought more than \$250 million in damages, alleging consumers were misled by statements regarding the product’s nutrition and asserted consumer fraud, breach of warranty, and other claims. A California jury returned a complete defense verdict in February 2025. Tell us about your trial strategy.

In a counter-intuitive strategy, we elected not to remove the case to federal court and chose to litigate in state court. I firmly believe that allowed us to better implement our trial strategy and led to our complete defense verdict.

Abbott’s defense was premised on the company’s commitment to nutrition science—including PediaSure’s delivery of a balanced mix of necessary nutrients, vitamins, and minerals that kids often lack in their diets. Explaining that—and countering the plaintiffs’ false dichotomy that parents should simply feed their kids “real” unprocessed food in lieu of PediaSure—required lengthy testimony from Abbott personnel and experts about the real-world diets of American children, governmental guidelines and scientific studies, and PediaSure’s nutritional benefits.

We also had to help the jury understand that plaintiffs’ collection of five experts—including a prolific social media endocrinologist with an agenda—had spent years working together in food-labeling cases and that their testimony was not credible. This took over three weeks of trial time, more than typically afforded to present a defense in federal court. Among other advantages, the more robust, participatory voir dire and greater peremptory challenges available in state court also led to an exceptionally capable and engaged jury.

Tell us about some of the challenges you faced in *Elizabeth J. VanCleave et al. v. Abbott Laboratories* and how you overcame them.

One major concern was potential jury sympathy for the plaintiffs, moms who bought PediaSure for their kids. On cross-examination, we had to elicit our points without being seen as attacking them personally. My partners Tracie Bryant and Mike Glick handled those masterfully, getting admissions that they knew PediaSure’s ingredients were labeled on every bottle, that their kids’ diets were typical and not nutritionally ideal, and that they’d suffered no harm.

For sure, defending a large corporation in a jury class-action trial is not easy and why most settle. But Abbott's belief in its accurate labeling played a big part in their decision to try the case. As I said during both opening and closing: "Abbott has waited almost six years for a jury to hear the evidence in this case. Because when you haven't done anything wrong, you stand up for your product and defend yourself."

Take us back. When did you first know you wanted to be a trial lawyer?

In what now feels like a glaring lack of due diligence, I somehow arrived at law school without knowing any lawyers or even discussing my career plan with much of anyone. Fortunately, Notre Dame had a very strong trial advocacy tradition and program, and things finally clicked for me there. I remember to this day the thrill I got cross-examining a witness in the well of a South Bend courthouse and feeling like I'd found what I was meant to do. Telling a client's story to a jury and working with incredibly talented colleagues to guide the jury to the right outcome remains as exciting and rewarding today as it did when I took my first witness as a Kirkland associate some 30 years ago.

What are the major keys to winning over a jury or a judge?

I strongly believe that almost all jury cases turn on credibility. Throughout the entire trial, jurors are trying to figure out who is telling them the truth, who to believe, and who not to believe. For that reason, robust cross-examination to undercut inaccurate, slanted, or evasive testimony by the other side's witnesses and ensuring your own witnesses come across as credible on cross is critical to winning at trial.

What is the best advice you give young trial lawyers?

Watch as many lawyers as you can. Many different styles and approaches can be effective, and your ultimate courtroom persona will become your inherent, authentic core enhanced over time by concepts and tools drawn from others along the way.

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