



# 2014 Life Sciences MVP

## Jay Lefkowitz



Kirkland & Ellis LLP's Jay Lefkowitz has had a busy year setting precedent that requires voluminous state tort claims to move forward in federal court and securing other victories for clients across the life sciences industry, landing on *Law360*'s Life Sciences MVP list for the third year in a row.

Although some attorneys focus their practices specifically on the False Claims Act, pay-for-delay allegations or another individual life sciences issues, Lefkowitz has proven himself to be a top advocate for life sciences companies in massive class actions to shareholder antitrust cases and more traditional problems.

"I think my bread and butter is helping drug manufacturers and other health care companies solve complex problems — whether they're in the product liability area, antitrust, government investigations or conflicts with the [U.S. Food and Drug Administration]," Lefkowitz told *Law360*. "I've been very fortunate to have a really diverse group of clients in this space who have given me the opportunity to deal with a very wide range of issues."

Some of his top cases this year have stemmed from his work on two U.S. Supreme Court cases — *Pliva v.*

circuits this year, representing Teva Pharmaceuticals Inc. in both arenas. In the Sixth Circuit case, the court

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*Mensing and Mutual Pharmaceutical v. Bartlett* — from previous years, where the high court found that state-law failure-to-warn allegations against generics makers are preempted by federal law. But plaintiffs have continued to search for ways to keep the tort claims in state court rather than see them transferred to federal judges.

Lefkowitz argued two more of these cases before the Third and Sixth

shot down multidistrict litigation in June over injuries allegedly caused by generic versions of the painkillers Darvocet and Darvon.

The plaintiffs had appealed a 2012 ruling by U.S. District Judge Danny Reeves in Kentucky federal court, where the MDL was consolidated, that dismissed a total of 68 personal injury suits over the medications. The suits had targeted both generics makers including Teva and branded-

drug companies such as Eli Lilly & Co. and Xanodyne Pharmaceuticals Inc. According to the *Mensing* and *Bartlett* precedents, federal law preempted design-defect claims against generic-drug makers, but the high court said in a footnote that it did not address state design-defect claims that parallel the federal misbranding statute. The plaintiffs in the Darvocet suit argued on appeal that their wrongful marketing claims fit the high court's "parallel misbranding" exception.

In April, the Third Circuit affirmed the dismissal of all product liability claims

constantly looking for loopholes to continue to bring lawsuits against generic companies."

Lefkowitz scored another win just last month after the Ninth Circuit issued an en banc decision reversing a panel decision that remanded dozens of coordinated, multiplaintiff lawsuits to California state court, determining that the cases belonged in federal court as Teva and Xanodyne had argued.

The 11-judge panel voted 9-2 to reverse the earlier three-judge panel decision, agreeing with the drug

cases, he's also delved deeper into the pay-for-delay world.

"I think it's really serendipity," he said. "For example, seven years ago, I hadn't done any cases in the antitrust/patent settlement area. Now I'm involved in eight of the nine of these cases that are being litigated around the country right in the aftermath of the Supreme Court's *Actavis* decision."

Lefkowitz maintained that the structure and depth of Kirkland & Ellis' life sciences practice has given him the opportunity to expand his expertise, even moving out of the traditional drug business to work with BioScrip Inc. on various matters.

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against Lefkowitz's client Teva and other generic manufacturers of equivalents of the bone drug Fosamax as those state law claims were preempted by federal law under Supreme Court precedent from Lefkowitz's previous cases.

"Since *Mensing*, I've been very, very busy defending that decision," Lefkowitz said. "Plaintiffs are

companies' arguments that the coordinated lawsuits constituted a removable "mass action" under the Class Action Fairness Act of 2005, which permits removal when a plaintiff proposes monetary relief claims of 100 or more plaintiffs be tried jointly.

While Lefkowitz has been busy with these CAFA and state tort-related

"I treat every single case I get as the most important thing I'm doing," he said. "When I sit down to prepare for an argument, often for several days on end, I try to block everything else and just totally focus on that."

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