



2014 Practice Group of the Year

Product Liability

From its success in defending against attempts to skirt Supreme Court decisions that created extra protections for generic — and branded — drug manufacturers to representing General Motors Co. in lawsuits arising from its recall of ignition switches, Kirkland & Ellis LLP's product liability practice has earned a place among *Law360's* 2014 Practice Groups of the Year.

Jay Lefkowitz, a leading partner in Kirkland's litigation practice and a member of the firm's global executive management committee, said there are anywhere from 75 to 100 lawyers at the firm, generally centered in New York, Chicago, and Washington, D.C., who work on product liability issues.

"We do a significant amount of work in the life sciences space and a good chunk of that is products work for drug and device companies," Lefkowitz said. "We also handle products cases in a variety of other areas as well, including the chemical, automotive and energy industries."

He said the most important cases the firm handled in 2014 in the product liability practice were in the drugs area, particularly related to challenges to two Supreme Court decisions that favored Kirkland clients.

In its 2013 *Mensing* decision, the high court reversed the First Circuit's holding that the user of a generic drug can bring a state-law design defect claim against its manufacturer, pointing out that generics makers cannot change a drug's design under federal law. And in 2011, in its *Bartlett* decision, the Supreme Court held that federal law preempted state-law failure-to-warn claims against generic-drug manufacturers.

"Plaintiffs have continued to try to plead around the preemption rulings in these cases relating to how and when drug companies can be sued in personal injury cases, and we have been pretty successful in beating back those challenges," Lefkowitz said.

For example, in June, the Sixth Circuit shot down multidistrict litigation over injuries allegedly

caused by generic versions of the painkillers Darvocet and Darvon, finding the plaintiffs hadn't adequately pled that the U.S. Supreme Court's *Bartlett* decision allowed their state design-defect claims over allegedly misbranded drugs.

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 Pharmaceuticals Inc. — which was represented by Kirkland — and branded-drug companies including Eli Lilly & Co. and Xanodyne Pharmaceuticals Inc.

In April, the Third Circuit affirmed the dismissal of all product liability claims against Lefkowitz's client Teva

and other generics manufacturers of equivalents of the bone drug Fosamax, as those state law claims were preempted by federal law under the Mensing and Bartlett cases, both of which were argued by Lefkowitz.

assistance is on the front end, trying to avoid being sued, and sometimes the assistance is helping once there is a lawsuit,” he said. “We’re blessed to have great clients who trust us with important matters.”

And after five years of litigation, in 2014 the firm secured the dismissal of all tort claims brought against ConocoPhillips Co. in a lawsuit brought by over 120 Norwegian plaintiffs who claimed to have suffered personal injuries while working on a subsidiary’s North Sea oil rigs.

With its ability to draw on lawyers with a variety of specialties, Kirkland’s product liability practice is well positioned to keep handling the kinds of big cases that have brought it notoriety in recent years, Lefkowitz said.

“Our lawyers really dig in and try to connect the dots between the challenging facts in these cases and the legal theories that provide viable defenses,” Lefkowitz said.

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And in November, 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.

Lefkowitz said the firm’s reputation as handling major, high-impact cases for big clients has led to a continued stream of business.

“We are fortunate that we continue to be approached by companies looking for assistance. Sometimes the

Aside from the preemption cases, the firm is currently representing GM in more than 50 class action lawsuits consolidated in the Southern District of New York arising from its voluntary recall of ignition switches. Kirkland is also representing GM and certain of its officers in a securities fraud class action and in eight shareholder derivative actions.

The firm is also representing Abbott Laboratories and AbbVie in dozens of cases across the country relating to the blockbuster biologic drug Humira, which the firm said accounted for over \$9 billion in revenue in 2012.