

THE AMERICAN LAWYER

An **ALM** Publication

LITIGATION DEPARTMENT OF THE YEAR

WINNER: PRODUCTS LIABILITY



(L-R) CHARLES LIFLAND, AMY LAURENDEAU, RICHARD GOETZ, STEVE BRODY AND SABRINA STRONG

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TRIED AND TRUE

With the world watching, O'Melveny's products liability litigators get clients the results they need.

By Ben Seal

INTO THE WHITE-HOT glare of the media spotlight stepped O'Melveny & Myers' products liability litigators. Their client, Johnson & Johnson, was accused of misleading the

public in its marketing of prescription opioids, contributing to an epidemic that has killed hundreds of thousands of Americans over the past two decades. Thousands of lawsuits, brought by state, local and tribal governments,

threatened to upend the pharmaceutical industry.

The litigators were in Oklahoma for the first opioids case to go to trial, after other pharmaceutical defendants had settled with the state, which sought \$17

billion to pay for addiction treatment and other programs it would need to repair the damage wrought by the epidemic.

After a seven-week trial in the summer of 2019, in a case with enormous ramifications for the industry, the public and governments across the country, J&J was ordered to pay \$572 million, a total that was later reduced to \$465 million and was then tossed on appeal this November. As lead litigation counsel for J&J, O'Melveny guided its client every step of the way, including on appeal.

In many ways, the case is representative of the firm's products liability practice. Its lawyers aren't shy about the limelight. They understand that success in the court of public opinion is an increasingly important part of full-service representation. And they try cases that others might rather avoid.

"We go to trial. We're not just ready to go to trial. We do it," Richard Goetz, co-chair of the firm's litigation department and former head of the products liability practice, says. "It frames how you think of your evidence, how you think of those first witnesses. You're stuck with them forever, particularly in a mass tort."

To work in O'Melveny's products liability and mass torts practice, the firm's attorneys say, requires checking one's ego at the door. As clients increasingly ask their outside counsel to build virtual firms to collaborate on major pieces of litigation, it's more important than ever for lawyers to build cross-firm relationships.

"To do that effectively, you've got to let your ego stay behind and come and work together, enjoy the process, and go out and get the best result for your client," practice co-chair Sabrina Strong says.

Larry Ottaway served as local counsel for the Oklahoma opioids trial, alongside O'Melveny's lawyers, handling many of the local witnesses and some national witnesses. He describes a "team effort" over the

course of 33 full days in court, not to mention the month he spent with the O'Melveny team before trial began.

"They were not arrogant or domineering. They were willing to learn, and that's kind of rare in lawyers," he says. "You get very good lawyers who are very successful in their fields, sometimes they don't have a lick of sense. That's not true of the people I worked with at O'Melveny."

O'Melveny first represented J&J in the modern era in 2001, when the company brought in Goetz to help defend a class action over allegedly defective blood-sugar monitors. In 2004, the company again hired O'Melveny after it was entangled in a scandal at the University of California, Los Angeles' willed-body program, in which a J&J subsidiary purchased body parts that had been sold by the program's director. That case, which made headlines around the world, jumpstarted what Goetz calls "a completely different relationship with the client" that has grown with each passing year.

In addition to its opioids-related work, the firm, led by practice co-chair Steven Brody, serves as national appellate counsel for J&J and its subsidiary Ethicon in the pelvic mesh mass tort that is among the largest in U.S. history. The firm secured a ruling overturning a \$15 million jury verdict in New Jersey, as well as the affirmance of a defense verdict in a Philadelphia case—the first defense win in that venue as part of the mass tort.

Brody and the firm also reached a settlement agreement with 41 states and the District of Columbia to resolve a seven-year consumer fraud investigation related to Ethicon's pelvic mesh products with billions of dollars in potential liability.

"Everybody from the firm who works on J&J matters really feels like we're a partner of theirs," Brody says. "We believe in the work they're doing ... work that is saving and bettering the lives of millions in this country."

The firm's work goes well beyond its most notable client, however. This spring, O'Melveny secured summary judgment motions on both federal preemption and general causation grounds in a multidistrict litigation in California involving claims by more than 1,000 plaintiffs against AstraZeneca subsidiary Amylin and co-defendants over allegations that Byetta and similar diabetes medicines cause pancreatic cancer.

O'Melveny also negotiated what it describes as favorable settlements on behalf of Ford Motor Co. in three state attorneys general lawsuits over the company's use of Takata airbags, and it blocked an attempt at class certification in claims alleging defects in the panoramic sunroof glass in several Kia Motors models.

Much of the practice's work balances the court of law with the court of public opinion, addressing products that have touched thousands or millions of lives. With that in mind, O'Melveny's litigators recognize that part of the assignment when they take on a case is to get out in front and communicate their client's story.

"You don't want to be walking into a courtroom already behind because you have let plaintiffs frame the narrative around the matter you're litigating," Brody says.

That task was never more challenging than in the practice's work for J&J in the opioids litigation. Goetz sees the epidemic as a social problem, not one for courts to address, similar to another defining issue of the modern age.

"Here we have an amazingly important issue to the country and an effort by courts to say, 'We will address that.' You see the same thing in global warming. 'Let's take the law and maybe change it a little bit to deal with a social problem,'" Goetz says. "Those to me are the most intellectually interesting cases, and opioids are a prime example of that. ... It's a new frontier of the law." ■