

## Product Liability Group Of The Year: Skadden

By **Emily Field**

*Law360 (February 28, 2023, 2:02 PM EST)* -- Skadden Arps Slate Meagher & Flom LLP's win for Endo Pharmaceuticals in a difficult discovery controversy in opioid litigation and for Johnson & Johnson in fighting a contempt order in a talc trial earned the firm a place among Law360's 2022 Product Liability Groups of the Year.

The firm took over representation of Endo in fall 2021 following thunderous accusations of discovery violations in litigation over the opioid crisis that first erupted in a proceeding in eastern Tennessee about five years ago and spread to other opioid suits.

"Basically, we were retained and the next day, we were dealing with motions for sanctions over discovery issues that had occurred before our involvement," partner Jessica Davidson told Law360. "So we got up to speed very quickly, [with] not a lot of sleep, and faced some really hostile judges."

One of those judges was Tennessee Circuit Court Judge Jonathan Lee Young, who was presiding over a suit brought under the Drug Dealer Liability Act. He hit Endo with a default judgment holding Endo legally liable by default for opioid abuse because of discovery violations in February 2022, a ruling that echoed a similar one the year before by another Tennessee state judge in a different opioid case against Endo.

Skadden took on the task of fighting for the recusal of Judge Young, who went on to give an interview about the ruling to Law360 and post about the opioid litigation on Facebook. Skadden lawyers were able to use these activities to persuade a state appellate court that he should have recused himself from the case.

"This [social media] activity by the trial judge positions himself publicly as an interested community advocate and voice for change in the larger societal controversy over opioids, not an impartial adjudicator presiding over litigation," the appellate court wrote. "This perception is enhanced when considered alongside the trial judge's ready participation in the Law360.com article and apparent desire, as expressed on his Facebook page, for more local media coverage."

The judge was later suspended for continuing to talk to the media and for having an affair with a woman in an adoption case. He also lost a reelection bid last year.



The firm was also successful in another appeal of an adverse ruling last year, this one while representing Johnson & Johnson in a talc cancer trial. A J&J executive had failed to reappear in court due to a sudden medical issue, an explanation the trial judge said he found hard to believe when finding her and J&J in direct criminal contempt and sentencing them both to pay a \$500 fine.

The firm ultimately won at trial and at challenging the sanction. The appeals panel found that the judge had no way of knowing why the executive couldn't be there and whether her absence was on purpose.

The three-judge state appellate panel said reversing the contempt order was merited, because the lower court also refused to consider any outside evidence that would have helped it consider whether indirect contempt was appropriate.

"I think it's a terrific example of [working on] multiple pieces of the mass tort puzzle that we have in this group, working to get a real victory for the client," partner Alli Brown told Law360.

Skadden secured a win for J&J in the trial, in which the company's talc products were alleged to have caused a woman's fatal ovarian cancer.

"We also do a lot of work in the class action arena, particularly the consumer class action arena," partner John Beisner noted. "One matter that we handled over the last year was a matter for Ford, where a class in a consumer case involving sport vehicles and their capabilities was certified by a federal district court in Florida."

In that case, drivers claim that Ford advertised all of its Shelby Mustangs as race cars capable of all-day track performance, knowing that true race car enthusiasts would buy them. But the drivers claim that the automaker failed to tell customers that the two lowest packages offered — the base package and technology package — did not come with transmission and differential coolers, which keep engines from overheating and allow drivers to drive faster for longer.

The Eleventh Circuit granted review of the order on class certification in 2022, which Beisner said was a "significant achievement," as most petitions for interlocutory review are denied.

--Editing by Linda Voorhis.