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DAILY BUSINESS REVIEW

PRESENTS

Litigation
Department
OF THE *Year*
2015

AN ALM RECOGNITION EVENT

Shook, Hardy & Bacon
GENERAL—LARGE FIRM WINNER

GENERAL—LARGE FIRM WINNER Shook, Hardy & Bacon

Shook: Over the Years, the First-Chair Defense

Over the past several years, Shook, Hardy & Bacon was the first chair defense for Philip Morris, the country's largest cigarette manufacturer, in 27 of its 39 Engle progeny trials. Miami managing partner William P. Geraghty was the first chair in 17 of them.

Currently the firm is coordinating the defense of Philip Morris USA in more than 3,000 Florida smoking cases by 8,000 plaintiffs who sued individually after the state high court decertified a statewide class action. The decertification provides that certain findings from the Engle class action are binding on the defendants, provided that the plaintiffs are class members. Other Florida-based Shook attorneys who are first chair are Kenneth J. Reilly, Frank Cruz-Alvarez and Dan Molony.

"We've been trying these kind of cases for at least six years and what happens is that there is such a disparity in the results," Geraghty said. "We can win several cases and have them dismissed and then we recently had a jury give a \$34 million judgment."

In addition to its tobacco litigation work, Shook, which only has a handful of nonlitigators, celebrated significant wins in 2014. In one case the plaintiff sued saying that Boston Scientific negligently designed and manufactured a catheter and failed to warn of its risks causing her to limit her physical activities. After Shook at-



A.M. HOLT

Shook's Florida leadership, left to right: Tampa Managing Partner Dan Molony, Miami Administrative Partner Hildy Sastre, and Miami Managing Partner Bill Geraghty

torneys Dave Johnson and Scott Anderson showed the plaintiff's Facebook page with her doing those very activities, the case was dismissed with prejudice and the plaintiff was required to reimburse attorney fees.

In the second, with Shook partner Hildy Sastre leading the case from Florida, Boston Scientific achieved two bellwether pelvic mesh victories. In one case, the jury returned a full defense verdict; in the second the jury cleared the company of all liability.

Geraghty and his colleagues won several tobacco victories. In one, Juana Gonzalez alleged her husband suffered a wrongful death because of smoking cigarettes. "She wanted

money," he said. "She also testified that her husband started smoking very early in Cuba and that she told him she didn't want him to smoke. He didn't want to quit."

Geraghty won the case proving that they didn't think the deceased was addicted to cigarettes and even if he was, cigarettes were not the legal cause of the disease. "His widow testified that he knew about the dangers of cigarettes and assumed the risk. That case was done, no appeal or follow-up."

In the second, which Geraghty was not the lead attorney, the jury determined that the plaintiff was not a member of the Engle class because she admitted

that her chronic obstructive pulmonary disease may not have manifested itself before the closing date of the class period. In the third, the defendant had the same time frame issue regarding his addiction to nicotine and the class period closing date.

The challenge is to treat each case as a separate entity, Geraghty said. "There are similarities from case to case but, if you're on the defense side and think that, well it's a recipe for disaster. You have to dig in and find the unique element for each case and take advantage of it because that's what the jury will hone in."

"There's nothing like being a trial lawyer for this kind of litigation because it will keep you humble."

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