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FINALIST

LITIGATION

DEPARTMENT OF THE YEAR

(STANDING FROM LEFT TO RIGHT) Diane Sullivan, Konrad Cailteux, Theodore Tsekerides, Allison Brown, and (seated) Arvin Maskin

By Max Mitchell

WINNING OUTSIDE THE COURTROOM

Weil Gotshal is ready to take cases to trial, but it often makes sure its clients never face a jury.

DEPARTMENT SIZE AND REVENUE:

PARTNERS 7 ASSOCIATES 10 OTHER 2

DEPARTMENT AS PERCENTAGE OF FIRM 1.5%

PERCENTAGE OF FIRM REVENUE, 2016 2%

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ACCORDING TO SOME OF WEIL, GOTSHAL & MANGES' MOST prominent members, the firm's products liability group often gets hired when there is a big trial looming on the horizon. But, looking at a survey of the team's most significant wins over the

past few years, you might not know that trials are their specialty.

Of course Weil has significant trial wins, but what you might notice instead is the time they got their client dismissed on summary judgment in a case involving one of the largest environmental cleanup projects in U.S. history. Or the time attorneys used *Daubert* motions to dismantle claims against Procter & Gamble about the dangers of a denture cream product when other companies were agreeing to large settlements over similar allegations. Or the time they got class actions against an HVAC manufacturer dismissed in two venues based on class certification and jurisdiction issues.

In fact, what separated Weil's products liability group from other firms was the team's ability to win big not just at trial, but long before the matter ever came before a jury.

"We've done a lot of big trial work, but Weil is so much more than that," says Diane Sullivan, a well-known litigator from the firm's products liability practice. "At the same time we're working to prepare for trial, we have people who are thinking about, 'Is there an exit strategy?' ... Most clients don't want to go to trial."

Sullivan, who helped land one of the firm's biggest trial victories in recent years by convincing a jury to reject medical monitoring claims that could have cost Philip Morris more than half a billion dollars, echoes a sentiment expressed by other attorneys at the firm that one of the biggest strengths of the products liability team is having so many attorneys with strong trial experience.

"All members of the team are trial lawyers first and foremost," says Arvin Maskin, who heads the products liability team. "They're informed by what it's like to try these cases, so we understand what the company is going to be subjected to."

The products liability team consists of about 15 core attorneys, but lawyers from nearly all of Weil's practices and offices are regularly brought in to develop strategy. Although the firm's caseload is diverse—from getting a proposed class action against Apple Inc. over its Wi-Fi Assist feature dismissed, to warding off claims against drugmaker Sanofi-Aventis following the recall of its epinephrine auto-inject device—one thing that almost all cases have in common is complexity, Maskin says.

Cases often involve not only civil investigations, but also governmental inquiries, bankruptcy proceedings and intense media scrutiny, at times occurring in multiple countries and languages. "Rarely are our cases the kinds of things where you can just go to a recipe book," Maskin says.

He points to the case *New Jersey Department of Environmental Protection v. Occidental Chemical*. Weil's client Repsol was one of numerous companies sued over pollution of the Passaic River. The case involved potentially more than \$1 billion in liabilities for the defendants. Along with New Jersey's claims, Occidental also raised cross-claims against Repsol, alleging the parties were alter egos and therefore liable for costs related to the cleanup.

Weil was initially brought in as trial counsel, but the firm's pretrial work got Repsol dismissed from the direct claims, and eliminated nine of Occidental's cross-claims by early 2015. Then, in early 2016, the firm's attack on the alter ego arguments were successful, and so the company's would-be trial counsel managed to get the case tossed out before the matter reached a jury.

"We won on summary judgment after a decade of litigation and discovery," Maskin notes. "We were working across offices to come up with a strategy and plan to shut that down."

According to Miami-based partner Edward Soto, that ability to work together so seamlessly is one of the firm's greatest strengths. That and the knowledge that the lawyers can also take things to trial if need be.

"Usually, it really does take looking at someone across the table and saying we have to try this because you're not giving us any alternatives," he says.

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