

Trials Group Of The Year: Weil

By **Cara Salvatore**

Law360 (February 14, 2019, 6:30 PM EST) -- Weil Gotshal & Manges LLP had a big year in 2018 with trial wins for Johnson & Johnson in the always-newsworthy talc litigation and for a giant grocery warehouse accused of divvying up the distribution market with a competitor, among others, landing it on Law360's list of Trials Groups of the Year.

The firm has a crew of 30-40 trial specialists in multiple practice areas but concentrated most heavily in securities, complex commercial litigation and patents, according to Jonathan Polkes, one of its litigation heads.

In one example of the firm's trials prowess, partners Diane Sullivan and Alli Brown got a win for J&J in a big talc trial in New Jersey. After a monthlong trial, they helped J&J defeat claims that exposure to asbestos-laden baby powder contributed to a woman's mesothelioma, scoring a win only about six months after the company and a co-defendant saw verdicts totaling \$117 million in a similar case in the state.

Seven jurors unanimously rejected allegations by the plaintiffs, Rosalind Henry and her husband, Frederick, that exposure to the baby powder was a catalyst for her mesothelioma. Henry was diagnosed in 2016, at the age of 68, and her lawyer, Chris Swett of Motley Rice LLC, told jurors J&J knew asbestos was in its talcum powder but chose to conceal that.

The Weil team focused heavily on Henry's longtime use of a non-J&J product, Colgate-Palmolive's Cashmere Bouquet, to help persuade the jurors J&J was not to blame. In her closings, Sullivan told jurors Henry used Cashmere Bouquet powder for 40 years and J&J's powder for only five to six. The Henrys settled with Colgate just before trial and then turned around and claimed they actually used J&J's product more often, Sullivan said.

Weil also looked at what had been done in earlier trials and then "changed up the strategy a little bit in a way that was showing the jury right off the bat how the plaintiffs' lawyers were misleading the jurors about the company documents, cherry-picking, putting things out of context, not telling the whole story," Sullivan said.

Elsewhere, the firm's trial pros helped client C&S, a grocery distributor, beat back a \$500 million threat



from five Midwest grocery chains that claimed C&S had secretly agreed to avoid distributing in the Midwest as long as competitor Supervalu steered clear of C&S' territory in the Northeast.

D&G Foods in Iowa, Millennium in Minnesota, Blue Goose in Illinois and Lueptow's and Nemecek Markets in Wisconsin tried to show that C&S and Supervalu agreed to stay out of each other's territories so they could overcharge. But the jurors sided with C&S, finding the wholesalers didn't conspire that way.

The district court had certified five classes in September 2016, based mostly around four distribution centers, with one center getting two classes. The Midwest claims went to trial April 9.

David Lender, co-chair of Weil's global litigation department, said the trial was significant because they happen so rarely in these cases.

"Class action antitrust cases do not go to trial, and the reason is the stakes are way too high. If you lose, there's automatic trebling," Lender said.

Among the firm's other trial work, in January a California federal jury handed Illumina Inc. a \$26.7 million win against genomics company Ariosa Diagnostics Inc., finding Ariosa infringed two patents protecting prenatal testing technology.

The jury found Ariosa's Harmony prenatal test, which checks a mother's blood for early signs of fetal abnormalities, infringed Illumina's protected methods for testing and analyzing DNA for chromosomes associated with genetic disorders. The verdict is on appeal and is being briefed; the two companies have other open appeals against each other as well.

--Additional reporting by Melissa Lipman, Dave Simpson, Joyce Hanson, Bryan Koenig, Bill Wichert, Brandon Lowrey, Tiffany Hu and Cara Bayles. Editing by Marygrace Murphy.