

3 Firms Are GCs' Top Picks For Product Liability Litigation

By **Emily Field**

Law360, New York (September 21, 2015, 9:35 PM ET) -- General counsels named three firms as powerhouses in product liability litigation in a recent survey, selecting firms with long histories of success in the practice area and reputations for developing big-picture strategies for their clients.

Legal decision makers at large organizations with at least \$1 billion in revenue participated in the BTI Litigation Outlook 2016 report by BTI Consulting Group (Wellesley, Mass.) selected Faegre Baker Daniels, McGuireWoods LLP and Nixon Peabody LLP as product liability leaders, after a three-year period where no firms managed to snag that brass ring.

"That's new in and of itself and speaks to how we finally had some powerhouse breakouts in same year that the market has some growth," BTI's founder, Michael Rynowecer, told Law360 on Monday.

Debates over genetically modified organism foods, labeling issues and U.S. Food and Drug Administration bans on ingredients presage a regulatory spike and an accompanying rise in product liability litigation, according to the report, which also predicts that medical devices and consumer-facing technology, particularly wearable tech, will become hot issues in product liability litigation.

The market size for product liability litigation is expected to grow to \$1.93 billion for 2016, from \$1.87 billion this year and \$1.88 billion last year, according to the report.

"As demand has increased, clients have become more demanding and more selective in who they want to represent them," Rynowecer said.

Product liability litigation is a major area for Faegre Baker Daniels, Joe Price, senior partner in the product liability group and 43-year-veteran with the firm, told Law360 on Monday.

"In its historic roots, Faegre Baker Daniels was one of the leading early firms that did not only product liability but mass tort product liability," Price said. "We have the advantage of being at it for longer than most firms, and we think we're better at it."

Faegre Baker Daniels represents leading medical device manufacturers and health care companies, such as Zimmer Biomet Holdings Inc. and Boston Scientific Corp., Price said, as well as a number of food and agriculture companies and major manufacturers of nutritional supplements, another growing area for product liability litigation.

“If you look at the number of class actions that get filed in this country ... a significant number of those involve food labeling,” Price said.

Nixon Peabody takes a “holistic” approach to its product liability litigation clients, according to litigation department co-chair Scott O’Connell, finding strategies for not only the court of law but also the court of public opinion.

This type of litigation, particularly for consumer products, carries a huge risk of reputation harm, O’Connell said, saying a strategy for product liability cases needs to include media and social media strategy as well.

“It’s a whole strategy and can’t be disconnected,” O’Connell said.

Nixon Peabody attorneys are able to get on the ground quickly and address issues reach success with quick resolution, O’Connell said.

“At the end of the day, we know that in-house counsel are besieged with all kinds of problems, whether aggregated mass torts, product liability class actions, real multifaceted problems that need outside help,” O’Connell said.

Similarly, McGuireWoods focuses on understanding clients and their risk exposure and working with them to find the right balance in their litigation strategy, according to Rynowecer.

Partner James Neale pointed to one case where a major food company was going through a substantial recall. While the company wanted to do right by its customers, the recall was so massive that there were “so many people in line who were not probably supposed to be in line,” Neale said.

“That client at the outset said, ‘Your job is not to fight every claim, but to help us sort out who is properly in this line as a claimant and to give us the tools we need to differentiate between the two so we can get rid of claims not properly here,’” Neale said. “And more importantly, help us take care of our customers who are properly here, because we want to do the right thing.”

--Editing by Kat Laskowski.