

Product Liability Group Of The Year: Bowman & Brooke

By Jocelyn Allison

Law360, New York (January 12, 2011) -- In one of the most closely watched product liability trials of 2010, Bowman and Brooke LLP secured a win for Yamaha Motor Corp. in the first of 174 consolidated personal injury cases over the company's Rhino all-terrain vehicle, one of several reasons the firm earned a place among Law360's Product Liability Groups of 2010.

During the four-month bellwether trial in the Superior Court of California, Orange County, Bowman and Brooke was able to put on a strong technical defense refuting claims by plaintiff Richard Holt that the instability of the Rhino led to his injuries.

The case pitted Yamaha's lead counsel, Bowman's Paul Cereghini, against lawyers from Lief Cabraser Heimann & Bernstein LLP and Klein DeNatale Goldner Cooper Rosenlieb & Kimball LLP, two high-profile lead counsel for the plaintiffs in the consolidated California litigation. The case involved testimony from more than 20 experts.

The jury returned a verdict July 26 for Yamaha on claims of strict liability, negligence, failure to warn and failure to recall, and the victory has since helped contribute to the resolution of a number of other cases over the Rhino, according to Cereghini.

"In the motor vehicle product liability area in 2010, it was probably the most closely watched trial that has had the biggest impact on a major pattern of litigation that is ongoing now, so in that sense it was a very significant verdict for Yamaha and for us," Cereghini said.

The key to the Rhino case — and many of the product liability cases Bowman defends — was the firm's ability to put on a strong technical defense, this time demonstrating that the vehicle had good stability and handling and good occupant protection, according to Cereghini.

"One of the key things to trying a complicated product liability case involving technical issues is being able to break them down and explain them to the jury," said Cereghini, a member of Bowman's executive committee.

"[It's also important] to establish a level of trust with the jury so that they understand the lawyers trying the case really know the issues, they know the product and can be good teachers to the jury," he said.

Defense lawyers also have to be sensitive to the emotions of the jury and all those involved in the suit when trying matters involving catastrophic injury and death, which is often the case in product liability cases against motor vehicle manufacturers.

"Those are very real emotions that are involved in these cases, and it's important for the defense lawyers to be appreciative and respectful of that, and to recognize that the case still needs to be tried on a very strong technical defense," Cereghini said.

The skill of Bowman's lawyers before juries in multiple jurisdictions across the U.S. is part of what makes it a product liability defense firm of choice for companies, especially those in the automotive field.

The 160-lawyer firm is lead counsel defending Toyota Motor Corp. against all personal injury and wrongful death cases in litigation alleging that defects in the gas pedals of Toyota vehicles causes them to suddenly accelerate.

Led by Vince Galvin Jr. in San Jose, Calif., and Joel Smith in Columbia, S.C., the firm's role in the California coordinated actions and federal multidistrict litigation, which includes more than 200 cases, includes handling all technical and product aspects.

Galvin and Smith have been named two of the four lead trial counsel tasked with trying the class actions, and, along with Lawrence C. Mann, make up the three Bowman lawyers among seven regional counsel chosen to try the individual cases against Toyota.

The firm described the litigation as the industry's most prominent bet-the-company product liability litigation since lawsuits over the recalls of Ford Explorer vehicles fitted with Firestone tires in the early 2000s.

While the majority of the firm's practice is focused on the automotive and vehicle industry, Bowman also defends cases involving drugs and medical devices, tobacco, consumer appliances and heavy equipment.

On Aug. 12, a Bowman team led by Kim M. Schmid won an appeal before the U.S. Court of Appeals for the Eleventh Circuit on behalf of Breg Inc., which had been hit with hundreds of suits in recent years alleging its pain pumps were defectively designed.

Plaintiff Douglas Kilpatrick alleged that the pain pump's continuous infusion of local anesthetic into his shoulder caused him to develop a condition that led his shoulder cartilage to deteriorate.

A federal judge in Florida found in favor of Breg in June 2009, and the Eleventh Circuit upheld the ruling after finding that the lower court did not err when it decided to exclude the testimony of a particular orthopedic surgeon.

Kilpatrick v. Breg was the first of several hundreds cases over Breg pain pumps to go to trial, and the ruling affirming summary judgment for the company was the first appellate court ruling in the litigation.

"[The ruling] has sent a strong message that Breg is able to successfully defend its product," Cereghini said. "It suggests fatal problems in the plaintiffs' claims that are problems not just in the Eleventh Circuit, but elsewhere."

Bowman also racked up a victory in the area of tobacco litigation in 2010, winning a jury verdict for Philip Morris USA Inc. before the 15th Judicial Circuit Court in Palm Beach County, Fla., in one of the so-called Engle progeny cases.

The estate of Arthur Rohr, who died at age 85 from lung cancer and other complications, filed suit alleging that the tobacco companies knowingly concealed and misstated facts about tobacco in order to sell more cigarettes.

After two days of deliberations, a jury found that the deceased was 100 percent at fault in the case despite finding that the actions of the tobacco companies were a legal cause of his injuries, the firm said.

Bowman won a different kind of victory on Aug. 5, when it convinced the Michigan Court of Appeals to vacate a Genesee County trial court's widely publicized ruling compelling Toyota to produce Chairman and CEO Yoshimi Inaba and President and Chief Operating Officer Jim Lentz.

The appeals court in Alberto v. Toyota found that the lower court had abused its discretion by denying the defendant's motion for a protective order to quash the depositions, establishing new law in Michigan for discovery protections of high-ranking company officials.

"Being able to successfully defend that issue is important because those depositions, except in very rare instances, are inappropriate and are just pursued for other reasons, so having some good law in that area helps all corporate defendants,"

Cereghini said.

On Jan. 14, the firm won a jury verdict for Ford Motor Co. in a suit brought by a plaintiff who had suffered catastrophic spinal cord injuries in a crash involving a 1993 Ford Explorer, which the plaintiff said had a weak roof, bad brakes and was prone to rollovers.

The suit, *Poehler v. Ford*, sought \$12 million in addition to an unspecified amount of punitive damages, but the jury in Gaylord, Minn., rendered a unanimous verdict for Ford after a seven-week trial and several hours of deliberations.

A few months later, Bowman won another jury verdict in a crash-related lawsuit, this time for Mitsubishi Motors North America Inc. in a courtroom in Hillsborough County, Fla.

The jury in *Blanchard v. Mitsubishi* found on April 1 that the roof design of the 1991 Mitsubishi Eclipse involved in the 1998 crash was neither defective nor unreasonably dangerous, and that the car company had not acted negligently when it tested the roof.

The verdicts are among several victories Bowman has scored for clients in the 25 years it has been defending product liability cases. During that time, the firm has tried more than 650 cases in 350 courtrooms in every U.S. state except for Delaware and New Hampshire.

In the last year alone, Bowman lawyers picked juries and tried cases to verdict in nine states, demonstrating Bowman's reputation as a trial firm with a deep bench of first-chair product liability lawyers, according to Cereghini.

"We have established a very strong reputation as a trial firm and as a firm that has lawyers who really are fearless in their willingness to go into any type of venue and try any case no matter how challenging it might look, and we really concentrated that experience in the product liability field," he said.