

2014

PENNSYLVANIA LITIGATION DEPARTMENTS OF THE YEAR

The Legal Intelligencer

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CHANGING THE GAME

IN AN EVOLVING AREA OF LAW, REED SMITH EXCELS

By **Saranac Hale Spencer**
Of the Legal Staff

The lawyers of Reed Smith make all the difference—it's that simple.

The firm's products liability team has negotiated settlements on some of the biggest litigation to crop up in recent years, including winning summary judgment for NuvaRing on all seven bellwether cases in New Jersey, leading to a settlement in January for all of the nearly 4,000 cases nationwide.

Beyond being able to reach positive settlements, Reed Smith also has a "deep trial bench—we actually try cases," said Barbara Binis, a partner at the firm who has been there for 24 years.

Binis is on a team defending the makers of transvaginal mesh, which involves more than 25,000 cases and has 20 trials scheduled for the upcoming year.

The firm's successes have come despite the increasing complexity of products liability litigation in recent years.

Beyond the rise of advertising from plaintiffs firms, those firms have also been pursuing new theories of liability, like fraud on the market and failure to withdraw from the market, as well as pushing the limits of strict liability, Binis said.

Cross-border litigation has

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also made the field more complex. Binis noted that in the transvaginal mesh case, there is litigation in Scotland and Canada, so plaintiffs seek to

bring regulatory issues from other countries into U.S. courts. Most judges reject the move, she said, but the legal battle over the issue is complicated and demands resources.

Also, courts haven't caught up with e-discovery, she said. Using the mesh case as an example, she put the ratio at a million-to-one for the number of documents that have been produced versus what will actually be used.

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Much of the products liability litigation, especially in the arena of pharmaceuticals and medical devices, involves women’s issues, as is evidenced by some of the major cases Reed Smith is handling. The firm has an unusually high number of women in its litigation department.

That “sets us apart,” Binis said. There are about a dozen women between the first and second chairs in the department, she said.

The department as a whole is

made up of 125 people firmwide, 29 of whom are in Pennsylvania.

“We have a really good group of lawyers,” Binis said.

The group includes attorneys with diverse backgrounds who have come together in a department that has roots in Pennsylvania.

It has attracted talent from other firms, recently bringing on Stephen McConnell and James Beck from Dechert. Beck will be writing the section on products liability for a book recently commissioned by the Pennsylvania Supreme Court on its own jurisprudence.

The state of the law for products liability in Pennsylvania is currently in flux, and has been for at least a couple of years. The state’s high court has yet to rule definitively on whether it will follow the Restatement (Second)’s strict liability standard or adopt the

Restatement (Third), which tips toward a more negligence-oriented standard.

The firm is also coming off of a win, the latest in a string of three, in the Pennsylvania Supreme Court for an amicus brief filed by Beck on behalf of the Product Liability Advisory Council. The court held that it is reversible error for a lower court to allow the testimony of non-case-specific “any exposure” experts to establish substantial factor causation in asbestos mesothelioma cases.

Binis said the firm is also set apart by its use of alternative fee arrangements, noting the benefits of being able to offer clients a flat fee for a year of work. ♦

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**REED SMITH
 BY THE NUMBERS**

Department Headcount

Firmwide	125
Pennsylvania	29

Department as Percent of Firm

Headcount	7
Revenue	7