

Rising Star: Winston & Strawn's Scott Glauberman

By **Leigh Kamping-Carder**

Law360, New York (March 22, 2011) -- Winston & Strawn LLP's Scott Glauberman convinced the Illinois Supreme Court to adopt new jury instructions and scrap a \$27 million verdict against Ford Motor Co., before defeating class certification in the so-called McDonald's Corp. obesity case, earning him a spot on Law360's list of five product liability lawyers under 40 to watch.

As the youngest equity partner at Winston & Strawn, Glauberman, 38, has successfully defended some of the biggest household names in complex product liability litigation.

Whether the Chicago-based attorney is focused on cases involving car seats, washing machines or French fries, he delights in working with engineers and learning the nitty-gritty details behind everyday products.

"I get a big kick out of learning about different products, how they were designed, the way they were made, and how they've come to be part of consumer society as we know them," said Glauberman, who made partner in 2005. "These are products that everyone knows about but nobody gives a lot of thought to."

Glauberman joined Winston & Strawn in 1999, after two years clerking for Judge Marvin E. Aspen of the U.S. District Court for the Northern District of Illinois, and graduating from Harvard Law School in 1997.

Since then, he has secured a ruling in the Supreme Court of Illinois that changed the way jurors in the state are instructed on potentially dangerous products, convinced a judge not to certify a class of New York residents who blamed McDonald's marketing for their weight gain, and defended LG Electronics Inc. in a range of consumer class actions.

In the Ford case, the widow of a man hit by a drunk driver alleged the vehicle's driver's seat was unsafe, and a jury agreed, awarding \$27 million in damages. Ford hired Winston & Strawn to appeal the finding.

On appeal, Glauberman challenged both the amount of damages and the instructions the jury received. For decades, Illinois juries were told to evaluate product defects by deciding whether a product was “unreasonably dangerous,” known as the consumer expectations test.

The state's high court, however, sided with Ford, not only overturning the verdict but also finding that juries could use a risk-utility test — which involves weighing the pros and cons and alternatives of a design — to evaluate a design defect claim. The October 2008 ruling necessitated a new Illinois pattern jury instruction, Glauberman said.

“It's made the litigation of design defect cases more predictable and more in tune with the actual considerations that go into developing a product,” he said.

Glauberman was still an associate in 2002 when the McDonald's obesity case got under way. The putative class action was the first of what was expected to be a wave of suits bringing health and obesity claims against fast food chains, Glauberman said, but it turned out to be the only one of its kind.

“I'd certainly like to take credit for it,” he said. “I can't answer with certainty why that happened.”

Part of it may have had to do with the litigation strategy Glauberman and his team pursued, which involved emphasizing the range of factors leading to the putative class members' weight gain, and underlining the difficulty of certifying a class based on those apparent idiosyncrasies.

That strategy paid off in October, when a judge in the U.S. District Court for the District of New York denied class certification, concluding that the putative class members' claims were too individualized.

Glauberman also defended a trio of suits over the amount of trans fatty acids in McDonald's French fries on the novel theory that the plaintiffs' state law claims were preempted by the federal Nutrition Labeling and Education Act, which regulates packaged food labels.

Once the defense explained how McDonald's labeled its products, and the scientific testing that went into those labels, the plaintiffs settled, Glauberman said.

These days, Glauberman's time is taken up defending LG in eight consolidated actions alleging the company's front-loading washing machines are designed in a way that causes mold growth. Class certification proceedings are just around the corner, he said.

Glauberman is also navigating his role as an equity partner — a position he attained in 2009 — and the increased responsibilities that come with bringing in new business and making a name for himself, he said.

The biggest challenge is not his relative youth — “I've yet to have a client demand to see gray hair before working with me,” he quipped — but the juggle between focusing on new cases while finding time to serve existing clients.

Glauber's solution?

"Work harder."

--Editing by John Williams.

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