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Rising Star: Tucker Ellis' Dustin Rawlin

By **Allison Grande**

Law360, New York (April 10, 2012, 7:29 PM ET) -- Tucker Ellis & West LLP partner Dustin Rawlin has helped Johnson & Johnson unit Mentor Worldwide LLC achieve an unbroken string of victories in complex medical device liability litigation over the past dozen years, a feat that has earned him a place among Law360's top five product liability attorneys under 40.

The 37-year-old Rawlin — who works in the firm's Cleveland, Ohio, office — has used his ability to instinctively recognize and prioritize client's needs to craft efficient, effective and cost-saving litigation strategies for his clients, especially in the medical device field, according to his colleagues.

"Dustin's super smart, super hardworking and super discerning," Tucker Ellis managing partner Joseph Morford told Law360. "He knows what needs to be done for the client and is very successful at getting it done. We have a lot of great young talent, and he stands out even among them."

Rawlin harnessed these skills to seamlessly manage evolving demands during his 12-year relationship with Mentor, which was a stand-alone company before being bought by Johnson & Johnson in 2009.

"During the time he's been representing Mentor, the company has actually transitioned both in-house as well as with respect to the type of company that it is," Tucker Ellis partner John Lewis, who has represented Mentor with Rawlin for the past 12 years, said. "But Dustin has done a really good job at adapting to different in-house counsel and client needs over time, and has helped us to expand our relationship not only with Mentor but also with Johnson & Johnson, over time."

This client-focused approach has resulted in a continuous series of both defense verdicts and dispositive motion victories for Mentor in more than a dozen product liability cases involving silicone gels, breast implants, tissue expanders, vocal cord paste, ultrasound devices, penile implants and other devices since 2003.

"Figuring out how the legal problems presented in the case align with the client's goals for litigation as early as possible is important in getting clients to their goals as quickly and efficiently as possible," Rawlin said in describing his overall approach to litigation.

During the past five years, Rawlin has used this strategy to help Mentor escape individual suits and class suits both inside and outside of multidistrict litigation over ObTape, a transvaginal mesh device used to treat stress urinary incontinence in women.

His exposure to this litigation began in 2006, when he became involved in a single-plaintiff case in California state court alleging that the company had defectively designed,

manufactured and marketed ObTape and failed to adequately test the safety of the device, which allegedly causes erosion and infection when implanted, before bringing it to the market in 2003.

Advancing the argument that ObTape, like all medical devices, has inherent risks about which Mentor had adequately warned consumers and that the device had received a generally positive reception globally, Rawlin and his team won a complete defense jury verdict in the case in 2008.

While working through that case, patients also filed a putative medical monitoring class action in Missouri in 2008, as well as roughly 100 cases involving 250 plaintiffs that have been consolidated into an MDL in Georgia district court.

To date, Rawlin and his team have successfully disposed of many of these claims. A federal judge granted the companies' motion to dismiss the class action on the grounds that Missouri medical monitoring law does not extend to product liability claims, while the first two phases of litigation in the MDL ended with favorable settlements.

Currently, Rawlin is managing a team of eight attorneys who are conducting plaintiff-specific discovery in 23 cases comprising phase three of the litigation, with back-to-back bellwether trials planned for 2013.

Although the cases center on similar product liability claims and the defense that Mentor provided consumers with adequate warnings, success in these cases depends on understanding the unique stories of each individual plaintiff, according to Rawlin.

"We have global themes that apply to each case, but really the defense in each case turns on the clinical story regarding what happened to each individual plaintiff in the course of treatment," he said. "There's really a unique story for each plaintiff, and getting to the bottom of that takes a lot of time and understanding of the medicine and science."

Rawlin demonstrated his firm grasp of these important details in 2010 when, as a newly minted partner, he prepared a key witness for a deposition by trying to determine the questions the other side would pose, Lewis recalled.

"When we looked at the deposition transcript, 95 percent or more of the questions that the witness was asked were the questions that Dustin had predicted," Lewis said. "It gives the client a great comfort level when your lawyer can say, 'Here's what they're going to ask for seven hours,' and be for the most part right."

Rawlin, a Cleveland native, began fostering these skills as well as his relationship with Mentor at Jones Day, which he joined in 2000 following his graduation from Duke University School of Law.

Rawlin and Lewis moved to Tucker Ellis, which both saw as a better fit for their burgeoning medical device litigation-focused practice, in the fall of 2011.

Since then, Rawlin has continued to find success for not only Mentor but for new client PharmaJet Inc., which he helped quickly escape a putative medical monitoring class action in Ohio at the motion-to-dismiss stage in February.

"After he won the dismissal for PharmaJet, the company immediately called us and said that if we have more lawyers like him, then they want to work with us on a lot of matters," Morford said.

Since joining Tucker Ellis, Rawlin has also worked to mentor younger attorneys, recently assisting several of them with their first depositions on his own time.

"My advice to young lawyers is that you have to show initiative and that you're willing and hungry to take on responsibility in cases," Rawlin said. "You want to be someone that partners want to take to trial with them because they rely on them and know that they'll do good work."

Considering the example that Rawlin sets both inside and outside the courtroom, his colleagues believe that his career will only continue to rise.

"The sky is the limit for this kid," Morford said. "The more clients see him and interact with him, the more that they want to work with him, and we're happy to have him on our team."

--Editing by Kat Laskowski.

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