

Most Admired Attys: Alston & Bird's Jane Thorpe

By **Megan Stride**

Law360, New York (September 10, 2010) -- Over a more than 30-year career in mass tort and complex litigation defense, Alston & Bird LLP's Jane Thorpe has built a reputation as a savvy strategist and tenacious team player who doesn't shy away from the nitty-gritty science at the heart of the case, making her one of Law360's 10 Most Admired Product Liability Attorneys.

Thorpe, who has been at Alston & Bird for the past 11 years, first dipped her toes into the product liability pool as a young lawyer, defending Wyeth in the 1980s in a case concerning the DTP childhood vaccine. She found the work so fascinating that she knew she'd dived into the specialty for good.

"An in-house lawyer at Wyeth really encouraged our group of young lawyers to understand the science underlying that litigation, and I just loved it," she said. "It was fantastic. We got to meet with great experts and develop the scientific facts of those cases."

In the late 1990s, Thorpe worked as lead science counsel defending 3M Co. and McGhan Medical Corp. in the mulitdistrict litigation over breast implants. For those cases, she also helped form the first national science panel to be used in mass torts, an entirely new procedure that put her in charge of managing all witnesses, cross-examinations of adverse experts and Daubert filings for her clients in all cases.

Working under such a groundbreaking framework was "a great learning experience," Thorpe said. "It was a three-ring circus, but it was very interesting."

Since then, she has successfully defended pharmaceutical, technology, and food and beverage companies in complex product liability matters regarding Fen-phen diet supplements, methadone, polio vaccines and asbestos.

Thorpe also defended cell phone companies from claims that their products caused cancer, winning the case on Daubert motions involving general causation at the district court level in 2002 and then succeeding with the same argument on behalf of the entire cell phone industry before the U.S. Court of Appeals for the Fourth Circuit.

Throughout her career, she has developed a particular prowess for Daubert proceedings, a skill that allows her to nix plaintiff witnesses to provide her clients with early, significant victories.

Her Daubert expertise has been especially productive in her recent work defending AstraZeneca PLC in a mass tort over its antipsychotic Seroquel. In a little over a year, Thorpe's team has snagged six winning opinions on specific causation in the mass tort.

Thorpe's cross-examinations of the Seroquel plaintiffs' main experts, both in a multidistrict litigation and in state court in Delaware, led to the "terrific Daubert results which shaped the direction of the litigation," said Andrew Goldman, a partner at Goldman Ismail Tomaselli Brennan & Baum LLP who has worked with her on the Seroquel suits.

"You don't see in these mass torts the kind of track record she's had with AstraZeneca," Goldman said. "It's very rare in Daubert in these cases."

Fulbright & Jaworski LLP's Stephanie Smith called Thorpe the "Daubert queen."

"If I was on the other side and saw Jane walk into a deposition or a hearing on general causation, I would definitely be worried," Smith, who worked with Thorpe in the Fen-phen litigation, told Law360. "She's extremely competent and knowledgeable about what she does. She is a force to deal with."

Thorpe's Daubert success is due in large part to the premium she places on the scientific facts underlying a case, colleagues said.

According to Dechert LLP's David Venderbush, who has worked with Thorpe in cases involving breast implants and Seroquel, she is ruthless in her pursuit of understanding evidence, often tracking down everything an expert medical witness has ever written and reviewing the plaintiffs' medical records herself, rather than relying solely on depositions.

"She's passionate about winning," Venderbush said. "It's palpable in her pretrial, predeposition preparation. She works harder than any lawyer I've ever seen to make sure there's no stone uncovered."

When the day of proceedings finally arrives, her tenacity and competency are evident to everyone in the room, especially expert witnesses and judges, Thorpe's peers said.

"Her knowledge of the scientific literature and her confidence on her feet results in this respect that the witness ends up having for her," Goldman said.

"She has complete credibility with judges," Smith said. "She doesn't overstate her case. She's been the recipient of numerous good decisions, and I think when she walks in the room they know this is somebody who knows what she's talking about."

Her overriding strategy is to work out at the beginning of a case how it will end based on an assortment of customizable factors, Thorpe said.

"Sometimes people approach litigation linearly, so they're thinking 'I've got a complaint, and an answer, and discovery, and a trial,'" she said. "But I think what's really fun is this figuring out the steps I need to take to get where they client needs to be at the end."

"Sometimes it will be to try a key case in the right place. Sometimes it will be to file a creative Daubert motion. It could be a variety of things," Thorpe said.

Of course, successful trial lawyers are always working to put in the best professional performance possible in order to give clients the results they seek, Thorpe said, and “the desire to get an A is always there.”

But Thorpe also feels a larger purpose fueling her work, she said.

“Oftentimes, when you're defending on the merits for a product that has an enormous benefit, like childhood vaccines, the litigation is interfering with the distribution and development of those products,” Thorpe said. “These are important products to our country or the world.”

According to Peter Kontio, co-chair of Alston & Bird's firmwide litigation practice, Thorpe has an uncanny ability to sense what moves plaintiffs will make, sometimes years in advance.

“She skates to where the puck's going to be,” Kontio said. “She will often alert a client that there are going to be problems or lawsuits on a particular issue and that they may want to prepare now. Sometimes, she may work on preparation for litigation two years before litigation is even filed.”

Kontio recalled a case in which a plaintiffs lawyer asked one of Thorpe's defense witnesses when he had been retained. When the expert gave a date that preceded the suit by more than two years, the plaintiffs lawyer was baffled, he said.

“This was one of the top experts in the field, and it was important to make sure he was on Jane's team before somebody else grabbed him,” Kontio added.

Scott Elder started working with Thorpe as a young associate in Alston & Bird's general litigation practice in 1999, and the two have since collaborated on cell phone, asbestos, uranium and Seroquel cases.

Now a partner in Alston & Bird's products liability group, Elder said he picked up “just about everything” by working with his esteemed mentor.

“People come to Jane because they want Jane, but she makes an effort to promote people,” he said. “She's very supportive of people's careers and is an excellent mentor in that way.”

Thorpe's open mind and warm personality aren't lost on more established attorneys, either.

“She is maybe the nicest person in this industry,” Venderbush said. “She's really appreciative of the work that other people do, whether they work in her firm or work in other firms.”

Thorpe's graciousness was especially evident during the long hours spent working on the Seroquel cases, and later in the glow of her success, Goldman said.

“In all of that work that she did, which I give her a lot of credit for, she always did it in a collaborative fashion,” he said. “She's incredibly bright and she never seeks out credit for the work she does. She's very much of a team player, which you need in these mass torts with lots of lawyers.”

Her kindness, and her ability to keep ego in check, helps her build strong teams of lawyers that win, her colleagues said.

“She engenders huge loyalty,” Venderbush said. “She's a person that people like to work for, and people under her want her to succeed. Her personality brings that across.”

With her conversational skill and social finesse, Thorpe is also able to steer clients toward the course of action she considers most effective, her colleagues said.

Venderbush recalled that scenario playing out recently in the Seroquel litigation, with Thorpe gently convincing her client to go in a direction that proved successful.

“She brings people over to her side, in a subtle way, through her non-confrontational personalty,” he said. “That sounds weak sometimes in this profession, but it's often more effective than shouting the loudest.”

Thorpe enjoys plenty of pursuits beyond products liability law and is active in several nonprofit organizations that support public health and performing arts. She loves spending time with her husband and two grown children, she said, and also has a “great passion” for fly-fishing.

Along with Smith, she joins a handful of other female product liability attorneys for a fishing trip each year, traveling to Montana or Idaho to get away from it all.

Colleagues said the sport seemed like a perfect fit for Thorpe, given her professional strengths.

“It's quiet, unassuming, patient and strategic, and you have to be able to cast the line where the fish are or are going to be,” Kontio said.

Methodology: From May 25 through June 11, Law360 invited readers to nominate attorneys they admire to be profiled for the "Most Admired" series. Readers were asked: "Is there an attorney you've argued against in court who you respect — or whose briefs you fear? What about a lawyer whose views on the latest hot-button issues you eagerly seek out? Or a former classmate who is practicing the law in novel ways?" Survey participants were not permitted to nominate attorneys from their own firms and submissions from public relations and marketing professionals were not considered.

Separately, Law360 sought out nominations from practice group heads at the 100 largest law firms in the United States. In total, 1,016 nominations were received.

Nominations were reviewed by a board comprising experienced lawyers and Law360 editorial staff. Sixty-five attorneys covering seven practice areas of the law were then selected to be profiled for the "Most Admired" series.

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