

Titan of the Plaintiffs Bar: Baum Hedlund's R. Brent Wisner

By **Christopher Crosby**

Law360 (May 6, 2018, 10:02 PM EDT) -- Baum Hedlund Aristei & Goldman PC's R. Brent Wisner helped score the first jury verdict holding a brand-name drugmaker liable for injuries caused by a generic version in a high-profile case involving an attorney's suicide while on generic Paxil, landing him among Law360's 2018 Titans of the Plaintiffs Bar.

In that case, Wisner served as co-lead counsel for widow Wendy Dolin, who won a \$3 million verdict in April 2017 holding the pharmaceutical giant GlaxoSmithKline liable for the death her spouse, Reed Smith LLP partner Stewart Dolin.

Stewart Dolin had committed suicide in 2010 under the influence of generic paroxetine, an antidepressant sold under the brand-name Paxil. The verdict was the first instance of a jury finding a brand-name manufacturer liable for injuries caused by a generic drug, Wisner said.

GSK has hotly contested the verdict, and Wisner said he is preparing for a circuit challenge. But if the result holds, it will make Illinois one of the very few forums where a brand-name manufacturer can be held liable for "label negligence" — failing to oversee the details on a generic drug's warning label.

"We picked the right state, plaintiffs and ensured we had all the issues in front of the judge at the same time," Wisner said. "A person's story makes a difference. A judge is a human being — not a robot."

"On the edge of going one way or another, what pushes them is whether they like your case, your story, your client," he added.

Wisner said they made the strategic decision to pick Illinois because the state's constitution contains a broad principle that where's there's harm, there's remedy. Wisner also made the decision, which was contested inside the firm and discussed at length with his colleagues, to sue GSK and the generic-drug



R. BRENT WISNER ON JURY TRIALS: "What pushes them is whether they like your case, your story, your client."

maker together.

If the court was going to reject his case, he wanted to put the judge in a position of having to tell people, "Yes, there's no right to relief here: Anyone who takes a generic drug is SOL," Wisner said.

The gambit paid off. In 2014, Mylan NV, the manufacturer of the generic drug, was dismissed from the suit and U.S. District Judge James Zagel ruled that GSK, as the maker of the brand-name drug Paxil, was responsible for ensuring the label was accurate — a decision that continues to be controversial with defense lawyers.

"No one had sued both generic and brand-name manufacturers before," Wisner recalled. "No one had tried to force the court to say, 'There's no right to relief for millions of people.'"

Wisner also had another angle to his strategy: Dolin was co-chair of Reed Smith's corporate and securities practice, making his widow's claim particularly accessible to the court.

He was someone who "could be any of the judges," Wisner said. "Any of the lawyers. This is a person you've seen in your courtroom."

David Rapoport, who tried the Dolin case alongside Wisner and delivered opening and closing arguments, highlighted Wisner's role on direct and cross examinations of most of the witnesses.

"Brent is a brilliant young attorney who did a great job handling his portions of the Dolin trial," Rapoport said. "His witness examinations were consistently to the point, effective, interesting and often entertaining. He created a David v. Goliath atmosphere that I believe contributed to the plaintiff's verdict."

Wisner also made headlines — and stirred up controversy — over the summer stemming from his involvement in another case against Monsanto Co.

He leaked internal emails from Monsanto to the New York Times which suggested the agrochemical giant may have tried to ghostwrite academic articles exploring, among other things, the health risks of its products. Wisner obtained the documents from the company in a San Francisco federal court case that alleges the company's top-selling weed killer Roundup causes non-Hodgkin's lymphoma.

In Wisner's telling, he drafted a 70-odd-page document explaining why the emails were important and, pursuant to the court's direction, set a meet-and-confer to hear why the information shouldn't be unsealed. But when he finally got on the phone, Wisner contends Monsanto's counsel told him the discussion was over; they weren't interested in talking and — in his mind — they'd given up trying to keep the documents private.

After 30 days, Monsanto still hadn't defended its protective order, so he assumed the company had decided not to pursue its argument that the documents couldn't be unsealed.

Leaking the documents to the Times triggered a minor shockwave. The judge overseeing the multidistrict litigation mused about kicking him off the case — he serves on its executive committee — and during a contentious hearing, the judge threatened to arrest Wisner's attorney after he refused to sit down.

The judge was irked that it should have been obvious that these documents were relevant, and their confidentiality in question. Wisner contends Monsanto simply abandoned that particular fight.

“At one point the judge goes: You’re so busy being a PR man and not a lawyer, and what this case needs is more lawyers,” Wisner said.

In the end, after chastising both sides — the court criticized opposing counsel for its handling of the meet-and-confer meeting — Wisner and his opposing colleagues had a private meeting in which the judge imposed conditions that Wisner can’t — and won’t — leak documents again.

Meanwhile, the court has recently called the link between Roundup and cancer “shaky,” but Wisner said there's a chance the court will reject the company’s bid for summary judgment.

If the judge sides with consumers, Monsanto is “screwed, down, cooked,” Wisner said.

"If we clear the hurdle, [Monsanto] is done," Wisner said. "We’re just going to get massive verdict after massive verdict. San Francisco is not the best place for Monsanto."

--Editing by Melissa Lipman and Kelly Duncan.

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Baum Hedlund's corrections to original article:

- “Wisner also made the decision, which was contested inside the firm and discussed at length with his colleagues, to sue GSK and the generic-drug maker together.”

Correction: The lawsuit was actually filed prior to Wisner joining the firm and prior to the Supreme Court’s ruling in *Pliva v. Mensing* (which eliminated lawsuits against generic manufacturers). There was no contest about suing both manufacturers. However, Wisner successfully argued, after the Supreme Court’s ruling in *Mensing*, how unfair it would be for a consumer to have no recourse when injured by a generic drug and that GSK, which controlled the label for both brand and generic versions of the drug, should be held accountable.

- “No one had sued both generic and brand-name manufacturers before,” Wisner recalled. “No one had tried to force the court to say, ‘There’s no right to relief for millions of people.’”

Correction: Actually, both we and others had sued both generic and brand-name manufacturers before the Supreme Court’s ruling in *Mensing*. What Wisner stated was that no one had sued both generic and brand-name manufacturers post-*Mensing*.

Corrections continued on the next page

- “He leaked internal emails from Monsanto to the New York Times which suggested the agrochemical giant may have tried to ghostwrite academic articles exploring, among other things, the health risks of its products.”

Correction: Wisner did not “leak” confidential Monsanto documents to anyone and did not send any documents to the New York Times. Documents whose confidentiality had been terminated by the terms of the Protective Order were posted on the Baum Hedlund website once the confidentiality of the documents had been terminated by Monsanto’s failure to file a motion to preserve their confidentiality within 30 days of our challenge of Monsanto’s confidentiality designations. Journalists around the world, including the New York Times, accessed the documents at the website. The de-classified documents were circulated to the EPA’s Office of the Inspector General, European regulators and European parliament which led to important safety investigations and widespread inquiry into Monsanto’s scientific manipulations of carcinogenicity data.

- “In the end, after chastising both sides — the court criticized opposing counsel for its handling of the meet-and-confer meeting — Wisner and his opposing colleagues had a private meeting in which the judge imposed conditions that Wisner can’t — and won’t — leak documents again.”

Correction: The judge did not impose the stated conditions—the judge observed and concluded that the Protective Order probably needed modification and issued a revised Protective Order with a clarified de-classification procedure which all the parties, including Wisner, agreed to follow. Once documents are declassified under this procedure, they will be posted and circulated, just as before.