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## A Products Liability Practice Meets The Challenge Of The Plaintiffs' Bar

*The Editor interviews Garyowen P. Morrisroe and Phoebe A. Wilkinson, Chadbourne & Parke LLP.*

**Editor:** Would each of you tell our readers something about your professional experience and the reasons you were attracted to Chadbourne?

**Morrisroe:** I am the chair of Chadbourne's products liability practice and a Fordham Law graduate. I joined Chadbourne in 1987 and have been continuously involved in the firm's product liability practice.

Chadbourne attracted me because it offered young lawyers a hands-on opportunity to engage in challenging and sophisticated litigation. The firm's supportive culture was also a plus.

**Wilkinson:** I came to Chadbourne as a summer associate in 1992 and joined the firm permanently following graduation from Brooklyn Law School. I have handled both complex commercial litigation and products liability litigation at Chadbourne.

I was attracted by the variety of litigation at Chadbourne, and the depth and talent of the group. There are many excellent litigation firms in New York, but often they tend to focus on securities litigation. Chadbourne too has a strong securities litigation practice, but what makes us different, and in my opinion so attractive, is that we also litigate in many other substantive areas of the law, including products liability.

**Editor:** Would each of you tell us how your practice has evolved over the course of your career?

**Wilkinson:** Chadbourne's products liability practice has always been rooted in high-end, complex litigation. And as mass tort



**Garyowen P.  
Morrisroe**



**Phoebe A.  
Wilkinson**

practice has become more complicated and moved into novel areas of legal theory, we too have moved quickly and with considerable finesse to stay ahead of the trends. The litigation stakes have gone up significantly over the course of my career. We find ourselves managing complex and massive litigation across a much wider geographic area than was previously the case. Chadbourne has the depth of experience and expertise to stay ahead of these developments.

**Morrisroe:** When I started at Chadbourne, it seemed exotic that I got the opportunity to participate in high-profile products liability cases around the U.S. This work continues, of course, but we are now advising multinational corporations on products liability matters, including legislative and regulatory issues, throughout the world.

**Editor:** Please give us an overview of the firm's products liability practice.

**Morrisroe:** Our practice involves representing leading product manufacturers in the pharmaceutical, alcohol, tobacco, cosmetics and chemical industries in both federal and state courts all over the country. We take cases from start to finish in all of these venues. We also advise clients on litigation avoidance. Our group consists of 40

full-time attorneys, of whom 15 are partners. We also have several Ph.D. scientists. The combination of our lawyers' varied experience in complex scientific matters with our in-house technical scientific resources enables us to master complex issues across the range of science, from epidemiology, to chemistry, to biology, to medicine, and persuasively communicate those issues to the court and the jury. While most of our people are in New York, we have products liability capability in London and Los Angeles.

**Wilkinson:** Part of the evolution of the practice of product liability litigation is that clients are looking for ways to work with their lawyers on cost structuring and infrastructure issues. Our group also has access to staff attorneys and other professionals. That helps put teams together to efficiently meet the challenge of large scale mass tort litigation. The firm's substantial resources enable us to be responsive to our clients' needs.

**Editor:** You mentioned that you litigate in both state and federal courts. Is there a difference?

**Morrisroe:** The public policy behind granting diversity jurisdiction to federal courts was the perception that state courts tend to favor local parties. Plaintiffs' attorneys can initiate their claims in either venue, but generally prefer state court. Some state courts are seen as particularly hospitable to plaintiffs' claims. Often we will remove a state court case to federal court.

**Editor:** The firm has been engaged in a number of important cases on behalf of major cigarette manufacturers. This is a

*Please email the interviewees at [gmorrisroe@chadbourne.com](mailto:gmorrisroe@chadbourne.com) or [pwilkinson@chadbourne.com](mailto:pwilkinson@chadbourne.com) with questions about this interview.*

### tough arena to be in these days.

**Morrisroe:** This always has been a challenging area for defense lawyers. Chadbourne has been involved since the mid-1950s, and we have learned a lot about complex products cases from tobacco litigation. These cases evolved from negligent failure to warn claims seeking personal injury damages to cases based on complex and novel legal theories, including RICO, Antitrust and third-party recoupment. The remedies sought now include medical monitoring, profit disgorgement and injunctive relief. In addition, plaintiffs' counsel are deploying procedural devices to aggregate these claims, such as class action and consolidation.

### **Editor: The firm has also been engaged in a variety of foreign jurisdictions in tobacco litigation. How are these matters proceeding?**

**Morrisroe:** We are involved in litigation pending on every inhabited continent. The major division is between common law jurisdictions and civil law ones. They are different from a procedural standpoint, but in terms of substantive legal concepts they are similar. U.S. product liability law has developed at a quicker pace than product liability law elsewhere. Chadbourne's vast U.S. experience gives us the ability to anticipate and address the critical legal and factual issues in a foreign case. We are also capable of handling the complex scientific issues, such as medical, toxicological, epidemiological and psychiatric issues. This expertise is of great value for our clients when teamed up with a local litigator.

### **Editor: How about other products liability areas?**

**Wilkinson:** Chadbourne has tremendous expertise in complex medically-related issues in the life sciences area. In recent years, as the plaintiffs' bar has focused on the pharmaceutical industry, we have been retained in a variety of litigations in that industry sector. Having been so active in the tobacco cases – where a number of the first mass tort strategies were developed – our expertise has been particularly valuable. In particular, medical causation issues – which determine whether fact causation can be proved – are issues we have litigated for decades. Another area of products liability litigation involves the alcoholic beverages industry. Chadbourne has been involved since the outset, having been

national and lead trial counsel in the first ever fetal-alcohol litigation.

Another new development is the increasing number of foreign plaintiffs coming to the United States and filing actions. A recent Ninth Circuit decision permitted a man from the Philippines, who had been resident in this country for eight days before filing suit, to bring his tobacco-related claims in a federal court in Washington state, even though he had been a life-long smoker in the Philippines and had allegedly contracted his tobacco-related illness in that country. Conversely, both a New Jersey state court and the federal MDL court handling the federal Vioxx litigations both recently issued decisions dismissing the Vioxx-related claims of foreign plaintiffs on the basis that such suits are more properly litigated in those plaintiffs' home countries.

It remains to be seen whether more foreign products liability claims will be pursued by foreign litigants in this country. I believe that product liability manufacturers face the prospect of increased litigation from non-U.S. citizens, either here or abroad.

### **Editor: To the extent you can, would you share with us some of the recent highlights that the practice group has experienced?**

**Morrisroe:** We recently litigated a nine-month trial in federal court in Washington, DC against the U.S. Initially the U.S. sought \$280 billion in damages under RICO. The final judgment awarded *no* damages. Injunctive relief was granted in this case, and we are on appeal.

In a recent state court decision in Philadelphia – a difficult defense venue – we won a defense verdict in a case that was focused on our client's marketing practices. In state court in Long Island we recently won a directed verdict, which is a unique achievement. It is also noteworthy that this year we have assisted our clients in getting defense verdicts in New Zealand and Kazakhstan.

**Wilkinson:** For the past several years we have been litigating all over the country very high profile litigations involving a prescription pain medication. Our most noteworthy victories include defeating plaintiffs' petition to have an MDL – a vehicle which permits the aggregation of all pretrial work for multiple cases into one federal court. It is rare to defeat such a petition.

We have had significant success defeating plaintiffs' efforts to achieve class-action certification all around the country. The most noteworthy victory was an Ohio State Supreme Court reversal of a lower court's decision to certify a class.

In the past year we have had six summary judgment victories that came on the eve of trial in a number of jurisdictions around the country. We were able to prepare and strategize those cases in a manner that resulted in the judge determining that there was simply no issue of fact that could be sent to a jury. These were significant victories for our clients.

In alcohol litigation – where we are litigating allegations concerning the ways in which our clients have marketed their products – we have also had a lot of success. Most recently we had a case dismissed early on in the litigation, and in a jurisdiction that was considered to be advantageous to the plaintiff.

### **Editor: Would you tell us about the work of the group in products liability prevention counseling?**

**Morrisroe:** When we work with clients in a particular litigation, our expertise with respect to both the legal and the complex medical and scientific issues encourages them to come to us for litigation prevention advice. We take a proactive role in counseling clients on how to conduct their business to avoid future litigation and, if litigation does occur, to ensure that they have robust defenses. This is an active part of our practice and also branches into regulatory advice.

### **Editor: What about the future? Where would you like this practice to be in, say, five years?**

**Morrisroe:** I believe that products liability litigation will continue to escalate. It is simply too attractive for the plaintiffs' bar to resist pursuing profitable manufacturers on questionable claims when the judiciary is receptive to a variety of novel theories. That translates to an expanding practice for us, in response to the needs of our clients.

**Wilkinson:** In addition, I would not be surprised to see a larger volume of global product liability litigation. As a consequence, I expect that our group will be engaged in increasingly complex matters as our adversaries invent ever more novel theories to navigate the medical and life sciences arena, and that the venues in which we will appear are going to be very widespread.