

## Product Liability MVP: Latham & Watkins' Kenneth Parsigian

By **Emily Field**

*Law360, New York (December 22, 2016, 8:34 PM EST)* -- Latham & Watkins partner Kenneth Parsigian's work in helping defeat a class of healthy Marlboro smokers who were seeking to stick Philip Morris with a nearly \$190 million tab for annual preventive lung screenings won a spot on this year's list of Product Liability MVPs.

The chair of the firm's Boston litigation department, Parsigian was co-lead counsel on the case, which included tens of thousands of presently healthy Massachusetts smokers who wanted the tobacco company to foot the bill for annual scans using low-dose computed tomography, or LDCT, a relatively new technology that can pick up cancer signs much earlier than a chest X-ray.

The scans cost \$500 each and the annual screening program would have lasted 28 years, according to a Philip Morris spokesman at the time of the trial.

"The court ruled that the fact that insurance would pay [for screenings] couldn't come into evidence," Parsigian said. "One of the big strategies was to look for opportunities to get that fact in."

Parsigian spotted his moment when an attorney for the plaintiffs asked a redirect question; a colleague later told him that she saw his head "snap up," Parsigian recalled.

"You plan for possibilities and listen like a hawk. Then you keep pushing," Parsigian said. "As long as you do it responsibly and on a good faith basis, most judges will let you have a chance at it."

Ultimately, the jury in February after a day of deliberations found in favor of Philip Morris' argument that the cigarettes weren't defective and there wasn't a safer alternative to the Marlboros since a low-tar product Philip Morris promoted in the 1980s had flopped on the market.

The smokers' medical-monitoring claim was one of first impression in Massachusetts, according to



Latham & Watkins. Those types of claims are still relatively new, and many states don't allow them.

Seven months later, U.S. District Judge Denise J. Casper **struck down the smokers' only remaining** consumer protection claim, finding in a text order that the smokers failed to show that there was a safer and feasible alternative design for Marlboro cigarettes and that it was unreasonable for Philip Morris USA Inc. not to adopt such a design.

Parsigian also represented Philip Morris **in another trial in Massachusetts state court**, this one brought by smokers seeking \$600 million in damages for alleged violations of the state consumer protection law by falsely advertising that Marlboro Lights cigarettes delivered less tar and nicotine to users.

He was able to win denial of class certification on the smokers' unjust enrichment claim, which cut the class period by more than two decades, according to the firm.

Parsigian also successfully argued that the smokers wouldn't be able to recover Philip Morris' profits from Marlboro Lights, according to the firm

Ultimately, Superior Court Judge Edward Leibensperger **awarded only \$4.9 million**, a mere fraction of the amount sought by the class of 197,000 Massachusetts consumers. The award amounted to only \$25 each in statutory damages.

"What I like about product liability is that it's all real. It's everyday stuff, it's the stuff you study in law school," Parsigian said. "Product liability is about the same issues that have been coming up in common law for 600 years."

At the beginning of his legal career, Parsigian was an associate independent counsel in the Iran-Contra investigation led by the late independent counsel Lawrence Walsh, according to the firm. In that capacity, he headed up the probe of former U.S. Attorney General Edwin Meese.

Parsigian attended law school at Boston University School of Law and after graduating in 1988 clerked for Justice Stephen G. Breyer when he was on the U.S. Court of Appeals for the First Circuit, according to the firm.

--Editing by Orlando Lorenzo.

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