

MVP: Orrick's Josh Rosenkranz

By Xiumei Dong

Law360 (September 13, 2022, 2:02 PM EDT) -- Josh Rosenkranz of Orrick Herrington & Sutcliffe LLP has represented Johnson & Johnson in a series of appeals of jury verdicts finding the company's iconic baby powder caused cancer, including a New Jersey appeal wiping out a \$117 million verdict, earning him a spot as one of Law360's 2022 Appellate MVPs.

HIS BIGGEST ACCOMPLISHMENT LAST YEAR:

Rosenkranz, the leader of Orrick's U.S. Supreme Court and appellate litigation practice, persuaded a New Jersey appellate court last year to throw out a \$117 million talcum powder verdict against Johnson & Johnson and Imerys Talc America.

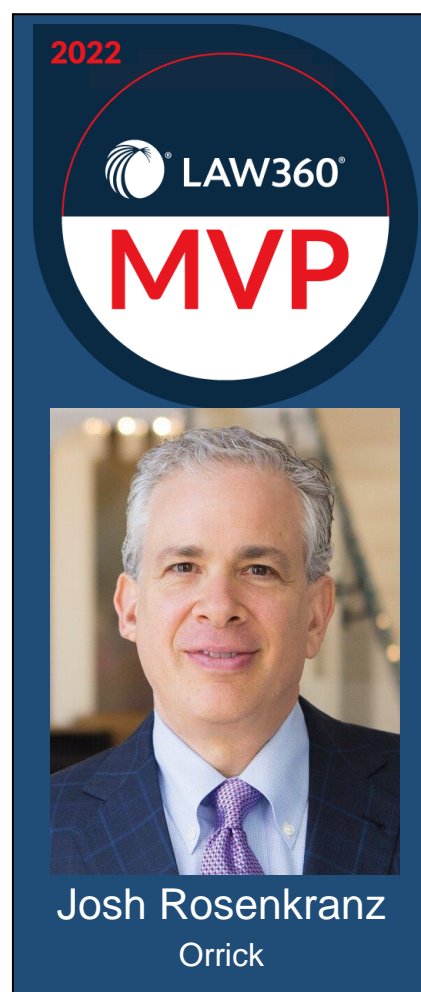
The court found that the trial judge shouldn't have allowed two plaintiffs' experts to testify and ordered new, separate trials for the defendants. But the win "was way bigger than that because it would set the rules for all of New Jersey and potentially other jurisdictions about what experts can say about the assertion that [J&J's] baby powder causes cancer," Rosenkranz said.

According to Rosenkranz, Orrick's appellate team represents J&J on several dozen cases stemming from the talc litigation. In July, the team scored another reversal for J&J in New York, where a state appeals court overturned a \$120 million judgment, finding that the plaintiff failed to establish sufficient evidence that her exposure to talcum in J&J's products caused her health to deteriorate.

"I think the two cases is kind of a one-two punch," Rosenkranz said. "Between the two of them, we knocked out the two key pillars of plaintiffs' cases saying that Johnson's baby powder causes cancer."

HIS BIGGEST CHALLENGE THIS YEAR:

Rosenkranz said he faced some of his toughest challenges with the two appellate cases for J&J since the "cases get tried for weeks," and plaintiffs' lawyers had cobbled together "massive records" from 50 years.



"You don't get a court to throw out massive verdicts after a long jury trial without giving the court a sense of unease that there was a fundamental injustice," Rosenkranz said. "I think that's the challenge in those sorts of cases, to convey that to the court without conveying to the court that you think its job is to second-guess juries, which it is not."

WHY HE'S AN APPELLATE ATTORNEY:

The challenges of defending a client on complex matters in court are what motivated Rosenkranz to become an appellate lawyer.

"I love the art of crafting a legal argument from the building blocks of narrative in law, logic and common sense," he said.

He also said he likes that compared with trial-level litigation, appellate decisions have "a greater impact on the direction of the law," he said.

OTHER NOTABLE CASES HE'S WORKED ON:

Over the past year, Rosenkranz has notched multiple high-profile wins in state and federal appellate courts, including one at the Supreme Court.

Arguing on behalf of Unicolors Inc., Rosenkranz persuaded the Supreme Court in February to reverse a Ninth Circuit decision vacating an award Unicolors won against H&M for infringing its design. The high court ruled 6-3 that a mistake of law or fact can excuse inaccuracies in copyright registrations.

That issue is of critical importance to many artists who rely on the copyright system to protect their rights, Rosenkranz said.

"If we had lost, it would have fundamentally changed the course of copyright litigation," he said. "It really would have disadvantaged the little guys — poets and artists — who try to protect their copyright but don't know the law and routinely make legal mistakes on copyright applications."

In August 2021, he and Orrick's appellate team also convinced the Federal Circuit to overturn a \$1.1 billion judgment against Gilead's Kite Pharma Inc. in a long-running intellectual property battle with Juno Therapeutics Inc. involving a life-saving cancer therapy.

HIS ADVICE TO YOUNGER ATTORNEYS:

Rosenkranz encourages younger attorneys to follow their passions, advice the late Supreme Court Justice William Brennan gave him amid a major career decision after his clerkship.

Encouraged by Justice Brennan, Rosenkranz accepted a job heading a new public defender appellate office in New York. After that, he co-founded the Brennan Center for Justice, the public interest organization named after his mentor.

"We spend so much of our life in pursuing work, [you] may as well spend it doing something that you really love," Rosenkranz said.

Rosenkranz also advises young attorneys to plan only three years ahead and to spend those periods learning the skills they find most interesting.

"If you can do that, I think it relieves some of the pressure. And also you're more likely to do great at it, and more opportunities will open up for you," he said.

— *As told to Xiumei Dong.*

Law360's MVPs of the Year are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals, and complex global matters. A team of Law360 editors selected the 2022 MVP winners after reviewing more than 900 submissions.

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