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Environmental Group Of The Year: Keller Rohrbach

By **Madeline Lyskawa**

Law360 (February 12, 2024, 2:58 PM EST) -- Keller Rohrbach LLP attorneys secured a nearly \$700 million deal on behalf of the state of Oregon in environmental contamination litigation against Monsanto, as well as a first-of-its-kind jury verdict against PacifiCorp for its role in the Beaver State's wildfire disaster, earning the firm a place among Law360's 2023 Environmental Groups of the Year.

In reflecting on the firm's work over the past year, Daniel Mensher, an attorney with Keller Rohrbach's complex litigation group, told Law360 it's been "a hell of a year," adding that the success his team has had is a culmination of an enormous amount of work and collaboration.

"A lot of these cases we've been working on for years and have had this success because of the awesome collaboration that we've had internally at Keller Rohrbach, as well as the co-counseling relationships that we've had with other firms in these cases," Mensher said.

Following four years of complex litigation, Keller Rohrbach and co-counsel Stoll Berne secured a record-setting \$698 million settlement on behalf of the state of Oregon in litigation against Monsanto over its role as the sole manufacturer of polychlorinated biphenyls, or PCBs, just before trial in late December 2022.

"It was dramatic in the sense that we worked that case up all the way through voir dire, sat a jury and were right on the verge of making our opening statements the next day, and then it settled," said Yoona Park, another attorney with the firm's complex litigation group who is based in Portland, Oregon.

Although a "bit of a bummer" to not be able to make its opening statements, the team was able to see every aspect of what Monsanto was prepared to do in defense of a case like this, before the monumental settlement was reached, Park said. The deal, which marks the largest settlement reached by a state with Monsanto regarding PCB contamination, will be used to fund PCB cleanup and habitat restoration, the firm said.

Nearly six months later, the Delaware Supreme Court revived similar litigation brought by another one of the firm's state clients, Delaware, against Monsanto over PCB contamination. Although the case had previously been dismissed by a state Superior Court, Delaware subsequently appealed the ruling to the state's justices, who unanimously reversed the case's dismissal in June. Around the same time, the firm also successfully represented the city of Seattle in its ongoing litigation against Monsanto over PCB



contamination, prevailing on the first issue raised in the company's motion for summary judgment in early July. The rest of the motion remains pending, the firm said.

Keller Rohrback's wins against Monsanto, however, haven't come without their challenges, Park said.

"It's a long slog, and I think when you're talking about particular challenges, one of the things we really need to talk about is the resources a corporation like Monsanto ... [has] to bear," Park said. "They can pretty much drown you in all the discovery, all the unnecessary litigation tactics and moves. And so, I think that's one of the real challenges that we face in terms of moving cases forward and getting to a resolution and getting to trial."

What makes the team successful despite these challenges, Park said, is its practice of going into each case planning for trial, and building trust with the large government entities the firm represents. While the firm's cases against Monsanto have not made it to trial, using the mindset Park described, the Keller Rohrback team was able to secure a nearly \$90 million verdict in June against PacifiCorp on behalf of 17 named plaintiffs seeking to hold the company accountable for the devastating fires that swept across Oregon in May 2020.

The case, which involved the first certification of a class action in a wildfire suit and the first utility-caused mass fire disaster to proceed to trial, rendered a powerful verdict that has the potential to force industry-wide change in the West, Matthew Preusch, a partner with Keller Rohrback's complex litigation group who worked on the case, told Law360.

"Because these [theories of liability] had never been to a jury verdict, no one knew how much these claims were worth, in particular the emotional distress claims. And so, by a jury in Oregon saying these people's suffering is worth between three and four-and-a-half million dollars, that changes the settlement value of cases around the West, and really around the country," Preusch said.

Mensher said the team plans to continue and expand its work representing clients in PCB-related litigation against Monsanto, as well as its work related to per-and polyfluoroalkyl substances, or PFAS, contamination.

--Editing by Janice Carter Brown.