

## WINNING | A SPECIAL REPORT

The lawyers in our 2016 special report all have something in common—they score big wins in court. But how do these battle-tested litigators make their clients happy? As they detail, it's as much about the process as it is the outcome. They have learned that they must trust their own styles of trial practice, be credible, know the documents, and connect with and respect the jury. In cases ranging from products liability to patent law, they've mastered their craft. These are the stories of our winning litigators.

### GOLDMAN ISMAIL TOMASELLI BRENNAN & BAUM LLP

#### TAREK ISMAIL & KENNETH BAUM

Merck & Co. Inc. had just wiped out 650 products liability lawsuits in federal court over its osteoporosis drug Fosamax when the first trial in California state court began.

But unlike the arguments in the federal litigation, federal pre-emption wasn't an option for Tarek Ismail and Kenneth Baum, partners at Chicago-based Goldman Ismail Tomaselli Brennan & Baum. So they turned to the science, scoring a defense verdict from a jury in Orange County, California, in April 2015.

Lead trial counsel Ismail, along with Baum, who is based in Santa Monica, California, and has a Yale medical degree, challenged the plaintiff's claims that the femur fracture she suffered was caused by Fosamax. They also raised questions about the plaintiff's medical history.

"The plaintiffs in these cases claim that the medicine causes a very particular type of femur fracture that has



a distinct characteristic on X-rays and clinical presentations," Ismail said. "We challenged the very character of the plaintiff's injury and disputed that she had a fracture that had a distinct characterization that could be attributed to the medicine."

It was a significant win for Merck, whose other Fosamax femur cases were on hold following the federal pre-emption ruling, now on appeal. More than 600 cases had been filed in California, the only "active" docket involving Fosamax femur claims at the time, said James Holston, managing counsel at Merck.

"That was the only court that was moving forward at the time," he said.

### TRIAL TIPS

■ Focus opening statements on constructing a favorable narrative for your client, not trying to preview or rebut every piece of evidence in the case. As trial proceeds, stay relentlessly focused on your theory of the case and resist the temptation to fight every broad accusation or revisit the other side's tangential issues.

—TAREK ISMAIL

■ Do not underestimate the power of well-conceived demonstratives tailored for dual display during examinations of witnesses and closing arguments.

—KEN BAUM

"It was also a court where if the judge did not find pre-emption it would become a viable venue for the plaintiffs to pursue their claims."

—AMANDA BRONSTAD