

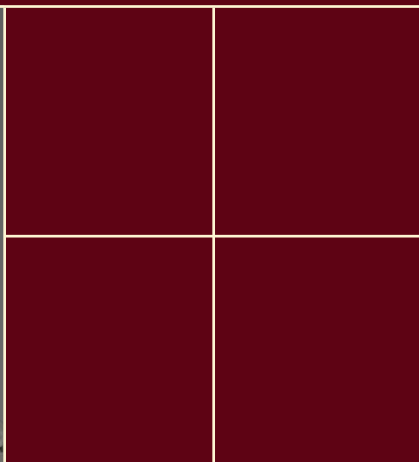
# THE AMERICAN LAWYER

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SPECIAL  
ISSUE

## Litigation Department OF THE Year

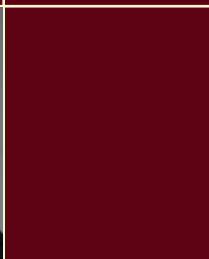
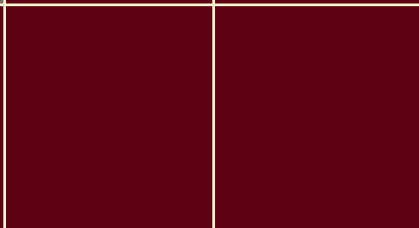


**WHEN WE STARTED** our Litigation Department of the Year competition ten years ago, we weren't sure if it would catch on. We knew we were asking a lot from firms—requiring them to sift through their litigation matters, choose the best results, and summarize complex cases succinctly. But a decade later, here we are presenting the results of our sixth biennial competition.

As usual, the task of picking winners and finalists involved some excruciating decisions. The submissions—which covered the two-year period ending July 31, 2011—were impressive, and stand as a testament to the excellent work done by the firms of The Am Law 200.

For the first time since we started this project, we changed the format for all four competition categories: general litigation, product liability, labor and employment, and intellectual property. We gave firms more flexibility to select the cases they wanted to present, and we asked each firm to submit an essay on why it should be a finalist. We also invited firms to nominate a partner as Litigator of the Year.

After months of reading, vetting, and interviewing, we arrived at four law firm winners, 11 runners-up, and 14 honorable mentions. We also chose three lawyers for Litigator of the Year, and five as finalists. Congratulations to all of these firms and individuals, and our thanks and appreciation to all the firms that participated in the 2012 contest.



PHOTOGRAPHY BY MIKE MCGREGOR



## Tenacious in the Extreme



The labor and employment group at **MORGAN LEWIS** tallied an impressive track record in a variety of cases, often overcoming long odds.

By **VIVIA CHEN**

a noncompete agreement. Banks argued that the executive's move would lead to the "inevitable disclosure" of trade secrets at the heart of Bimbo's business—including the recipe for creating the famous "nooks and crannies" of Thomas' English Muffins. The federal district court judge agreed, and in July 2010, the Third Circuit affirmed the decision, barring the executive permanently from the move.

And in a legal hat trick, Banks won a third such dispute for Hewlett-Packard Company in February 2011. HP was attempting to snag a key IBM executive who had actually signed a noncompete agreement—and on the proper

line. In her opinion in *International Business Machines v. Visentin*, New York district court chief judge Loretta Preska denied IBM's request for injunctive relief, and criticized IBM's noncompete agreement for being overbroad—a ruling affirmed on appeal last fall.

The firm also won big in its class action work, convincing the plaintiff-friendly Ninth Circuit to use a pro-defendant "presumption of prudence" standard in an ERISA class action against Computer Sciences Corporation. And it defeated certification in a Fair Labor Standards Act case against Dollar General Corporation involving employees at 8,000 stores.

With a track record like this, it's no wonder opposing counsel voice begrudging respect; some describe the firm as "difficult," "not very pleasant," and "effective but ruthless."

But Banks takes it all in stride. "I try to be cordial and fair. But I also try to protect the interests of my clients. That is not always a recipe for popularity."

Connect with the Morgan Lewis Labor and Employment Practice on Twitter @MLWorkforce.

E-mail: [vchen@alm.com](mailto:vchen@alm.com)

**C**LIENTS ADORE MORGAN, LEWIS & Bockius's labor and employment group. Opposing counsel? Well, not so much.

But that shouldn't be surprising, given that Morgan Lewis delivered some unlikely wins for its clients over the past two years, often pulverizing its adversaries in the process. It did so in a wide array of disputes, from battles over the hiring of key employees to class actions and discrimination claims.

Almost without exception, clients praised the firm for its tenacity, energy, and creativity. Recalling the firm's role in defeating an individual disability discrimination claim, Kathleen O'Sullivan, senior general counsel at Pacific Maritime Association, noted that the firm "persevered through a mistrial, and succeeded in

the second trial, obtaining a unanimous jury verdict on all but one claim, which was amazing." Another client called the firm "maniacal about deposing witnesses" but also very smart about "relationship-building with the judge."

In corporate fights over talent, in particular, the firm showed remarkable versatility and agility. In *International Business Machines Corp. v. Johnson*, Morgan Lewis's Michael Banks overcame long odds in a trade secrets dispute over Dell, Inc.'s 2009 recruitment of David Johnson, head of IBM's M&A group. Remarkably, Banks convinced the judge to allow the hiring to go forward, even though Johnson had signed a noncompete agreement with IBM. Banks argued that the agreement showed no meeting of the minds, because Johnson had intentionally signed on the wrong line. The judge denied IBM's request for injunctive relief; the U.S. Court of Appeals for the Second Circuit affirmed that decision in 2010.

Banks beat tough odds again in *Bimbo Bakeries USA, Inc. v. Botticella*, where he prevented Bimbo's vice president of operations from jumping to rival Hostess Brands, Inc.—even though the executive had never signed

**FROM LEFT:**  
Brian Ortelere,  
Grace Speights,  
Anne Marie Estevez,  
Joseph Costello,  
Robert Jon Hendricks

<b>Practice Group Size</b>	Partners: 82 Associates: 156 Counsel: 28
<b>Practice Group as Percent of Firm</b>	20%
<b>Percent of Firm Revenue 2010</b>	20%