

Litigation Powerhouse: Morgan Lewis & Bockius

By Daniel Wilson

Law360, Nashville (August 10, 2016, 5:49 PM ET) -- With a strong global litigation presence and a deep bench that has made it a go-to firm across multiple areas of litigation, backed by significant recent victories for clients such as Toyota and M&G Polymers, Morgan Lewis & Bockius LLP has earned a slot as a Law360 Litigation Powerhouse.

The firm, founded in Philadelphia in 1873, has grown into a legal giant, with 842 attorneys in its litigation group as of the beginning of March, 298 of them partners.

Its already-impressive litigation group, spread across its 28 global offices, was given a significant boost in 2014 with a mass lateral move of several hundred attorneys from the former Bingham McCutchen LLP, and then again in 2015 when Singapore's Stamford Law Corp. merged with the legal giant, according to litigation practice leader Gordon Cooney.

Bringing together the varying expertise and strengths of two large firms, the addition of the former Bingham attorneys has helped Morgan Lewis cement its position as a go-to litigation firm in areas such as employment, the financial services industry, class action defense work, patent litigation and environmental cases, he said.



Morgan Lewis & Bockius

Litigation Attorneys: 842

Litigation Partners: 298

Big Wins:

In re: Oil Spill by the Oil Rig "Deepwater Horizon" — A Louisiana federal court allowed Anadarko, part-owner of the Deepwater Horizon rig, to pay only a fraction of the \$3.5 billion maximum civil penalty it could have been slugged with, recognizing its lack of culpability for the massive oil spill.

Tackett et al. v. M&G Polymers USA LLC et al. — After M&G Polymers secured a U.S. Supreme Court ruling overturning adverse retiree benefits precedent that had long plagued employers, the Sixth Circuit agreed to effectively restart the underlying case, ruling the case would be too influenced by the prior retiree-friendly precedent otherwise.

Hollins et al. v. Regency Corp. et al. — In "bet-the-company" litigation that challenged the company's core business model, cosmetology training school Regency Beauty Institute convinced an Illinois federal court that work done by students in its training salons was educational and didn't make its students employees.

Sachs v. Toyota — A California state court ruled that Toyota's "Smart Key" electronic key system didn't violate federal anti-rollaway regulations, helping the automaker avoid both a massive recall and a potential block on selling its cars in the U.S.

HT SRT v. Woon — In a first-of-its-kind disclosure case demonstrating the firm's international reach, Singapore's High Court ruled that the privileged and confidential information of fabrication company HT, obtained through a hack and posted publicly on Wikileaks, was still considered privileged for litigation purposes.

Trial Tip: "The best litigators always try to take the very complicated and work relentlessly to make the complex simple and understandable, and to find ways to connect with the judge or the jury." — Gordon Cooney, litigation practice leader

"Our environmental litigation practice now is perhaps the best in the U.S. ... because we married incredible talent from what had been the legacy Morgan Lewis side of the house and added to it amazing talent from the Bingham side of the house," Cooney said.

A prominent recent example of its environmental work includes a significant role in litigation related to the Deepwater Horizon blowout, the largest mass tort environmental case in U.S. history.

Both legacy Morgan Lewis attorneys and many former Bingham attorneys now with Morgan Lewis worked for years on that litigation, variously representing Schlumberger Ltd., Moex Offshore 2007 LLC and Anadarko Petroleum Corp.

The firm's work was capped off by a November ruling implementing a civil penalty against the company of just under \$160 million, a far cry from the more than \$1 billion the government had requested and just a fraction of the maximum penalty of around \$3.5 billion, after convincing a judge of the company's lack of culpability as a nonoperating partner in the well.

"We got out, basically, below the number we offered in settlement ... which the [company] was ecstatic to pay," environmental practice group leader Jim Dragna said. "It's a strict liability statute where not having any fault is not relevant."

In another recent example of its litigation prowess, the firm helped internet giant Google Inc. escape a proposed class action in February 2015 alleging antitrust violations from Google's agreements with device makers using its Android operating system, convincing the judge that consumers had suffered no harm.

"The reality is, the allegations essentially conceded [Android had led to] lower prices, free services, greater output. These are good things. This is what the antitrust laws are designed to protect," said Brian Rocca, co-managing partner of the firm's San Francisco office.

Morgan Lewis has continued to add to its strong track record of success over the past year, for instance, helping to convince the Sixth Circuit that a case involving a dispute between M&G Polymers USA LLC and a class of retirees over lifetime health care benefits needed to be sent back to district court for a ground-up reworking, following a related U.S. Supreme Court decision.

The high court had vacated a previous Sixth Circuit ruling against the company, unanimously finding that a long-held reliance on the retiree-friendly 1983 "Yard-Man" decision, which had effectively found that unalterable lifetime employee benefits could be granted even when there was no clear promise in a related contract, was out of step with contract law.

That was a significant ruling for employers across the U.S., according to appellate practice co-chair Allyson Ho, who argued the case.

"For decades, employers had essentially litigated on an uneven playing field in the Sixth Circuit," she said. "But I think the magnitude of that was larger, because many suits were specifically being brought in the Sixth Circuit to be able to take advantage of that precedent."

Despite her success in the high court, Ho still had to convince the circuit court on remand that because the whole case had been litigated "in the shadow" of Yard-Man, it needed to go back to the district court for a fresh start.

In another important recent appellate ruling, the firm helped e-commerce giant eBay Inc. secure a Ninth

Circuit decision finding that the Americans With Disabilities Act's Title III, dealing with "places of public accommodation," applies only to brick-and-mortar businesses, not websites, the first such circuit court decision on the issue.

At the trial court level, the firm helped Toyota Motor Corp. win a July 2015 trial in a closely watched California state court class action alleging the automaker's "Smart Key" electronic key system, a proximity system allowing a car to be started and continue running without a key inserted into an ignition barrel, violated a federal anti-rollaway regulation.

The judge in the case ultimately found the system was in compliance with federal regulations, helping Toyota to avoid both a costly recall and what could have amounted to a de facto bar on its vehicles being sold in the U.S, and the firm continues to represent Toyota in a similar ongoing suit.

The firm is also adept at helping to nip matters in the bud, for instance, helping Regency Corp. — owner of cosmetology training school Regency Beauty Institute — to secure summary judgment in October in a proposed class action alleging its students should be considered employees under the Fair Labor Standards Act because they perform services on paying customers in the school's retail salons.

The suit, a case of first impression brought on behalf of around 30,000 students, effectively challenged Regency's entire business model, but Morgan Lewis litigators helped to convince the judge that regardless of any related revenue brought in, any work done by students was primarily being done for their educational benefit.

Also, the firm was recently called upon to help represent the interests of the New England Patriots and owner Robert Kraft in the recent Deflategate case, drafting a rebuttal to the NFL over its claimed reasons for suspending star Patriots quarterback Tom Brady.

That case served as an example of the trust the firm regularly builds as part of its many long-term client relationships, Cooney said, noting Boston-based partner Daniel Goldberg had long worked on legal matters for Kraft.

The way Morgan Lewis works to build relationships with clients is a key difference over many rivals, with the firm prepared to take on all of its clients' litigation matters — as well as their other legal needs — and not just high-margin, high-stakes work, according to Morgan Lewis Chair Jami Wintz McKeon.

"We don't aspire to be the place that you come to only for your biggest matter," McKeon said. "Obviously, we love those matters, and they're our sweet spot, and we handle a lot of them, but we also work with our clients on all of the other matters that are important to them."

Another key part of its success is the willingness of its lawyers to collaborate across offices and practice groups to help ensure clients get the outcome that they're looking for, several attorneys said.

Steve Reed, practice group leader of Morgan Lewis' global antitrust and competition practice, noted he had seen this collaboration in action from the outside, in his former role as in-house counsel.

"One reason I used Morgan Lewis [when] in-house is that I was impressed by individual lawyers, their knowledge of the industry and their depth of experience, as well as by their collaborative approach to problems. That was very valuable," he said. "I didn't see that at every firm I used."

Further, Morgan Lewis' ability to move with the times is another big draw for clients, McKeon and Cooney said. For instance, the firm recognized the growing trend towards e-discovery well ahead of the

curve, developing a related in-house platform close to two decades ago — a capacity many firms still lack, McKeon said.

As a result, it continues to attract clients for major new matters. It was recently chosen by the Coca-Cola Co. to handle a prominent multibillion-dollar transfer pricing dispute with the IRS and by rapidly growing transportation company Uber Technologies Inc. as one of a select group of preferred firms to handle its growing legal needs, after a complex, competitive proposal process, an example of a growing legal trend.

"Part of what's behind that is [companies increasingly] want law firms that work with them who really understand their business," Cooney said. "And it's easier from the client's perspective to work with a smaller number of firms who are committed to understanding that client's business and their business objectives."

And the firm also works hard to keep the pipeline of fresh litigation talent flowing, holding an intense trial academy program each year where several dozen litigation partners train associates, culminating in mock trials.

"It's pretty stressful for them, because they have partners that are the judge and acting as jury ... Once they've gone through it, then they all 100 percent say it was one of the best things that ever happened [for their practice]," partner Winn Carter said. "It's a true baptism by fire."

--Editing by Katherine Rautenberg and Jill Coffey.