

## Class Action Group Of The Year: Morgan Lewis & Bockius

By **Matt Fair**

*Law360, Philadelphia (January 8, 2016, 5:41 PM ET)* -- A string of impressive victories throughout 2015, including persuading the U.S. Supreme Court to toss out a decades-old precedent in a case over caps on retiree health benefits, has earned Morgan Lewis & Bockius LLP a place among Law360's Class Action Groups of the Year.



The firm's work defending M&G Polymers from a class action over its efforts to cap benefits to retirees resulted in a major win before the high court last January as the justices agreed that a decades-old precedent out of the Sixth Circuit improperly placed a thumb on the scale in favor of vested retiree benefits.

"We managed to convince the court to review and unanimously reject a 30-year-old precedent related to the vesting of retiree healthcare benefits," Morgan Lewis litigation chair J. Gordon Cooney said. "This was an issue that the business community was following very carefully and there had been division in the lower courts for decades about how to address the issue."

The firm's class action working group includes about 200 attorneys operating across several practice areas ranging from consumer protection and antitrust to labor and employment and eCommerce.

Helping to unify the many practice areas, group co-chair Scott Schutte said, is a commitment to sharing knowledge and strategy class action attorneys could find helpful regardless of the types of claims they specialize in.

In that vein, Schutte said, the group holds monthly meetings in order to keep one another up to speed on major developments in the class action sphere.

“Our class action working group meetings are all focused on substantive developments in the law, trends in the law, and what has worked or not worked in particular cases,” he said. “It’s helped as a way of communicating knowledge around the firm and has been one of the reasons why I think we’ve had some of the success we’ve had.

Among one of the more unique victories the firm’s class action attorneys scored in the last year was a rare trial in California state court over allegations that smart keys manufactured by Toyota Motor Corp. violated federal safety standards.

Rather than spending a lot of time debating the central claim in motion practice, the company opted to hold a bench trial on whether, in fact, the smart keys did violate the safety regulations in question.

Ultimately, the judge sided with Toyota in the case.

“Toyota stood behind its product and appreciated the opportunity to resolve the alleged common question. We were pleased to demonstrate to the court that the system complies with the relevant federal safety standard,” Cooney said. “The strategy of agreeing to try that question as part of the class certification process reflected creative thinking, confidence in our client’s products, and confidence in our trial team, who delivered the goods.”

The firm has also been active winning notable victories on behalf of major clients including Amazon.com Inc. and eBay Inc. in the burgeoning world of e-commerce class action litigation.

As our economy moves steadily toward increased reliance on e-commerce and technology, it’s hardly surprising that class action litigation regarding those areas is not far behind,” Cooney said. “We’re pleased to occupy a prominent space in representing a number of different clients in these spaces.”

The firm won a victory for eBay in April 2015 as the Ninth Circuit ruled that the online auction company was not required under the Americans with Disabilities Act to accommodate individuals with sight and hearing impairments.

“There are all sorts of various accommodations that need to be provided in the bricks-and-mortar world, and the question in this context becomes whether the ADA applies to websites and web-only business, and whether websites are a place of public accommodation,” Cooney said.

The firm has also helped to blaze new legal ground on the issue of arbitration clauses and class action waivers in the e-commerce realm as it secured a victory for Amazon last February in a case over purchases of controlled substances through the online retailer.

“There’s been significant litigation concerning the scope and enforceability of arbitration clauses between potential class members and potential defendants,” Cooney said. “This has included litigation in the e-commerce setting relating to whether, when somebody accepts the terms of service with an online business, that acceptance can include an enforceable arbitration agreement with a class action waiver. This is an issue that has been dividing the courts.”

In the Amazon case, a New York federal judge ruled that the named plaintiff’s acceptance of the online retailer’s terms and conditions had created an enforceable class action waiver and arbitration clause.

Morgan Lewis has also helped Cephalon Inc. secure a series of victories in a string of class actions over claims stemming from alleged improper off-label marketing of the company's drugs.

A Pennsylvania federal judge in May dismissed a putative class action being pursued by a group of third-party payors seeking reimbursement for off-label prescriptions of the painkiller Actiq.

"The Cephalon case are a great example of what we've been able to do on behalf of our clients to distinguish between alleged off-label promotion, which is an FDA regulatory concept, and private causes of action for fraud or deception," Cooney said.

The confluence of private class actions and government investigations is something that Schutte said the firm took pride in helping their clients navigate.

"Private class actions are more and more often related to government investigations or enforcement actions on the state or federal level," he said. "We have developed really good bench strength to be able to come in as a one-stop shop for providing advice about problems, instead of providing advice about a single class action."

--Editing by Patricia K. Cole.

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