

The Legal Intelligencer

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LEGAL & LITIGATION DEPARTMENTS OF THE YEAR



Photo by Nanette Kardaszkeski

Seated from left: Paul Evans, Joseph Ragaglia, Joseph Costello, and Michael Burkhardt

Standing from left: John Lee, Sarah Bouchard, Steven Wall, Larry Turner, Anne Martinez, Michael Ossip and Michael Banks.

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WINNER, LABOR & EMPLOYMENT

WORKING TOGETHER

MORGAN LEWIS RELIES ON GLOBAL TEAM

BY KRISTIE REARICK

Of the Legal Staff

After Michael Burkhardt presented oral argument in *EEOC v. Honeywell International*, convincing the court to deny

an injunction request and effectively decide the case in favor of his client, Honeywell International, he was asked, “What are you going to do now?”

Naturally, he responded, “I’m going to Disney World.”

Actually, Burkhardt was scheduled to visit Mickey Mouse—with his family—the day of oral arguments. But instead, he went to court.

That’s the kind of thing a member of the labor & employment team at Morgan Lewis does.

Their clients come first, Joseph Ragaglia, leader of the firm’s labor and employment practice group said.

“That’s really the philosophy of our entire section,” Ragaglia said. “We truly partner with our clients. We get to know our clients and we try to anticipate what they need. We’re very proactive.”

They’ll do whatever it takes to resolve the issue at hand, even if it means starting your vacation a day late.

“We’re very aggressive with our strategy. We work very closely with our clients to make sure we achieve their goals,” Ragaglia added.

Morgan Lewis is known for its accomplishments in the labor and employment space. In Pennsylvania, the 50-lawyer group is a huge part of the firm’s global team of 250 attorneys.

Burkhardt can certainly attest to being a part of this global atmosphere. When Honeywell sought to fight the U.S. Equal Employment Oppor-

tunity Commission’s request for a temporary restraining order and preliminary injunction to stop open enrollment in its health insurance plan—due to the company’s inclusion of a wellness program—he had just five days to present arguments on the matter, which involved the Affordable Care Act, a law he didn’t have a deep knowledge of.

“It was a good testament to our firm and our practice,” said Burkhardt, adding that he reached out to a partner in Pittsburgh and a partner in Chicago to help him navigate the “very extensive statute” that is the ACA.

Honeywell was in the middle of open enrollment for its employees’ health insurance, which included a wellness program that offered employees incentives to participate. If they chose not to participate, surcharges would be applied. Biometric screenings were administered by a third-party vendor, Burkhardt said. The screening results were given to the employees. It was completely private information for



the employees’ eyes only and the company did not have access to the information, he said. The EEOC had a strong position around wellness pro-

grams, saying they shouldn’t be permitted unless it’s voluntary, Burkhardt explained. The EEOC argued that applying incentives and surcharges violated the Americans with Disabilities Act and the Genetic Information Nondiscrimination Act.

“But the EEOC had failed to issue any regulations on what constituted as ‘voluntary,’” Burkhardt said. “There was guidance, but no regulations.”

Ultimately, the ACA played an integral role in helping to win the case. The act “made it clear that employers should be encouraged to participate” in these types of wellness programs and that incentives and surcharges don’t translate as “involuntary,” in fact, they comply with specific limits under the act, Burkhardt said.

In the end, the team’s victory may have helped push the EEOC to change its rules and issue final regulations on wellness programs.

“There’s still more to come on that battle, but the EEOC did alter its position and got to a little bit

of a rational place” when it comes to wellness programs, Burkhardt said.

It’s victories like this one that keep Morgan Lewis’ litigation group in the spotlight.

“We’re fortunate to attract some really great talent,” Ragaglia said, noting that associates have as much input as partners. “We each have a different role to play and we work together to come up with the best strategy possible.”

In a period of transition for the group, as younger partners grow their practices, the group has maintained its reputation as thought leaders in the field, Ragaglia said.

“We’re making way for our junior partners, and we’re seeing our clients embrace them as trusted advisors,” he said.

Clients such as The Hershey Co., Cooper Tire & Rubber Co., Comcast, Cigna, Vanguard and Oracle are among the household names the firm’s practice group works with. The team often utilizes creative ways to aid these clients.

The group, led by Dennis Morikawa and Jonathan Snare, won a victory for Cooper Tire when a judge on the Occupational Safety and Health Review Commission vacated all citations before the court. For two weeks, the team tried a precedent-setting case

involving OSHA’s attempt to regulate carbon black, an ingredient in tires said to be a fire hazard. The case was a significant victory for Cooper Tire with ramifications extending throughout the tire manufacturing sector.

In another case, led by Larry Turner, a preliminary injunction was granted to client Radian Guaranty Inc. against a former regional account manager who was responsible for more than \$650 million in business and privy to a substantial amount of confidential customer and company information.

And in a case involving Life Insurance Co. of North America—the team, led by Jeremy Blumenfeld, was brought in after a series of setbacks that had the potential to dramatically expand the scope of the Employment Retirement Income Security Act (ERISA) in certain areas. They were victorious in an appeal that drew attention from businesses and insurance companies across the nation.

“One of the great advantages with a very large national practice is that we have a lot of people with various expertise,” Burkhardt said. “You can call people at any time to get some help.”

It took only a matter of hours to have a team assembled for the *Honeywell* case, he said.

“I didn’t know enough about the Affordable Care Act (ACA) or

benefits plans to make an intelligent argument. Having resources to tap into made it possible,” he said.

He recently dipped into that well once again on a noncompete case out of the U.K.

“I reached out to partner in London to digest local trade secret laws there,” he said. “It’s a big advantage, having an expert is a huge help.”

Ragaglia agreed.

“Working with these folks, all 50 of them, I really feel like I walk away from work each day learning something new,” Regaglia said.

And it’s an exciting time to be working in this space, he added.

“This administration is very proactive. The courts tend to be more pro-employee or pro-union, and this creates an awful lot of change that we need to be able to react to,” he said. •