

Insurance Group Of The Year: Morgan Lewis

By **Mike Curley**

Law360 (December 4, 2020, 2:07 PM EST) -- Its ability to secure coverage for ITT Corp. in a \$66 million settlement over defense of asbestos claims and defense of Rite-Aid Corp. for claims against the pharmacy chain in national opioid litigation has earned Morgan Lewis & Bockius LLP a spot as one of Law360's 2020 Insurance Groups of the Year.

Paul Zevnik, the head of Morgan Lewis' insurance practice area, told Law360 that there are between 40 and 60 attorneys in the practice group, working out of more than a dozen of the firm's offices including in Boston, New York, Chicago and Los Angeles.

But those attorneys are also part of the larger litigation practice and have access to the more than 600 attorneys there — and that collaborative ability to share resources has helped the team achieve its victories, Zevnik said, noting that the firm secured around \$1 billion for its clients in 2020 and about \$15 billion for its clients over the last 17 years.

In the Rite-Aid case, for instance, partner Jay Konkel said the firm was already defending the pharmacy chain in its underlying opioid defense, and therefore was deeply familiar with the facts of the case when it came time to seek defense coverage from its insurers.

"It was knowing about the underlying cases, knowing about the rulings in the underlying cases," Konkel said. "This firm's familiarity with our client's whole issue with liability and seeking recoveries from it is something we're very good at leveraging."

The chief challenges of the case included convincing the judge of the straightforward issue at hand, he said, while the insurers tried to "carve" it into different arguments. Konkel described the "entire might of the insurance industry" contesting the issues, but in September, the Delaware Superior Court agreed to hold the pharmacy company's insurer liable for defense costs in excess of the first \$3 million spent on the case.

The firm's ability to dig into the details of a case is crucial to helping secure coverage for clients, Konkel said. He pointed to the ITT dispute, where the firm deposed the drafter of a policy written in 1971 for the company, soliciting testimony that bolstered ITT's case for coverage of asbestos liability relating to



exposure through its products.

"It's just an example of us listening to where insurers are going to go and then not just making a legal argument, which a lot of lawyers can do, but digging into the facts, digging into the drafting history of things, and developing something very unique and very helpful for our clients, making it pretty appellate-proof," he said.

Also this year, the firm is representing NiSource Inc. and its subsidiary Columbia Gas of Massachusetts in its bid to recover losses stemming from an overpressurization that led to 130 fires and explosions in Greater Lawrence, Massachusetts.

Daniel Chefitz, a partner working on the case, noted that NiSource is one of the largest utility companies in the country, and said the case involved claims for property damage and injuries as well as damage to NiSource's pipeline itself.

"This is a good example of us partnering with our clients, understanding when they're involved in a crisis [and] what are their most pressing needs," he said.

The case could have led to years of arbitration, Chefitz told Law360, but instead, within a year, the firm was able to recover \$800 million as of January. He attributed this success to the firm's ability to arbitrate in multiple locations at the same time and to find creative ways to overcome insurers' defenses.

"We understand these cutting-edge issues, we're innovative, we'll find ways to get around defenses that may exist," he said. "We have the ability to reach across the aisle, so to speak, and create innovative settlements with the insurers."

Zevnik said the practice group has grown some by bringing in new attorneys but mostly by embracing technology and efficiency, and he said he expects that to continue.

Over the next five to 10 years, he said he expects to see continued litigation over COVID-19-related business losses, as well as continued litigation over opioids and other product liabilities in the life sciences field.

He also pointed to the firm's captive insurance practice, which helps large companies set up their own insurance companies. He said as much as 80% of Fortune 500 companies have a captive insurer, and that companies with legacy liabilities — like asbestos — find particular use for them to manage those liabilities and ensure they have full insurance coverage.

"One of the things that we do anticipate over the next 10 years is the insurance markets ... becoming more difficult, or tougher than they were a couple years ago, and so the captives are a very important tool for them as well," he said. "Those are the trends that I see, and we're at the cutting edge in all of them."

--Editing by Daniel King.