

Law360's Weekly Verdict: Legal Lions & Lambs

By Michele Gorman

Law360 (March 5, 2020, 5:33 PM EST) -- Morgan Lewis & Bockius LLP is a legal lion this week for helping PBS score a win in a #MeToo movement case, while Sullivan & Cromwell LLP landed among the legal lambs because Volkswagen must face punitive damages related to its "clean diesel" emissions scandal.

Legal Lions

Morgan Lewis & Bockius LLP was victorious Wednesday when a Washington, D.C., jury found that PBS cut ties with talk show host Tavis Smiley because he had improper sexual relationships with subordinates and not because he's black. The jury ruled in PBS' favor on all counts following a trial on dueling contract breach claims with the ex-host, whom PBS said it fired for violating a "morals clause" in his contract. PBS is represented by Grace Speights, W. Brad Nes, Elliott Brown and Amanda B. Robinson of Morgan Lewis & Bockius LLP.

Next up on the lions list is Law Offices of Carmen Rodriguez PA, which secured a win Wednesday when a Florida federal jury decided that law firm Reed Griffith & Moran acted in compliance with the Fair Labor Standards Act when it didn't pay a former staffer overtime wages for preparing real estate closings. Joan Kuehn, who worked for the Boynton Beach-based boutique from June 2012 through October 2018, had filed suit in May against the firm and two current partners, claiming they owed her tens of thousands in unpaid overtime after allegedly applying an improper administrative overtime exemption to her position for years. The defendants are represented by Carmen Rodriguez of Law Offices of Carmen Rodriguez PA.

The Consumer Financial Protection Bureau's in-house legal department made it into the lions pack this week when a Fifth Circuit panel affirmed Tuesday the special tenure protections enjoyed by the agency's director as "valid and constitutional." Payday lender All American Check Cashing Inc. had argued that a CFPB enforcement action accusing it of abusive business practices should be void because of constitutional flaws in the CFPB's structure — namely, that it is led by a single director who can't be fired by the president except for cause. The CFPB is represented in-house by Christopher J. Deal and Lawrence W. DeMille-Wagman.

Attorney General Derek Schmidt, the Office of the Attorney General of Kansas, District Attorney Stephen M. Howe and the Johnson County District Attorney's Office snagged a win Tuesday when the U.S. Supreme Court found that Kansas can use information found in federal I-9 documents when prosecuting unauthorized immigrants for identity theft. The justices held that the Immigration Reform and Control Act, the federal law that requires employers to verify their employees' work authorization through the use of the I-9 form, didn't bar the state's prosecutions against Ramiro Garcia, Donaldo Morales and

Guadalupe Ochoa-Lara for using stolen Social Security numbers. Kansas is represented by Attorney General Derek Schmidt and Jeffrey A. Chanay, Toby Crouse, Kristofer Aillsieger, Natalie Chalmers, Dwight R. Carswell and Steven J. Obermeier of the Office of the Attorney General of Kansas, and District Attorney Stephen M. Howe and Jacob M. Gontesky of the Johnson County District Attorney's Office.

Rounding out this week's pride of legal lions are Randles & Splittgerber LLP and Davis George Mook. A Missouri federal judge on Feb. 28 shot down a bid by BASF Corp. to get out of a \$250 million punitive damages award handed down in the first trial over alleged harm caused by the weedkiller dicamba, saying BASF and Monsanto Corp. would have to share the penalty. BASF had sought earlier in the week to rid itself of responsibility for the \$250 punitive award the jury pinned on Monsanto, even though the Feb. 14 verdict found both BASF and Monsanto responsible in peach farmer Bill Bader's negligent design and failure to warn lawsuit, which is part of ongoing multidistrict litigation. The jury additionally awarded \$15 million in actual damages. Bader is represented by Bev Randles, Angie Splittgerber and Bill Randles of Randles & Splittgerber LLP, and Tracey George and Lawrence Mook of Davis George Mook.

Legal Lambs

In a ruling landing Sullivan & Cromwell LLP on this week's legal lambs list, a California federal jury awarded minimal economic damages to a narrowed group of consumers Tuesday in Volkswagen's first U.S. trial over its "clean diesel" emissions scandal, meaning the German automaker now faces punitive damages in a bifurcated bellwether trial. The nine-person jury determined that the automaker owes economic damages to five of the 10 California consumers whose cases were tried in the first phase of the trial. Volkswagen is represented by Robert J. Giuffra Jr., Sharon L. Nelles, James H. Congdon, Dylan Aluise and William B. Monahan of Sullivan & Cromwell LLP.

The Center for Class Action Fairness ended up among the legal lambs when the Ninth Circuit on Tuesday upheld a class action settlement resolving claims over how Facebook collects data on private messages, rejecting the arguments of a class member who claimed the deal was "worthless" to Facebook users and overly lucrative for their lawyers. The appeals panel said a lower court had been right to approve the settlement over the objections of class member Anna St. John, an attorney at the Center for Class Action Fairness who had argued the settlement only gave Facebook users "worthless injunctive relief" requiring Facebook to post a disclosure about its data collection from private messages. St. John was represented by herself and Adam Ezra Schulman and Theodore H. Frank of the Center for Class Action Fairness.

In a loss that landed the U.S. Department of Justice's Civil Division on the legal lambs list, the Ninth Circuit delivered a sharp blow to the Trump administration's immigration agenda on Feb. 28, unanimously rejecting a key policy banning asylum claims from migrants who cross the U.S.-Mexico border outside of a designated port of entry. The panel sided with a coalition of immigrant legal service groups that challenged the administration's rule, concluding that the restriction on asylum eligibility violates federal immigration laws that support the eligibility for asylum-seekers regardless of where they enter the country. The government is represented by Scott Stewart of the U.S. Department of Justice's Civil Division.

Next on the lambs list is the U.S. House of Representatives' Office of General Counsel and Georgetown University Law Center's Institute for Constitutional Advocacy and Protection. The D.C. Circuit on Feb. 28 dismissed House Democrats' demand for testimony from former White House Counsel Donald McGahn, bolstering President Donald Trump's longstanding push to block current and former administration aides from testifying before Congress. The House Judiciary Committee is represented by Douglas N.

Letter, Todd B. Tatelman, Megan Barbero, Josephine Morse, Adam A. Grogg and Sarah E. Clouse of the U.S. House of Representatives' Office of General Counsel and by Annie L. Owens, Joshua A. Geltzer and Seth Wayne of Georgetown University Law Center's Institute for Constitutional Advocacy and Protection.

Last up on the legal lambs list is Wolf Haldenstein Adler Freeman & Herz LLP. A Manhattan federal judge on Feb. 28 tossed out a long-running class action that sought to free "This Land Is Your Land" from copyright control, ending one of several such cases aimed at pushing iconic songs into the public domain. Siding with the group that owns the copyright of the Woody Guthrie classic, U.S. District Judge P. Kevin Castel ruled that the dispute had become moot after the group had offered a "sweeping" promise to never sue the rock band that filed the lawsuit. Plaintiffs James Saint-Amour and Alena Ivleva are represented by Gloria Kui Melwani, Randall Scott Newman and Mark C. Rifkin of Wolf Haldenstein Adler Freeman & Herz LLP.

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