Benefits Group Of The Year: Morgan Lewis

By **Patrick Hoff**

Law360 (January 27, 2023, 2:02 PM EST) -- Morgan Lewis & Bockius LLP helped win several precedential decisions in 2022 and was on the front lines helping employers navigate the U.S. Supreme Court's Dobbs ruling, earning it a spot among Law360's 2022 Benefits Groups of the Year.

One of the firm's most significant accomplishments came after the Supreme Court's decision overturning Roe v. Wade leaked in May, when Morgan Lewis put together a task force to understand the implications of the decision.

"It was really an all-hands-on-deck effort from the moment that the Supreme Court case leaked to really get our arms around all aspects of the potential impact of this both from a benefits standpoint and an employment law standpoint, and other aspects," said Amy Kelly, deputy practice leader for the firm's employee benefits and executive compensation practice.

Kelly said the task force helped clients plan and strategize before the justices' official ruling in Dobbs v. Jackson Women's Health Organization was handed down in June.

In addition to benefits attorneys, the task force consulted with Morgan Lewis' criminal defense lawyers and tax attorneys to ensure companies had a grasp on federal and state law implications, as well as how to design certain benefits, such as health plans, in light of the decision.

Craig Bitman, who leads the firm's employee benefits and executive compensation practice, told Law360 the post-Dobbs task force is a good example of what sets Morgan Lewis' benefits practice apart.

"Most other big firms that you may be following don't have the internal resources and the benefits groups of our size and depth that could do this, and don't have the employment law chops that we have at the firm as well that we can work with collectively," Bitman said. "And so while there may be some boutique firms that were doing this type of work, the boutique firms fall in this space as well because they don't have the other resources that a big law firm does."

Morgan Lewis also served as lead counsel to Oshkosh Corp. in the Seventh Circuit's August decision to uphold the dismissal of an excessive fee class action under the Employee Retirement Income Security Act. The decision in Albert v. Oshkosh Corp. was the first Seventh Circuit opinion after the Supreme Court's January 2022 ruling in Hughes v. Northwestern University, which Bitman said left many questions unanswered.

In Hughes, the Supreme Court said that the Seventh Circuit too closely scrutinized Northwestern workers' ability to choose their own investment plans when it backed the lower-court decision tossing claims similar to those against Oshkosh, and that resolving fiduciary duty claims requires a more in-depth analysis.

Bitman said many people thought Hughes would "really open the floodgates to the plaintiffs' bar" and overturn much precedent about what makes a fiduciary a good fiduciary. But in the Oshkosh decision, the Seventh Circuit said it understood Hughes to mean that fiduciaries aren't excused from liability just because they include prudent investments in the lineup of funds.

"But what [Hughes] didn't do was just overturn all of the prior jurisprudence on what it means to be a good fiduciary," Bitman said. "And I think that's really what we view as the important aspects … and we were obviously delighted by the court's decision."

Morgan Lewis was also lead counsel to Mass General Brigham, formerly known as Partners Healthcare, when the health system defeated a suit alleging that it reduced the value of a worker's annuity payments by more than $10,000 because it used a 1951 actuarial table that included outdated assumptions about life expectancy. In March, U.S. District Judge F. Dennis Saylor IV ended the ERISA suit, because no U.S. Department of the Treasury regulations or appellate case law agreed on a term for "actuarial equivalence."

Bitman said that while there had been several settlements in this area — the Mass General Brigham suit itself settled in July — the March decision was the first to address the substance of the claims.

"What the court found is that it's not merely just allegations about what are reasonable actuarial assumptions in general," Bitman told Law360. "Those assumptions need to be more specific to the plan and tested as reasonable for the plan. And I think that will have a really helpful result for other defendants here, because it will be harder for the plaintiffs bar to establish what was or wasn't reasonable for a specific plan."

Kelly added that Judge Saylor's ruling also aligns with how actuarial assumptions have been applied historically.

"It's different on a plan-by-plan basis based on industry and mortality associated with that. … And so having the court affirm that in this case provides a lot of comfort to other defendants who may need to litigate in this space," Kelly said.

Bitman said that what makes Morgan Lewis' benefits practice group successful is the collaborative and cohesive culture that exists between its attorneys, as well as the comprehensive approach the firm takes.

"We're kind of built to serve all of our clients' needs," Bitman said. "We're not just transactional or litigation-based like many firms are. We do everything in the benefits world, full stop."

–Additional reporting by Chris Villani and Abby Wargo. Editing by Peter Rozovsky.