

Health Group Of The Year: Morgan Lewis

By **Andrew Karpan**

Law360 (February 27, 2023, 2:03 PM EST) -- Health care lawyers at Morgan Lewis & Bockius LLP persuaded a federal jury last year to acquit a kidney dialysis business on all counts of conspiring with rivals to suppress competition, and defeated a nurse's racial bias allegations against the University of Maryland Medical Center, wins that earned the firm a spot among Law360's 2022 Health Care Groups of the Year.

Morgan Lewis partner Howard Young, who co-runs the firm's health care industry group, repeatedly emphasized its work over the past year defending the kidney dialysis center operator DaVita Inc. from allegations it broke antitrust laws by conspiring with competitors through agreements not to recruit one another's senior-level employees.

"This was really a first-of-its-kind case ... which focused in large part on alleged agreements with DaVita and others regarding the inability of competitors to 'poach,' if you will, talent from the companies," Young said, estimating that the company was facing \$100 million in maximum fines for each charge by prosecutors against the company.

"I guess, it could have technically been up to \$300 million," Young said.

In 2021, a Colorado federal grand jury handed down the indictment that charged DaVita and its former CEO with conspiring to suppress competition over senior employees in violation of antitrust laws. To helm the firm's defense of the company from those allegations Morgan Lewis tapped John Dodds, a former federal prosecutor. Kent Thiry, the former executive, was represented separately by two other BigLaw firms.

"It's not always the case that large corporations are willing to go toe to toe with the Department of Justice in a very high-profile, very consequential antitrust matter," said Young, noting that the case "got a lot of attention both in the press and obviously in the legal world as well."

The case was an early test of a new legal effort by the DOJ to use the Sherman Act to prevent companies in the health care industry from signing so-called no-poach agreements. As the trial was going on in Colorado, a jury in Texas federal court was listening to a similar criminal case the government made against a physical therapist staffing company's former owner and former clinical director, accused of orchestrating its own purported wage-fixing scheme.

In a two-day punch, juries in both courtrooms rejected the arguments from prosecutors, first in Texas and



then in the DaVita case.

"The fact that they lost this first one before a jury makes it a higher bar for the government to pursue those matters," Young said. "The agreements that were alleged by the government did not amount to what's called a 'per se' violation of the Sherman Act."

Another case that animated the firm's 381-lawyer health care practice over the past year was the defense work it picked up fighting a lawsuit filed by Faresha Sims, who claimed to have been the only "doctoral-prepared Black [certified registered nurse anesthetist]" employed by the University of Maryland Medical Center, according to the race bias suit she filed after she was let go from the hospital amid racial discrimination complaints.

"Other employers come to us for sensitive matters," said Young, who noted that "coming through COVID, we've seen strains in the workforce."

Last June, the firm's lawyers persuaded a Maryland federal judge to throw out Sims' allegations entirely, rejecting her lawsuit as "merely ... a general list of her coworkers' misdeeds."

The hospital's lawyers at Morgan Lewis had succeeded in its argument that not all the problems Sims complained about at her job could be tied to her race.

"Not all physical harassment necessarily establishes a hostile work environment," according to the ruling the firm won from U.S. District Judge Catherine Blake, who noted that "there was only one instance in which that perspective was explicitly tied to her status as a Black woman."

Young described that win as providing "substantial cost savings," compared to the cost of having to take that case to trial.

"It was highly litigated," Young says about the hospital's legal fight, as there were "various depositions that went on, and other things."

He blames that added work largely on Sims' lawyers.

"The plaintiff's counsel really pursued what we would characterize as a 'scorched-earth' discovery approach," Young says.

One of Sims' former lawyers on the case declined to address his work, which had been abandoned by him and others over a year before Judge Blake ended the suit, by which time Sims had been defending herself, according to the filings.

In addition to helping health care companies beat a variety of potentially costly lawsuits, Morgan Lewis' health care practice also brings in a lot of work tying together deals in the health care sector. In the past year, the firm pointed to various sales its lawyers helped arrange for various holding companies, like a consulting firm called Nordic Consulting Partners and a deal for the private equity firm Kohlberg & Co.

"Health care deals are really a special beast," partner Janice Davis said. "You have to have the right people to do these transactions."

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