

## 3rd Circ. Lets Morgan Lewis Withdraw From 30-Year-Old Suit

By Joshua Alston

*Law360, New York (July 25, 2014, 6:52 PM ET)* -- The Third Circuit on Friday granted Morgan Lewis & Bockius LLP permission to withdraw from representing a Turkish weapons maker in a contentious product liability suit 29 years after the firm's initial request, clarifying guidelines for evaluating withdrawal motions.

In a precedential decision, the Third Circuit granted Morgan Lewis' motion to withdraw as counsel for Makina Ve Kimya Endustri Kurumu, or MKEK, a gun manufacturer wholly owned by the Republic of Turkey. Morgan Lewis represented MKEK in a liability suit filed over 30 years ago, but was denied a motion to withdraw in 1985 due to Pennsylvania federal court rules preventing withdrawal before another attorney comes aboard.

When Morgan Lewis appealed the denial, the Third Circuit ordered the firm to remain MKEK's counsel of record because it served a "meaningful purpose," in this case, facilitating communication between MKEK — which earned a reputation as an "intractable litigant" — and the plaintiffs, to whom MKEK owed a roughly \$850,000 judgment awarded in the underlying litigation.

That meaningful purpose no longer exists, the Third Circuit said Friday, as MKEK has refused to pay the judgment or respond to discovery requests for the past quarter-century. Further, the Third Circuit warned lower courts against misinterpreting the "meaningful purpose" language in its prior decision. The court said there is no standard process for determining a meaningful purpose, and said firms are within their rights to withdraw unless there is a compelling reason not to.

"The point at which the law firm no longer serves a meaningful purpose in the case marks the outer boundary of the district court's discretion because withdrawal would be required at that point," the decision said. "By requiring 'leave of court' before an attorney may withdraw, the local rules commit the decision on attorney withdrawal to the discretion of the district court. And that discretion is not governed by any 'meaningful purpose' test."

Morgan Lewis' bid to withdraw from the case was contested by Beverly Ohntrup, whose since-deceased husband, Robert Ohntrup, was shot through the hand in 1975 when an MKEK gun malfunctioned. Ohntrup has doggedly pursued MKEK for the judgment, first with her late husband, then on her own following his death from cancer in 1999.

According to the opinion, MKEK has refused any cooperation with the litigation in its three-decade history, and after the Republic of Turkey was added as a defendant under an alter ego theory, the

country also ignored discovery requests. In 2007, Ohntrup was awarded a \$16 million civil contempt judgment against the gun maker, now worth about \$25 million due to compounding penalties and interest.

But before there was any indication MKEK had no intention to comply with the court's orders, the court said Morgan Lewis was an important conduit for communication between the parties, fearing the firm's withdrawal would give way to a communication breakdown that would mar the post-judgment proceedings.

Ohntrup argued Morgan Lewis continues to serve an important role in the litigation, because without the firm as MKEK's counsel, she will face onerous requirements for serving documents under the Hague Convention, while the firm's burden of forwarding documents to MKEK and Turkey was comparatively light.

The Third Circuit disagreed, ruling Ohntrup failed to prove there was any reason to keep Morgan Lewis attached to the case outside of her future inconvenience.

"We affirmed the district court's initial denial of the motion to withdraw because there was a chance that the firm's presence would facilitate communication between the parties, not to guarantee Ohntrup the most convenient method to comply with the service requirements in the Federal Rules of Civil Procedure," the opinion said. "By now, it is clear that the firm is merely a captive, uncompensated process server and that Ohntrup's efforts to communicate with MKEK through the firm are futile."

A Morgan Lewis attorney did not immediately respond to a request for comment on Thursday.

U.S. Circuit Judges Thomas L. Ambro, D. Michael Fisher and Thomas M. Hardiman sat on the panel.

Ohntrup is represented by Casey B. Green and Wade D. Albert of Sidkoff Pincus & Green PC.

Thomas J. Sullivan Jr., Viola Vetter and Brady L. Green of Morgan Lewis represented the firm.

The case is Beverly Ohntrup et al., v. Makina Ve Kimya Endustrisi Kurumu et al., case numbers 12-4065 and 12-4500, in the U.S. Court of Appeals for the Third Circuit.

--Editing by Mark Lebetkin.