

Class Action Group Of the Year: Morgan Lewis

By **Martin Bricketto**

Law360, New York (January 10, 2014, 8:38 PM ET) -- Guiding Toyota Motor Corp. toward a more than \$1 billion settlement in unintended acceleration litigation and securing decisions for Hewlett-Packard Co. in putative consumer and employment class suits are some of the accomplishments that have earned Morgan Lewis & Bockius LLP a place among Law360's Class Action Practice Groups of the Year.

Morgan Lewis has more than 125 attorneys across its domestic offices who regularly handle class actions in areas ranging from securities, antitrust and products liability to employment, privacy and even intellectual property, according to J. Gordon Cooney Jr., co-chair of the firm's class action working group.

Success as a class action practice takes a command of class action rules and case law as well as courtroom advocacy skills, industry knowledge and access to regulatory experts, and an ability to combine business and legal strategy, Cooney said.

"Counsel need not only to be able to forcefully present dispositive motions and class certification positions, but also to be able to try the case if necessary," he said. "In addition, class certification hearings have become increasingly more evidentiary in nature, so trial skills have become even more important in contemporary class action practice."

Cooney also explained that top-tier class action lawyers understand that their goal is to solve a problem for a client that often includes legal, business and community profile elements.

"This means that outside counsel has to work with the client and sometimes other law firms to help identify and shape the business objectives that are in turn going to drive the legal strategy," he said.

Morgan Lewis came up big last year for numerous clients in high stakes class action litigation, including BioClinica Inc., RadioShack Corp., Weyerhaeuser Co., Jefferies & Company Inc. and Pearson Education Inc. However, the Toyota case was perhaps the most widely followed given its importance for the automobile industry.

After two years of negotiations, Morgan Lewis and co-lead counsel Reed Smith LLP helped Toyota reach a settlement of economic loss claims in multidistrict litigation over alleged electronic defects and sudden unintended acceleration.

Toyota recalled millions of car and truck in 2009 and 2010 after reports that several vehicles experienced unintended acceleration, and most of the 200 class actions and numerous individual suits that ensued were consolidated in the Central District of California.

The settlement agreement, which covered about 16 million vehicles, was executed in late 2012, and Judge James Selna gave final approval in July.

Cooney said generally that courts have been subjecting class action settlements to more rigorous scrutiny.

“This means that counsel has to understand not only basic principles with regard to class action settlements, but also has to be on top of the emerging case law and must anticipate during the settlement-negotiation stage the potential objections that might be raised and the ways to avoid or minimize them so, if a client wants to have peace through a settlement, that settlement is going to withstand judicial scrutiny,” he said.

Morgan Lewis also scored major class action victories last year as lead counsel for HP.

In a decision unsealed in September, the Ninth Circuit backed a summary judgment win for HP in what was brought as a putative nationwide class action covering all salespeople with the company since August 2005. Plaintiffs contended that incentive compensation went unpaid or was delayed because of computer system errors.

Later that month, Morgan Lewis helped HP defeat certification of a putative class in California federal court claiming the company represented that its “SimpleSave” external hard drives would automatically back up all files when in fact users had to manually configure the device to back up some file types.

U.S. Judge Larry Burns based his decision on a free and automatic software update that addresses the alleged problem at the heart of the case. Named plaintiff Robert A. Waller Jr. wasn't adequately protecting class interests by “pursuing litigation to obtain a restitution remedy that is already on offer in the form of the software update,” the judge found.

The update also raised individual issues that made class certification inappropriate, according to the judge, whose decision could have a broader impact for HP and other technology companies given how common software updates.

Class action defendants and their counsel often face an initial disadvantage, because there's at least the perception of a problem that generated the litigation, according to Cooney.

“Many of our wins in this area reflect our ability — with the active assistance of our clients — to show the judge not only that we are right with respect to dispositive motions or class certification, but also that there isn't a significant unsatisfied problem that would go unaddressed without class certification,” he said.

--Additional reporting by Sindhu Sundar. Editing by Chris Yates.