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THE RECORDER

ESSENTIAL CALIFORNIA LEGAL CONTENT

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Litigation Department of the Year

AN ALM SIGNATURE AWARD SERIES

Labor & Employment

FINALIST

MORGAN, LEWIS & BOCKIUS

The mere optics of *Johnson v. Evangelical Lutheran Church in America* might have pressured the defense to seek an early settlement.

After the financial downturn hit its retirement fund, the pension board of the Evangelical Lutheran Church voted in 2009 to reduce monthly payments. In 2010, four pastors filed suit in Minnesota federal court, claiming the church had breached its fiduciary duty to them.

Cutting pension benefits is always a complicated decision for employers. Here the church found itself in the delicate position of fighting leaders of its own flock in one of the first cases to challenge a retirement plan of a faith-based organization exempt from the federal requirements imposed by ERISA.

Enter Morgan, Lewis & Bockius partner Nicole Diller, who helped the church defuse the potentially explosive suit. For starters, the Morgan Lewis team defeated a 10,000-member proposed class seeking hundreds of millions in damages, transforming the matter into a three-plaintiff case which settled after three years of litigation for less than $60,000.

"Cases like this pose a great reputational risk," said Diller, who works out of the firm's San Francisco office. "The way that you manage it on the reputational side is very important."

Diller said "being proactive, not reactive" was a key part of the defense strategy. The Morgan Lewis team met with leaders of the church at the outset, interviewing potential witnesses, scouring the records, hiring experts and assessing the strengths of the case.

"A lot of defense counsel wait for plaintiff lawyers to make the first move," she said. "I like to be a couple steps ahead of plaintiffs."

In 2012, Diller and Charles Jackson, a Morgan Lewis partner in Chicago, persuaded U.S. District Judge Michael Davis to dismiss claims against the Evangelical Lutheran Church, leaving its independent pension board as defendant. Then in March, Davis denied class certification, finding the majority of the proposed class members "were helped, not harmed, by the board's challenged actions."

Dave Ullrich, associate general counsel for the church, credited Diller's team with successfully negotiating to limit electronic discovery.

"When you have as many documents as big organizations do, you have to cull down and figure out who has what," said Ullrich. "I have nothing but wonderful things to say about them."

Another notable win came to Morgan Lewis as a fix-it assignment. Client Rite Aid Corp. turned to partners Barbara Fitzgerald in Los Angeles and Thomas Peterson in San Francisco after a jury awarded a former employee more than $8 million in an employment discrimination case. Taking over for another firm, Morgan Lewis scored a ruling in April from California's Second District that reversed both compensatory and punitive damages. A retrial was ordered but the panel eliminated all punitive damages liability.

Morgan Lewis views employment litigation as a flagship practice. "Many of the big firms have put their labor and employment practices under general civil litigation," says partner Anne Brafford, who leads the firm's employment group in Irvine. "That's not us."

While the firm touts its nationwide reach, its employment lawyers were particularly busy in California last year, winning several victories for employers in the fast moving area of employee arbitration agreements.

In *Alvarez v. Boston Scientific*, former employees sued the medical device manufacturer in Los Angeles Superior Court under California's Private Attorney General Act for allegedly issuing inaccurate wage statements. Amid a series of conflicting rulings on the enforceability of class action waivers in employee arbitration agreements, Brafford successfully knocked out class allegations, staying the PAGA action and compelling individual claims to arbitration.

In two cases against P.F. Chang's China Bistro, San Francisco partner Rebecca Eisen and senior attorney Lauren Kim also won decisions forcing employee claims to arbitration.

— Max Taves

Morgan Lewis