

New Jersey Law Journal

APRIL 7, 2014

An ALM Publication

Litigation Department OF THE Year



FINALIST: LABOR & EMPLOYMENT

PHOTO BY CARMEN NATALE

Left to right: Ashley Hale, Thomas Linthorst, August Heckman, Richard Rosenblatt, Terry Johnson, Michelle Silverman,
James Walsh, Jr. and Sean Lynch.

Morgan Lewis



FINALIST: LABOR & EMPLOYMENT

A Strong Year in Workplace Dispute Defense

Morgan Lewis team boasts high-profile successes

By any measure, Morgan, Lewis & Bockius' 15-lawyer labor and employment practice in New Jersey had a busy and productive year in 2013, handling litigation, dispute resolution and counseling for employers in the financial services, insurance, pharmaceutical, hospital-ity, entertainment and retail industries.

The firm's New Jersey attorneys were involved in 168 individual plaintiff employment cases, 93 wage-and-hour litigation matters, 92 administrative agency charges, 91 Financial Industry Regulatory Authority matters, 21 restrictive covenant and trade secret matters, 15 ERISA/employee benefits cases, 14 systemic employment litigation cases, and 11 whistleblower litigation matters, as well as numerous other labor and employment litigation and counseling matters.

The New Jersey team prevailed in challenges to employers' workplace policies and practices. In July, it won summary judgment on behalf of Atlantic City's Borgata Hotel Casino & Spa in a 22-plaintiff gender stereotyping case alleging Borgata's groom-

ing and appearance policy perpetuated an unlawful stereotype of women and claiming that the policy was systematically enforced in a way that intentionally harmed female employees more than their male counterparts.

The New Jersey team has been involved in defending employers in a years-long surge in wage-and-hour litigation across the nation. While issues such as exempt/nonexempt classification, independent contractor classification, and timely payment of wages and overtime continue to drive many wage-and-hour claims filed in the state, new challenges have arisen in the wage-and-hour class-action arena.

Over the last year, the question of the enforceability of class-action waivers in employee arbitration agreements, which eliminate an employee's ability to bring a class action, has often been in the headlines. The U.S.

Supreme Court, the National Labor Relations Board, and federal and state courts all have weighed in and created a body of conflicting case law.

In a number of cases, the Morgan Lewis team has convinced courts to enforce the parties' agreements as written—effectively stopping these cases from proceeding as class actions. An example is *Ryan v. JPMorgan Chase & Co.*, in which the team compelled arbitration in an Fair Labor Standards Act putative collective action that sought tens of thousands of dollars in overtime pay for the bank's assistant branch managers.

Also in the wage-and-hour area, the New Jersey team has been a leader in defending claims involving employee security screening. In a growing trend of litigation across the country, employees have brought class-action claims under the FLSA alleging that

Morgan, Lewis & Bockius by the Numbers

| | Firm-wide | N.J. Office |
|--|---------------|-------------|
| Department Size (attorneys) | 255.25 | 14.6 |
| Department Size as Percentage of Firm | 19% | 6% |

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they are not compensated for time spent undergoing security screenings or “bag checks” when leaving the work site. The firm is lead counsel for Amazon.com and its subsidiaries in 11 class actions filed in courts in Nevada, Washington, California, Arizona, Tennessee, Kentucky, Delaware, and Pennsylvania. In the past, the New Jersey team has played central roles in industry-wide class cases filed by financial advisors and pharmaceutical sales representatives.

The team defended and assisted employers in managing significant whistleblower matters. In *Kolchinsky v. Moody's Corp.*, the plaintiff—a former managing director who alleged that he was demoted, transferred and constructively discharged in retaliation for raising concerns about rating practices—publicly accused the company of improper practices in the press and in congressional testimony. The Morgan Lewis team achieved dismissal of the majority of the plaintiff's claims, and the plaintiff agreed to drop his remaining claim.

In *Sheets v. Public Service Electric & Gas Co.*, the plaintiff asserted novel whistleblower theories under common law, claiming that his termination was intended to scapegoat him to take the blame for alleged mistakes of others. The firm was brought in to the defense

midway through the litigation, as the plaintiff continued to demand more than \$1 million to resolve the case and a trial date neared. By pursuing an unusual motion to dismiss despite the case having been filed a year earlier, Morgan Lewis lawyers were able to convince the court to dismiss the majority of the plaintiff's claims, with one remaining claims settling thereafter for a nuisance value.

The firm delivered important results to employers facing allegations of workplace discrimination under the New Jersey Law Against Discrimination and federal law

An illustration is *Reilly v. Public Service Electric & Gas Co. et al.*, an age and disability discrimination case brought under the LAD by an employee who was terminated while on disability leave after 34 years of service with the company. Morgan Lewis won summary judgment, even though the plaintiff's counsel took 14 depositions encompassing more than 2,500 pages of testimony to create a 60-page counterstatement of facts, attempting to show that the reasons given by PSE&G for the termination were pretextual.

The firm also won summary judgment in *Dovey v. Stewart Business Systems, Inc.*, an LAD gender discrimination case brought by a director of human resources and administration terminated when she was eight-and-

one-half months' pregnant. Morgan Lewis argued successfully that pregnancy was not a disability under the law and that in any event there was no evidence that the pregnancy had been a basis for discrimination.

Litigation Leadership

Partners in the New Jersey team also hold leadership positions in the firm's 280-attorney national labor and employment practice.

Richard Rosenblatt serves as the practice's operations partner and works closely with lawyers across the country to develop and implement processes for delivering services with maximum efficiency while maintaining the highest quality of service and results.

Rosenblatt has completed a six-month course of study to obtain his certification in Legal Process Management and has trained hundreds of Morgan Lewis partners and associates on the principles of Legal Process Management.

Partner Rene Johnson is a member of Morgan Lewis's firmwide Advisory Board.

Partner Thomas Linthorst serves as the business development partner for the labor and employment practice, guiding strategic business development initiatives on a nationwide basis. ■