

2014

# PENNSYLVANIA LITIGATION DEPARTMENTS OF THE YEAR



**PRODUCTS LIABILITY  
— WINNER —**

**Morgan Lewis**

L to R: James D. Pagliaro, Eric Kraeutler, Victoria Miller, J. Gordon Cooney Jr. and John P. Lavelle Jr.

**The Legal Intelligencer**  
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# WATCHING THE WAVES

## MORGAN LEWIS STAYS AHEAD OF THE CURVE TO SUCCEED

By **Saranac Hale Spencer**  
Of the Legal Staff

**W**hether it be a nationwide class action over defective vehicles or a single-plaintiff lawsuit over the label on a bottle of water, Morgan, Lewis & Bockius has shown its products liability practice has the national bench strength coupled with niche capabilities to beat back claims that its clients' products were defective or harmful.

"We have a unique national footprint," said James Pagliaro, a partner with the firm who heads up the products liability and mass torts practice.

Morgan Lewis has significant offices across the country—in Los Angeles, Chicago, Houston and all the way down the East Coast from Boston to Miami. That gives the firm the ability to staff, coordinate and try cases nationally.

It also has a "very diverse products practice," Pagliaro said.

The firm is able to handle medical device, pharmaceutical, building equipment and car manufacturer defense, to name just a few areas.

Pagliaro pointed to Morgan Lewis' setup allowing it to represent clients across the board, including products liability issues, as a unique feature that has allowed his practice area, and the firm as whole, to thrive.

"One thing that does distinguish our firm is our longstanding client list," he said, and that the firm is able to "represent them across a spectrum of areas."

Listening to clients and responding to their needs has put Morgan Lewis at the

forefront of some specific areas of the law. Identifying the Marcellus and Utica shales as a growth area that would have an impact on the economies of Pennsylvania as well as the country as a whole and evolving to accommodate that coming shift is one recent example.

Last year, the firm expanded its Pittsburgh office to include Kenneth Komoroski, who has more than 25 years of experience in products liability, environmental compliance, enforcement and litigation, and in the energy industry. Komoroski has long been involved in the development of the Marcellus and Utica shales and has been at the center of the legal and business communities in the area. He and his team represent numerous oil and gas companies in environmental, toxic tort and accident matters across the Marcellus Shale region.

On forecasting the next area of litigation, Pagliaro said that anyone watching the ocean can see a wave hit the shore, but the smartest people can look beyond that and figure out when and where the next wave will hit.

Developing that way has led the firm to be a leader in several areas, with expertise in toxic torts, chemicals, asbestos, silica, medical devices, building and construction products, food and consumer products.

The products liability practice area has more than 70 lawyers nationwide, with more than 30 of them based in Pennsylvania.

The firm's Pennsylvania lawyers recently won a major appellate victory for Zimmer Holdings in the Pennsylvania state court system, getting a reversal and remand for new trial on a personal injury case that had initially resulted in a \$27.6 million jury verdict. Morgan Lewis wasn't trial counsel, but was brought on by Zimmer immediately after the verdict was rendered. The Pennsylvania Supreme Court granted the plaintiff's petition for allocatur in May.

In the U.S. Court of Appeals for the

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Fourth Circuit, the firm won a total victory for the parent company of Dannon in a case over the labeling of its bottled water. The plaintiff had sued on behalf of her daughter, claiming that her consumption of fluoridated bottled water caused dental fluorosis, which is marked by staining and pitting of the teeth. The plaintiff claimed that the company's bottled water should be labeled with a warning about consumption of fluoridated water. The Food and Drug Administration doesn't require that kind of label.

U.S. District Judge George Russell of the District of Maryland dismissed all of the plaintiff's claims, ruling that they were preempted by the Food, Drug and Cosmetic Act and the Nutrition Labeling and Education Act. The judge also dismissed the claims on additional grounds, finding that the plaintiff's fraud-based claims and the warranty for a particular purpose claim were insufficiently pled and that the implied warranty claim was time-barred. The court denied leave to amend, finding that an amendment would be futile in light of federal preemption.

Morgan Lewis also defeated efforts to create an industrywide multidistrict litigation over American-made drywall, which the plaintiffs had alleged had contaminated their homes with "off-gassing."

Not only did the firm defeat the MDL, but it also won summary judgment in two of the cases it was handling, with a strong ruling from the court making clear that the "plaintiffs shall take nothing." ♦

### MORGAN LEWIS BY THE NUMBERS

#### Department Headcount

Firmwide 89

#### Department as Percent of Firm

Headcount 6