

# New Jersey Law Journal

MAY 25, 2015

An **ALM** Publication

## *Litigation* *Department* OF THE *Year*



**WINNER: EMPLOYMENT**

PHOTO BY CARMEN NATALE

BACK ROW, FROM LEFT: Jason J. Ranjo, Terry D. Johnson, August W. Heckman III, Emily Cuneo DeSmedt and James P. Walsh Jr.; front row, from left: Joseph A. Nuccio, Thomas A. Linthorst, Richard G. Rosenblatt, Sean P. Lynch, Michelle Seldin Silverman and Nitin Sharma.

## Morgan Lewis



## WINNER: EMPLOYMENT

# A Combination of Teamwork and Diversity

Morgan Lewis leverages its size for success

By Juliette Gillespie

**T**he labor and employment practice group in Morgan, Lewis & Bockius' Princeton office is made up of only 13 attorneys, but they still pack a punch.

In 2014, the department was involved in 170 individual plaintiffs employment cases, 103 employment agency charges, 97 Fair Labor Standards Act/wage-and-hour litigation matters, 24 noncompete and trade secret disputes, 17 whistleblower matters and 15 Employee Retirement Income Security Act/employee benefits litigation matters. In addition, the attorneys handled numerous employment arbitrations, labor-management relations matters, reductions in force and day-to-day advice and counseling matters.

Many of the group's New Jersey clients are employers in the financial services, insurance, pharmaceutical, hospitality, entertainment and retail industries. They turn to Morgan Lewis to effectively defend many of their most significant employment disputes and navigate the laws governing the New Jersey workplace.

However, partner Thomas

Linthorst, head of the firm's New Jersey labor and employment group, pointed out that one of the strengths of his department is its close ties to the firm's national labor and employment practice group. The attorneys based in Princeton handle cases in New Jersey, New York, Pennsylvania and, indeed, across the country. The New Jersey attorneys can reach out and work seamlessly with their colleagues in other states.

One prime example of this nationwide reach is *In Re Amazon Fulfillment Center Fair Labor Standards Act and Wage and Hour Litigation*, in which Morgan Lewis played an instrumental role in obtaining a landmark 9-0 victory last December before the U.S. Supreme Court, which put an end to all the FLSA claims in the 15 wage-and-hour class and collective actions filed in courts across the country against Amazon.com, its subsidiaries and co-defendants that provided staffing services to Amazon. Morgan Lewis served as lead counsel for Amazon.

The litigation involved the compensability of Amazon employees' time spent waiting for and undergoing security screenings at fulfillment center workplaces. There were cases in many courts that were litigated up to the U.S. Court of Appeals for the Ninth Circuit. Working with co-defendants' counsel in *Integrity*

*Staffing Solutions v. Busk*, Morgan Lewis played a key role in developing the arguments that ultimately persuaded the Supreme Court to unanimously rule that security screening time is not compensable.

The decision carries significant implications not only for other retail industry employers that use security screening as part of their loss prevention efforts, but also for employers fighting challenges regarding the compensability of preliminary and postliminary activities.

"We were able to jump in, drawing on our national presence and colleagues around the country," Linthorst said of Morgan Lewis' role in the case.

When asked if there was another case that stood out for him in 2014, Linthorst replied that what he found most notable was the great diversity of employment cases handled by Morgan Lewis.

"We really do handle the gamut here," Linthorst said.

In the wage-and-hour area, challenges to independent contractor classification continue to proliferate. For client Royal Bank of Canada, Morgan Lewis successfully shut down a challenge to the company's classification of a corporate banker as an independent contractor. The firm won summary judgment in January 2014, with



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the court finding that the plaintiff was properly classified as an independent contractor. The court's decision hinged on facts the Morgan Lewis attorneys had developed during discovery, showing that the plaintiff had entered into another consulting agreement with another bank. In February of this year, the Second Circuit affirmed the summary judgment.

Morgan Lewis also successfully handled several nonsolicit and non-compete challenges filed in spring 2014, allowing its client Cognizant Technology Solutions to protect investments in its own client relationships. Morgan Lewis took aggressive steps to obtain a temporary restraining order, enjoining a former employee from providing services to his current employer, a Cognizant client.

In another matter, Morgan Lewis took action to prevent a former Cognizant employee from taking a position with a competitor. The firm prepared a draft complaint against the former employee and his employer that motivated the competitor to immediately remove the former employee and resolve the action before suit was filed.

As disability and accommodation issues continue to proliferate in workplace litigation, Morgan Lewis prevailed in disability discrimination matters on behalf of two clients.

For Novo Nordisk, the firm won summary judgment in April 2014 on an

employee's challenge alleging disability discrimination and retaliation for taking FMLA leave following a heart attack. The court decided in favor of the employer, finding that the plaintiff did not experience an adverse action and was granted all requested reasonable accommodations.

Morgan Lewis also prevailed on behalf of American Airlines, convincing the Second Circuit last December to uphold the dismissal of a former flight attendant's claim of discrimination and harassment on the basis of a perceived mental disability.

Morgan Lewis was also successful in employment discrimination litigation involving claims of age and reverse gender discrimination.

The firm defended CSC Holdings (Cablevision) in a case in which a former senior manager—who had been terminated after playing an Internet

video containing vulgar and offensive language for two subordinates—alleged that he was terminated due to his age and gender. In the original litigation, Cablevision prevailed on summary judgment by demonstrating that while it may have considered one female subordinate's gender in assessing her reaction to the video, it did not consider her gender when determining disciplinary action. In January 2014, Morgan Lewis convinced the Second Circuit to uphold the summary judgment decision. ■

## Morgan Lewis



### Morgan Lewis & Bockius by the Numbers

#### Department Headcount

Firmwide

245

New Jersey

13

Department as  
Percentage of Firm  
Headcount

19%