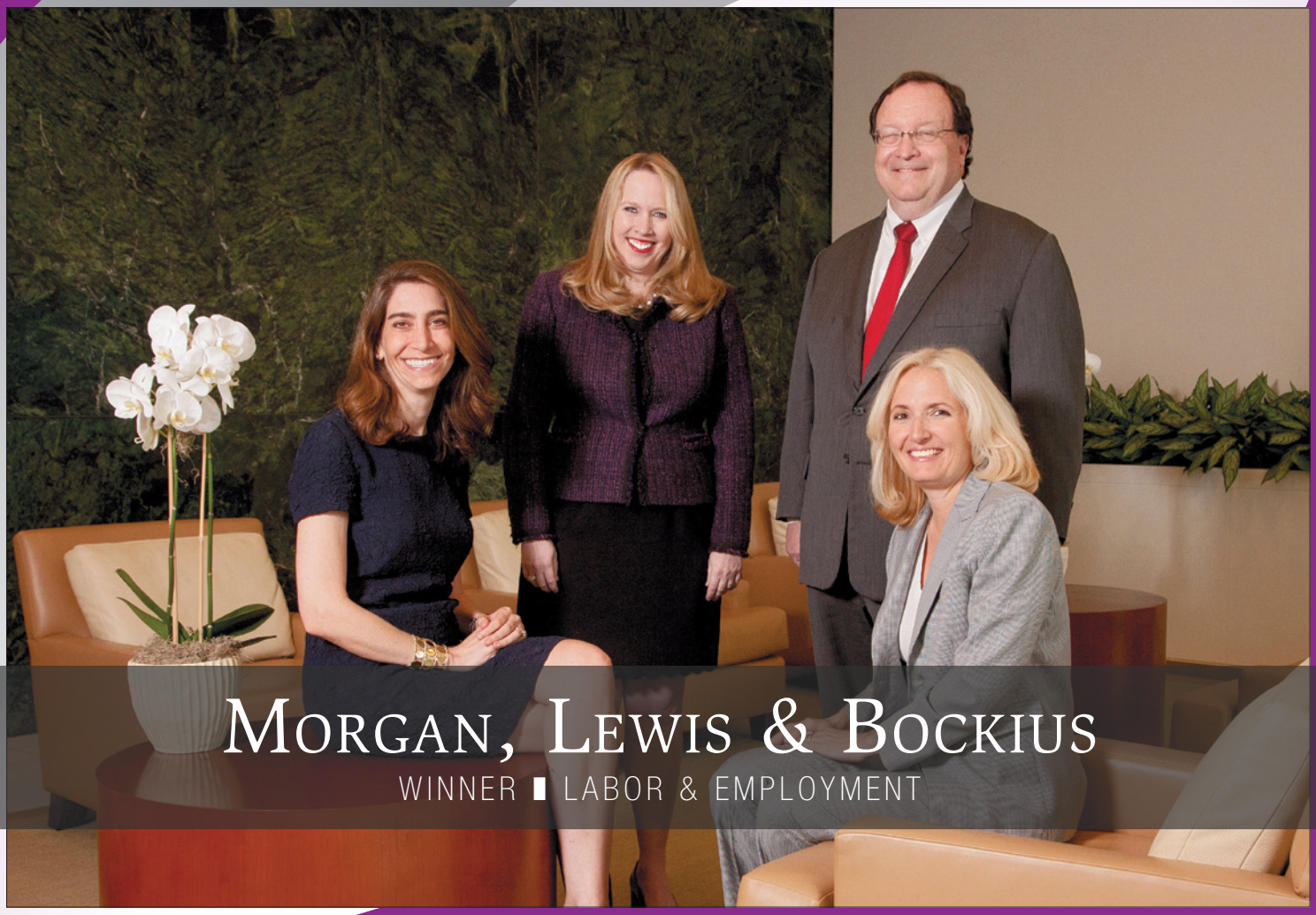

Morgan, Lewis & Bockius

WINNER ▮ LABOR & EMPLOYMENT

From left: Morgan, Lewis & Bockius partners Stefanie Moll, Allyson Ho, Ron Manthey and Nancy Patterson

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WINNER ▮ LABOR & EMPLOYMENT

Morgan, Lewis & Bockius: A Game Changer

by MARY ALICE ROBBINS

In 2014, the 16 attorneys in the Texas labor and employment practice at Morgan, Lewis & Bockius—working with colleagues in the firm's offices around the country—helped employers with a wide variety of workplace disputes and scored a "game-changing" victory in one case at the U.S. Supreme Court.

"We call ourselves trial lawyers as opposed to litigators because we go to court," said Ron Manthey, a partner and leader of the labor and employment practice in the Dallas office.

Before going to court, the firm determines what skills are needed for a particular case and then forms an integrated team of trial lawyers with those skills, Manthey said.

Stefanie Moll, a Morgan Lewis partner who leads the labor and employment practice in Houston, said a team is formed according to practice group and subspecialty skills, with the focus minimally on geography or in which office a lawyer is based.

"It's not about having some person in a city," Moll said.

The Morgan Lewis Texas team delivered two significant appellant victories in 2014 and early 2015.

On Nov. 10, 2014, Dallas partner Allyson Ho argued at the Supreme Court in *M&G Polymers USA v. Tackett,* a case involving the interpretation of collective bargaining agreements and the duration of retirees' health care benefits. Morgan Lewis has represented M&G Polymers in the case since 2007.

According to the Supreme Court's Jan. 26 opinion, a group of retirees and their spouses sued M&G Polymers and related entities, alleging that the company's decision to require them to contribute to the cost of their health care benefits violated a 2000 collective bargaining agreement and a pension, insurance and service award agreement in violation of the Labor Management Relations Act of 1947 and the Employee Retirement Income Security Act. The plaintiffs specifically argued that those agreements gave them a vested right to lifetime contribution-free health care benefits.

Ho said the biggest challenge that the Morgan Lewis appellate team faced in *Tackett* was getting the Supreme Court to hear the case.

The U.S. Court of Appeals for the Sixth Circuit had sided with the retirees in *Tackett* on the basis of its conclusion in 1983 in *International Union, United Auto, Aerospace and Agricultural Implement Workers of America v. Yard-Man* that retiree health care benefits are unlikely to be left up to future negotiations. Ho said the Sixth Circuit "has become a magnet" for that issue, resulting in significant forum-shopping by retirees

and the plaintiffs attorneys who represent them. But the Supreme Court had refused for years to address the issue, she said.

In *Tackett,* the Supreme Court rejected the Sixth Circuit's "*Yard-Man* inferences as inconsistent with ordinary principles of contract law."

Ho said the *Tackett* decision is not only significant to her client but also is seen as restoring a level playing field in benefits litigation around the country.

"It's a game changer," she said.

The Supreme Court's decision did not end the case. The high court remanded it to the Sixth Circuit for a review of the agreements under the correct legal principles.

David Cook, founder and managing principal in Cook & Logothetis in Cincinnati, serves as lead counsel for the plaintiffs in *Tackett*. Cook praised Cris Weals, a Morgan Lewis senior counsel in Washington, D.C., for his work on the case.

"Cris Weals is a consummate professional," Cook said. "He is a strong advocate for his client, and he does so in a manner without rancor or hostility."

Morgan Lewis attorneys also won a significant appellate victory for American Airlines at the Sixth Circuit in a suit over pilots' pension benefits brought under the Employee Retirement Income Security Act of 1974.

According to the Sixth Circuit's July 9, 2014, opinion, the issue in *Canada v. American Airlines Pilot Retirement Benefit Program* was whether American properly deferred Canada's pension benefit payments after he chose to continue flying after the normal retirement age without compensating him for the deferral with an actuarial increase in the benefits that were ultimately paid.

Canada filed suit in the U.S. District Court for the Middle District of Tennessee and argued that the airline's decision not to make such an adjustment in his benefits constituted an illegal forfeiture and cutback of vested benefits.

In 2010, the district court granted American's motion for summary judgment and denied Canada's summary judgment motion, dismissing his suit with prejudice.

"Even given due consideration to the fact that American Airlines expects to save millions by its decision to suspend benefits with no actuarial adjustment for pilots who continue in their employ after age 60, the court cannot say its decision was arbitrary or capricious," U.S. District Judge Aleta A. Trauger wrote in the opinion.

The Sixth Circuit affirmed the district court's judgment.

Ho, who argued *Canada* at the Sixth Circuit, said, "The ramification for that case for the company, had it come out differently, was huge."

Canada had sought injunctive relief that would have required the plan to be interpreted in a way that all pilots would receive the actuarial adjustment.

Also in 2014, a team of Morgan Lewis attorneys led by Chicago partner Chuck Jackson won an interlocutory appellate victory at the U.S. Court of Appeals for the Tenth Circuit in *International Brotherhood of Electrical Workers, Local 111 v. Public Service Co. of Colorado*. Manthey and Ellen Perlioni, a Dallas partner in Morgan Lewis, worked with Jackson on the case.

The Tenth Circuit noted in its Dec. 9, 2014, opinion that the IBEW filed suit after Public Service refused to arbitrate a dispute over retired workers' health care benefits. According to the opinion, the union claimed that the company violated a 2009 collective bargaining agreement in 2011 when it unilaterally modified its retired workers' health care benefits by increasing their copayments for prescription drugs.

Manthey said the union was trying to force an interpretation of the collective bargaining agreement that would have allowed Public Service's retired workers to seek arbitration. The Tenth Circuit's decision established that the retirees do not have the right to go to arbitration, he said.

"It's a paramount decision that applies to many plans because of the arbitration issue," Manthey said.

He said that keeping a dispute of this type before a judge limits it to an interpretation of a retirement plan, whereas in arbitration, other issues can come up.

One Morgan Lewis client is profuse in his praise of the firm. Daniel Yates, vice president and general counsel of Schlumberger Ltd., North America, said he goes to the Morgan Lewis lawyers when he needs the best.

"They're really, really good," Yates said. "They're super-responsive, supergood at briefing, really good at arguing cases and putting cases together." ■

Mary Alice Robbins is an Austin freelance writer and former senior reporter with Texas Lawyer.