

Delaware Powerhouse: Morris Nichols

By **Rose Krebs**

Law360 (September 5, 2019, 1:21 PM EDT) -- Morris Nichols Arsht & Tunnell LLP continues to grow its long-standing reputation as a leading firm in Delaware's sophisticated and high-stakes legal climate by representing corporate clients in an array of areas including bankruptcy, intellectual property litigation and complex Chancery cases.

Morris Nichols' 90-attorney Wilmington office was once again at the center of some of the year's most hard-fought and closely watched corporate cases, including a merger battle in Chancery between Cigna Corp. and Anthem Inc. and a dispute over the multibillion-dollar sale of energy and commodity recycling company Oxbow Carbon LLC.

The firm's work, which also includes representing clients in a bevy of IP and bankruptcy cases, has once again earned it a spot on Law360's list of Delaware Powerhouse firms.

"Delaware work can be a little intense," said Andrew M. Johnston, who has been a partner at the firm for about three decades and is chair of the firm's executive committee. "It requires special people who are willing to work hard and get done what the client wants done and when they want it done."

And Morris Nichols, which was founded in the 1930s, is filled with those types of attorneys in a "tight-knit" and "collegial" atmosphere in which ideas are bounced around among those who focus on different specialty areas, Johnston said.

"That's what attracted me 37 years ago, and it's what has kept me here 37 years — the people," he added.

Johnston said the Delaware-centered firm's strength results from the fact that it deals with complicated and highly specialized corporate issues that come up in the First State numerous times a year while other attorneys may never, or at least rarely, deal with them.

"Familiarity breeds an ability to get up to speed quickly and get the real answers the clients want quickly," Johnston said.

Robert J. Dehney, a partner who specializes in business reorganization and restructuring, said the firm's attorneys are experienced in handling lead counsel type of work and navigating the demands of some of the nation's busiest courts.

“There are a couple of clear choices in Delaware, and we are one of them,” Johnston said. “We want to keep it that way.”

Indeed, Morris Nichols’ work over the past year has shown it continues to be the choice to represent many corporations in all types of litigation.

William M. Lafferty, a partner who focuses on corporate and commercial litigation, said “an explosion” in certain types of commercial disputes, and the fact that most of those cases survive motions to dismiss, has put pressure on the Chancery Court’s schedule and kept attorneys busy.

“It’s been a big trial year for us, which is kind of consistent with where the trend is,” Lafferty said.

Among significant corporate battles the firm has handled the past year include the fight between Cigna Corp. and Anthem Inc. over a \$54 billion merger that imploded amid regulatory reviews and management power struggles.

Anthem, with nearly 40 million customers, agreed to pay more than \$54 billion for Cigna in July 2015 in a cash and share deal; but in February 2017, a federal judge agreed with a U.S. Department of Justice complaint that the deal would create an unlawful concentration of power in the insurance market.

Cigna sued Anthem for a \$1.85 billion deal termination fee, adding a claim for \$14.7 million in lost-deal damages. Anthem, represented by Morris Nichols, argued for \$20.5 billion or more in damages, accusing Cigna of sabotaging the deal after Cigna CEO David Cordani was ruled out as CEO for the merged business. A two-week trial ended in March with post-trial arguments scheduled for later this year.

In January, Morris Nichols won a Delaware Supreme Court reversal of a 2018 Chancery Court decision that ordered the multibillion-dollar sale of energy and commodity recycling company Oxbow Carbon LLC after investors invoked an exit right and sued for a buyout or company sale.

Morris Nichols represented Oxbow in its bid to resist the forced sale by the minority investors in a case that involves issues of contract interpretation and the application of Delaware General Corporation Law’s implied covenant of good faith and fair dealing.

Given the expertise of the chancellors and desire of many companies to have the esteemed equity court decide high-risk corporate disputes, the Chancery Court will likely stay busy, Lafferty said.

With Delaware also having two of the busiest federal courts in the nation, Morris Nichols’ work over the past year also included several notable IP and bankruptcy cases.

“It’s a very exciting place to practice IP litigation,” said partner Karen Jacobs, who is practice group coordinator for the firm’s IP litigation group. “We are very proud of the number of trials in which we are involved. We’ve had a very busy 2019.”

Jacobs said the First State’s “very sophisticated bench” makes it the venue of choice for many companies looking to wage patent battles.

“We continue to see it being very vibrant as our judges are sort of recognized as experts,” Jacobs said.

In January, after a nine-day trial, Morris Nichols scored a victory for Siemens Mobility Inc. when jurors awarded nearly \$6.7 million in damages on claims that some of Wabtec Corp.'s "positive train control" products rely on features that infringed eight Siemens patents, the firm said.

Morris Nichols also represented F'real Foods LLC in its \$3.2 million patent win in May when a jury ruled that Hamilton Beach Brands Inc. and Hershey Creamery Co. infringed three of its patents related to a milkshake-making machine.

During the past year, the firm said it also helped earn Federal Circuit affirmations on behalf of biopharma company UCB in a patent case related to a product that treats Parkinson's disease and another decision that upheld the validity of its epilepsy drug Vimpat.

Dehney said that "pound for pound," Morris Nichols' bankruptcy group is one of the most efficient in the business.

"We realized years ago it was going to be more litigious in bankruptcy," Dehney said. Cases so often involve many different "sophisticated" parties, so Dehney likened working bankruptcy matters to a "multi-dimensional" chess game.

"We are lean and mean," Dehney said. "Everyone in our firm has to be able to go to court. The mantra is ready, willing and able."

Cases in which the firm has represented various interested parties this past year include the Chapter 11 filings of EdgeMarc Energy Holdings LLC, Imerys Talc America Inc., Elk Petroleum Inc., Blackhawk Mining LLC, Southcross Energy Partners LP and restaurant chain Papa Gino's Inc.

--Editing by Philip Shea.