

Delaware Powerhouse: Morris Nichols

By **Rose Krebs**

Law360 (August 2, 2021, 2:02 PM EDT) -- Morris Nichols Arsht & Tunnell LLP said its expertise and long-standing reputation as a leading firm in Delaware's sophisticated legal market helped carry it through a pandemic-impacted year while continuing to represent clients in an array of practice areas.

Morris Nichols' roughly 80-attorney Wilmington office was at the center of some of the year's most closely watched cases in the First State, including the Boy Scouts of America's Chapter 11, the yearslong Anthem Inc. and Cigna Corp. saga in Delaware Chancery Court, which was decided in 2020, and a patent win for F'real Foods LLC.

The firm's work on high-stakes corporate disputes and key intellectual property matters, along with its bustling bankruptcy practice amid the worldwide pandemic, has once again earned it a spot on Law360's list of Delaware Powerhouse firms.

"We were in demand because our clients needed us," William M. Lafferty, a Morris Nichols partner who also chairs the firm's executive committee, said. "Our clients were dealing with uncertainty, and they wanted to get rock-solid advice about what to do and how to get through the craziness."

The firm's expertise helped clients navigate through an unprecedented year, and the hard work of attorneys and staff helped Morris Nichols manage during a most unusual year, Lafferty said.

"People acted professionally and figured out how to work remotely on the fly," Lafferty said, adding that he was amazed that everyone adjusted so quickly to working remotely.

Morris Nichols also had a busy year in Delaware's Chancery Court, one of the nation's preeminent corporate law venues.

The firm was part of Anthem's Inc.'s legal team that secured a significant win on behalf of its client when the company escaped from having to pay Cigna a \$1.85 billion deal termination fee after the collapse of the insurance giants' \$54 billion merger.

In August, Vice Chancellor J. Travis Laster ruled — after a 10-day trial in 2019 — that neither Cigna Corp. nor Anthem Inc. could recover on claims for billions in damages after the collapse.



In May, the Delaware Supreme Court rejected Cigna's bid for a \$1.85 billion deal termination fee tied to the collapsed deal and affirmed the Chancery Court's ruling, a significant win on behalf of Anthem for Morris Nichols and co-counsel White & Case LLP.

In June, the firm helped Cravath Swaine & Moore LLP escape what Morris Nichols termed "an unprecedented claim" of aiding and abetting breaches of fiduciary duty in a suit stemming from the \$1.4 billion take-private sale of The Fresh Market to affiliates of private equity giant Apollo Global Management.

Vice Chancellor Sam Glasscock III rejected stockholder claims that Cravath, as Fresh Market's legal counsel, deliberately doctored up a misleading filing with the U.S. Securities and Exchange Commission to hide "what may have been bad lawyering" in an attempt to push the deal through and score its fees. The vice chancellor called the claims against Cravath "fanciful."

"I think 2020 was a very busy year for the corporate group overall," Tarik J. Haskins, whose practice focuses on commercial transactions, said.

"We certainly have the experts. We know the Delaware law," Haskins said. "There is a Morris Nichols way that involves professionalism and dedication that sets us apart from others."

That culture helped the firm get through a year like no other seen since the firm's founding in 1930, Haskins said.

The pandemic impacted the types of cases filed, with force majeure clauses, material adverse change provisions and other deal-related issues brought to the forefront, firm attorneys said.

Uncertainty in the early days of the pandemic led to the legal community being even more keenly focused on how litigation related to busted mergers and acquisitions would play out in the Chancery Court, Lafferty said.

Among high-profile deal cases the firm worked on during the past year was litigation related to Advent International Corporation's takeover of publicly traded cybersecurity firm Forescout Technologies Inc., initially proposed as a \$1.9 billion deal. Morris Nichols represented affiliates of Advent in the litigation after Forescout sued seeking to have the court force the private equity company to complete the purchase. In May, Forescout reported that Advent had informed it the deal was on hold because of uncertainty resulting from the coronavirus pandemic.

Advent filed counterclaims, arguing it shouldn't be ordered to close on the transaction per material adverse effect provisions of the deal.

The suit settled before trial when Advent and its co-investor agreed to a deal with a reduced purchase price of about \$1.6 billion, or \$29 per share.

As can be expected in a year marked by financial difficulties among many industries, Morris Nichols' bankruptcy lawyers were called on to manage a hectic caseload.

"Bankruptcy last year was pretty intense," partner Curtis S. Miller, who focuses his practice on corporate restructuring, bankruptcy and litigation, said. "It was an incredibly busy year" and one of the busiest of his career, he added.

Delaware's bankruptcy court, historically one of the nation's busiest for commercial bankruptcy filings, was the busiest in the nation for Chapter 11 filings in 2020, according to U.S. Courts data.

"Any business that needed foot traffic was impacted [by the pandemic]," Miller said.

Overall, the court did a good job of moving cases along by having virtual proceedings, and the firm used its expertise to sustain operations during a chaotic time, Miller said.

"We have experience," Miller said. "There is not too much we haven't seen and not too much we haven't dealt with dozens of times."

Among significant bankruptcy cases handled by the firm this year were representing the Boy Scouts in the organization's complex and ongoing Chapter 11, serving as lead counsel to Boeing supplier Impresa Aerospace in its Chapter 11, and representing the official committee of equity security holders in biotech company Vivus Inc.'s Chapter 11.

Morris Nichols' intellectual property practice group has also been busy as the firm was involved in five patent bench trials from May 2020 through spring 2021 and was also involved in one of the first jury trials after Delaware's federal court lifted its civil and criminal jury trial suspension in April.

Among Morris Nichols significant patent cases during the past year, the firm secured what it termed a "rare permanent injunction" in July 2020 for F'real Foods LLC that barred Hamilton Beach Brands and Hershey Creamery from selling or importing for sale a line of milkshake mixing machines. In his memorandum opinion, U.S. District Judge Colm Connolly ruled the continued use of milkshake-making products would cause irreparable injury to F'Real Foods after it won a \$3 million infringement verdict in 2019.

Last month, a Federal Circuit panel rejected a bid by Hershey Creamery and Hamilton Beach Brands' to undo the companies losses in the mixing machine patent fight.

--Additional reporting by Craig Clough, Adam Lidgett, Jeff Montgomery, Benjamin Horney and Dave Simpson. Editing by Gemma Horowitz.