

Energy Group Of The Year: Morgan Lewis

By Adam Lidgett

Law360, New York (January 24, 2017, 3:47 PM EST) -- Morgan Lewis & Bockius LLP helped to defeat a widely publicized class action concerning nuclear power and represented Anadarko Petroleum Corp. in connection with Deepwater Horizon disaster-related litigation, underscoring the law firm's ability to counsel across the energy industry and securing a place among Law360's Energy Groups of the Year.

About 110 people work on Morgan Lewis' transactional and regulatory energy team, but about 175 at the firm are involved in some way with energy-related work, David F. Asmus, the firm's energy team co-leader, told Law360. Asmus said that while the big wins Morgan Lewis gets are important, one of the things that make the firm stand out is its intention to represent all clients — big or small — with the same spirit.

"The firm tries from top to bottom to make sure that the clients are happy with what we're delivering," Asmus said. "That is the key — that we're not just focused on doing big matters, but that we're focused on doing all matters in a winning way."

Asmus, a partner in Morgan Lewis' Houston offices, said the firm has a significant amount of attorneys who do energy-related work in Washington, D.C., New York, Boston and Los Angeles, but also has attorneys from San Francisco to Philadelphia and some overseas in areas such as London, Singapore and Moscow. Energy is one of the industry focus areas of the firm's, Asmus said, adding that the team has seen growth in recent years.

One of the stronger focuses for some of the energy attorneys at the firm this past year has been representing Duke Energy Florida LLC in a widely publicized class action that challenged the constitutionality of Florida rate recovery statutes relating to nuclear power. The suit sought more than \$1 billion in damages. The plaintiffs challenged the constitutionality of a 2006 Florida law that allegedly required Duke customers to pay into a system to fund nuclear projects, and said if the nuclear projects are abandoned, the utilities keep the money and may collect more, according to court documents.

The big win for the firm came on Sept. 21, when a judge dismissed the case. The judge said, among other things, that the plaintiffs could not challenge the constitutionality of a state statute by bringing a suit against a private actor, and that such a suit can only be brought against state actors.



Brad Fagg, a lead attorney for Duke and a partner in the firm's D.C. offices, said his client was not the right party to be sued. He said he used an analogy to illustrate the argument: If someone doesn't like the fact that one can't buy liquor on a Sunday morning, the remedy is to not sue the liquor store but to try to change the liquor law and sue the state.

He said one of the things the case helped illustrate about the firm is its ability to meld its specialties, with litigators working with its regulatory specialists to service clients better.

"That's where we pride ourselves on at Morgan Lewis — on the real, not superficial, integration of litigators and regulatory and transactional energy practitioners," Fagg said.

Besides the Duke matter, Morgan Lewis has represented Anadarko and its subsidiaries in connection with litigation regarding the explosion and release of hydrocarbons from the Deepwater Horizon oil spill in the Gulf of Mexico. A judge ordered the company in November 2015 to pay \$159.5 million for Clean Water Act violations stemming from the massive 2010 incident, a figure that was only a fraction of the \$1 billion in penalties the government sought against the company.

U.S. District Judge Carl J. Barbier said in his order that the award was an attempt to balance Anadarko's lack of culpability with the seriousness of the historic spill, in which 11 workers were killed and oil leaked for months. Anadarko owned a 25 percent interest in the Macondo well, while BP Exploration & Production Inc. owned a 65 percent interest and operated it.

James J. Dragna, a partner in Morgan Lewis' Los Angeles office and chief coordinating counsel for Anadarko, said the win was huge for his client, which wanted to make clear that while it was an owner of the well, and it understood it had some liability because of that ownership, it wanted to demonstrate to the community, the government and regulators that it's a responsible operator. He said that Anadarko also wanted to illustrate that "when it operates these wells, it operates them within compliance of all of the laws and that it had no culpability for the events leading up to the explosion and release of hydrocarbons from Deepwater Horizon."

"For the firm, it was an important win because it demonstrated the firm's ability to take on major stakes, crises-driven litigation against the best the government has to offer and obtain excellent results for the client," Dragna said.

--Additional reporting by Brandon Lowrey. Editing by Edrienne Su.