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Midsized Delaware firm is a big player in M&A deals

Morris Nichols did legal work on two of the largest deals of 2006.

By Sandhya Bathija

STAFF REPORTER

LOCATION, LOCATION, LOCATION.

Nowhere in the field of mergers and acquisitions could it have so much impact than on the small Wilmington, Del., law firm Morris, Nichols, Arsht & Tunnell LLP, which began as a small practice for former U.S. District Judge Hugh Morris back in June 1930. Morris' first clients were large U.S. businesses incorporated within the state, including E.I. du Pont de Nemours & Co. and the Coca-Cola Co.

So it is no surprise that the nearly-100-attorney firm bearing Morris' name helped complete an \$18.2 billion corporate deal for Anadarko Petroleum Corp.'s acquisition of Kerr-McGee Corp. last year. Nor is it a shock that the firm has its hand in another one of the largest transactions of 2006, Caremark Rx Inc.'s proposed \$22.1 billion merger with CVS Corp.

Those deals are just examples of the "fast-moving, high-profile cases" that the firm does all the time, said William Lafferty, a partner in the firm's business and litigation practice group. Whenever huge, international law firms need expert advice, they call Morris Nichols.

"They are one of the top firms in Delaware and we regularly use them on M&A transactions," said Michael Dillard, head of Akin Gump Strauss Hauer & Feld's corporate practice in Houston, who called on Morris Nichols for help in the Anadarko/Kerr-McGee deal.

Akin Gump wanted some help troubleshooting issues regarding deal protection and how much a

transaction can be locked up—i.e., structured to ensure the acquirer's bid—after the deal is announced, said Jeff Wolters, a partner in Morris Nichols' Delaware corporate law counseling group.

"We jump in on a particularly tricky corporate law issue," he said. "After we deal with that, we are out and we move on."

Morris Nichols also jumped in when attorneys at King & Spalding in Atlanta needed an expert opinion on the Caremark acquisition. In the past 20 years, King & Spalding has called on Morris Nichols to assist in 30 or 40 deals, Lafferty said.

Morris Nichols represents Caremark's board of directors in a class action brought by shareholders claiming a breach of fiduciary duty by merging with CVS, said Lafferty. And to make it more complicated, Express Scripts Inc. has launched a hostile takeover of CVS to block Caremark's merger with CVS.

Attorneys at the firm think of themselves as consultants. Or if it were put into simpler terms, they are to lawyers what specialists are to doctors, Lafferty said.

Delaware law experts

"We sell an expertise," said Alan Stone, a partner in the firm's corporate and business litigation group. "We have a deep tradition in corporate law. Usually lawyers at these big law firms may have seen something once before, but we have seen it 10 times before, so we can add value to all these different issues in corporate law."

And when it comes to corporate counsel, the firm has the right to gloat. After all, one of its founding partners, S. Samuel Arsht, sat on a



WILLIAM LAFFERTY:
His firm is involved in "fast-moving, high-profile cases."



ALAN STONE: *Says his firm competes with the largest law firms for the best talent.*



JEFF WOLTERS: *"We jump in on a particularly tricky corporate law issue." Then "we move on."*

three-person committee in the 1960s to completely revise Delaware's corporation law, which applies to the half-million businesses incorporated in the state, including 60% of *Fortune* 500 companies.

Other large clients Morris Nichols has worked with through the years include Bausch & Lomb Inc., BP Amoco, Citicorp Inc., the Coca-Cola Co., Ford Motor Co., McDonald's Corp., Motorola Inc., Pfizer Inc. and Viacom Inc., to name a few.

The firm offers its expertise to other lawyers and clients in all areas of corporate practice, Wolters said. Its expertise was used to advise and litigate two of the best-known cases involving start-up companies and preferred stock terms—*Benchmark Capital Partners IV L.P. v. Vague*, No. Civ.A.No. 19719 (Del. Ch. July 15, 2002), and *Watchmark Corp. v. ARGO Global Capital LLC*, No. Civ.A.No. 711-N (Del. Ch. Nov. 4, 2004). And the firm worked to devise Google Inc.'s dual-class stock structure before its 2004 initial public offering.

Public companies also use the firm to raise money through complicated preferred-stock and bond deals and to help with ongoing corporate governance issues, such as takeover defenses, corporate elections, proxy contests, advice on stock-options backdating and majority voting for directors.

Whenever the firm gets involved providing corporate advice, whether recruited by other attorneys or by the client directly, it involves both an attorney from the corporate counseling practice group and one from the corporate litigation practice group, said Stone. "It's important that the client has a litigation perspective all the way along," he said.

Morris Nichols used this model in its representation of Pilgrim's Pride Corp., which announced its \$1.1 billion acquisition of Gold Kist Inc. in early December. The company brought in Morris Nichols

to help on all the Delaware law issues and to help review the charter provisions of Gold Kist, said Rick Cogdil, chief financial officer of Pilgrim's Pride.

"They brought a lot of value in the acquisition strategy that we used," he said. "In our case it was necessary to have the team of litigators because it was a critical part to the overall acquisition."

Huge firms seeking expert advice call Morris Nichols.

Morris Nichols celebrated its 75th anniversary on Sept. 24, 2005, with a black-tie affair at its founder's estate, now part of White Clay Creek State Park. The firm published a 100-page book to share with clients and employees of the firm, *A History of Morris, Nichols, Arsht & Tunnell, Commemorating the 75th Anniversary*.

Future growth

The book tells of everything, from biographical information about the founders to plans for the direction and future of the firm, which plans to "grow intelligently, not just for the sake of growth," said Stone. "We definitely have enough business to grow," he said. "But we really need smart people. We won't lower our standards just to get more people in the door."

The firm does feel the pressure when trying to attract younger lawyers. While Wilmington is a great city in which to settle down and raise a family, it may not have the same appeal to some who want the big-city life, Stone said. But he still believes Morris Nichols competes with the largest firms for the best among law school classes. "What we have to offer is that we have an incredibly sophisticated practice," he said.

Lafferty said this was why he chose the firm 17 years ago. Delaware sees the best lawyers in action, he said, which he realized after spending a year clerking for the Delaware Court of Chancery.

"I just thought, why go anywhere else?" he said. "Here we get to deal with the smartest lawyers in business, so I [would] rather do it here than anywhere else."

And apparently other young attorneys agree. This year, the firm is welcoming its largest-ever summer associate class with 15 second-year law students.

A growing number of attorneys does not mean a growing number of offices. Morris Nichols plans to stay just in Wilmington, mostly to make sure the other firms it works with know it isn't a threat.

"We have to be sensitive to the idea that we gain most of our business from other lawyers," Stone said. "If we go and open up another office in New York, that is sending a different signal. We try to be sensitive to the idea that we are lawyers' lawyers." **NLJ**

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