

Delaware Powerhouse: Morris Nichols

By **Rose Krebs**

Law360 (August 3, 2022, 2:03 PM EDT) --Morris Nichols Arsht & Tunnell LLP prides itself on having played a part for nearly a century in the evolution of Delaware corporate law, and the Wilmington-based firm continues to litigate some of the highest-stakes cases in various practice areas.

Once again, the roughly 95-attorney firm was at the center of some of the year's most closely watched cases in Delaware, including representing IAC Holdings Inc. and its directors in a dispute challenging a reverse spinoff of Match.com in 2020, serving as counsel to officer-director defendants in derivative litigation over Oracle's \$9.3 billion acquisition of NetSuite in 2016, and working on numerous high-profile bankruptcy and intellectual property cases.

Morris Nichols' work during the past year, in a competitive and crowded legal market that has one of the nation's busiest bankruptcy courts and most popular patent case venues — along with the Chancery Court, an internationally important corporate law venue — has once again earned it a spot on Law360's list of Delaware Powerhouse firms.

"We've been around a long time," and the firm — founded in 1930 — has built a reputation of excellence and consistency, handling a caseload year after year that keeps it at the top of the game, William M. Lafferty, chair of Morris Nichols' executive committee, told Law360.

"The more touches you get, the more calls you get," Lafferty said. "The familiarity keeps people coming back, along with the quality of the product."

The firm's expertise results from its frequent handling of matters in Delaware's courts, as well as its knowledge about the ins and outs of corporate law and other areas, he said.

Morris Nichols has one of the most active Delaware corporate litigation practices, with the firm reporting it was involved in one in every 10 Chancery Court cases filed in 2021. Also, the firm was involved in about 25% of the Delaware federal court's roughly 885 patent case filings in 2021, a representative told Law360.

The firm highlighted its key casework in Chancery Court, including representing Southwest Gas Holdings Inc. in a hostile takeover bid by activist investor Carl Icahn, serving as counsel to IAC Holdings directors in the litigation challenging the \$30 billion reverse spinoff of Match.com, and successfully securing a



motion to dismiss for two officer-director defendants in yearslong Oracle Corp. derivative litigation.

A trial in the Oracle case kicked off last month in Chancery Court, with Morris Nichols representing an Oracle director who served on a special committee that vetted the NetSuite acquisition.

The firm's busy year handling intellectual property matters included an \$85 million win on behalf of client BASF Corp. in an antitrust case against Ingevity Corp. claiming interference with business prospects for a BASF vapor capture product. It also represented Pharmacyclics LLC and Janssen Biotech Inc. in related Hatch-Waxman actions involving the cancer treatment drug Imbruvica and notched a win for ClearOne in an infringement case over rival Shure Inc.'s microphone array design patent.

Jeremy A. Tigan, a partner in the firm's intellectual property litigation practice, said Delaware's district court "is essentially back to normal" after the COVID-19 pandemic had caused some trials to be delayed.

And Delaware's district court continues to be one of the busiest patent venues in the nation, with its judges handling "a crushing workload," he added.

But the court has done an impressive job moving its caseload along, and Morris Nichols continues to "stay on the cusp" of what is happening in the world of intellectual property litigation, Tigan said.

Delaware's bankruptcy court also continues to be among the nation's busiest, although there was a lull in activity due to certain market conditions and the impact of the pandemic, bankruptcy pundits noted.

But things seem to once again have been on an uptick over the past six to eight months, Curtis S. Miller, a partner in Morris Nichols' bankruptcy and restructuring practice, told Law360.

"Liquidity is really tightening," and companies are less able to get financing, Miller said. "We are getting a ton of calls on potential filings."

The slowdown happening throughout the economy is going to put more pressure on companies as they deal with refinancing woes, he said.

But Morris Nichols is primed to deal with the expected increase in filings and help clients navigate insolvency issues, Miller added.

"We continue to have a very experienced and deep bench," Miller said. "We are in front of these judges on a daily basis."

Miller said since Morris Nichols is involved with so many cases, working with many other firms on bankruptcy matters, "we know what strategies work."

On the bankruptcy side, Morris Nichols has served as co-counsel for the Boy Scouts of America in its mass tort Chapter 11, which saw a 22-day confirmation trial earlier this year. Last week, a Delaware bankruptcy judge approved major aspects of the organization's Chapter 11 plan. The firm also represented a debtor-in-possession lender in the Chapter 11 of Chilean hydroelectric dam developer Alto Maipo and served as co-counsel for office space provider Knotel Inc. in its Chapter 11.

Tarik J. Haskins, a partner who focuses on alternative entity counseling, financings and structured transactions, told Law360 of some interesting trends he has noticed recently in those areas.

In 2020, many deals were done from "a position of distress," while in the past year or so, more transactions have been done for strategic reasons or from "a position of strength," he said. There were also a lot of transactions involving private equity entities going public, he added.

Morris Nichols excels in "cross-pollination" between its litigation, transactions, bankruptcy and other practice teams to ensure client needs are best met, he said. Such collaboration also helps the firm think through "what ifs" and any possible scenarios before they happen, he added.

Morris Nichols highlighted its transactional work in a number of matters, including providing Delaware law counsel for private equity firm TPG in its U.S. initial public offering, valued at \$9.5 billion; advising Emerson Electric Co. on an \$11 billion merger with Aspen Technology Inc.; and representing aircraft leasing company AerCap in certain transactions, including its \$28 billion acquisition of GE Capital Aviation Services.

Melissa A. DiVincenzo, a partner in Morris Nichols' corporate counseling practice who provides advice on corporate governance matters and private and public corporate transactions, told Law360 the firm's "specialty expertise" helps set it apart in Delaware's competitive legal market.

Morris Nichols' collaborative culture helps it provide "thoughtful and thorough advice" to clients and keep them up to date on things like the latest changes in the Delaware General Corporation Law, important corporate governance trends, or key stockholder litigation happenings, she said.

"We have a long history of giving good corporate advice," DiVincenzo said. "We have tremendous institutional knowledge."

--Editing by Daniel King.