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Litigation Department OF THE Year



FINALIST: GENERAL LITIGATION (LARGE FIRMS)

PHOTO BY CARMEN NATALE

L to R: Adam Budesheim (partner, insurance coverage); Joseph T. Boccassini (partner, business litigation); Robert A. Mintz (partner, business litigation); Desiree L. Grace (associate, products liability); John C. Garde (partner, products liability); Mary Gabriel (partner, business litigation); Kenneth R. Meyer (partner, products liability); Richard Hernandez (partner, business litigation); and James A. Kosch (partner, business litigation).

**McCARTER
& ENGLISH**
ATTORNEYS AT LAW

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Prepared to Go the Distance

McCarter & English is not afraid of the courtroom

By Zack Needles

In examining some of the biggest cases McCarter & English lawyers handled last year, one may notice the frequent appearance of a single word that arguably sums up what has made the firm so successful in litigation: “trial.”

“We don’t shy away from trials,” Newark-based litigation partner Joseph T. Boccassini said. “We have top-notch litigators here who are ready to try cases.”

The firm’s willingness to go the distance when necessary was on display several times last year in a wide array of cases.

In February 2014, a team led by partner Adam Saravay obtained a defense verdict in favor of client James Krivda in an \$80 million trade secret case that was believed to be the largest of its kind in New Jersey history.

When Krivda, the former vice president of Givaudan Fragrances Corp.’s perfumery department, left to join competitor Mane USA Inc., Givaudan sued him for \$80 million, alleging he stole the formulas for 650 of its fragrances.

Following a five-week trial in the U.S. District Court for the District of New Jersey, a jury found in favor of Krivda on all counts.

In September 2014, partner Sherilyn Pastor and her team successfully defended client Transamerica Corporation against

of deliberation in Ocean County Superior Court, partner Kenneth Myer and his team obtained a jury verdict in favor of clients Terex Corp. and Terex Advance Mixer Inc.

In *Kimak v. Terex Corporation*, according to court documents, plaintiff John Kimak, who drove a Terex front discharge ready-mix cement truck in the course of his employment, was filling the truck’s water tank in preparation for a delivery when he slipped on some ice. While filling the tank, Kimak was standing on a 29-inch concrete platform that was parallel to the truck. Falling from the platform, Kimak’s leg went through the truck’s step, resulting in a compound fracture and ultimately amputation. Kimak sued Terex, claiming the front-discharge truck had an unsafe design that caused water to spill and ice to form. But the jury found Kimak had no cause of action.

Of course, showing a willingness to go to trial can sometimes be the best way to ensure that the case never makes it that far, Boccassini said.

“The best way to get a good settlement is to demonstrate that you’re ready to try and win a case,” he said.

The firm had its share of favor-

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former subsidiary IMO Industries’ claim involving \$1.85 billion in general liability coverage limits. A New Jersey Appellate Division panel upheld a trial judge’s ruling that Transamerica was not responsible for reimbursing IMO’s asbestos losses.

In October 2014, following a six-day trial and only 14 minutes

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able settlements in 2014, as well.

In June 2014, lead partner Richard Hernandez and his team defended client Hayward Industries Inc. against multidistrict antitrust litigation brought by a nationwide class of direct purchasers and a class of indirect purchasers. The case was consolidated in the U.S. District Court for the Eastern District of Louisiana. The plaintiffs alleged Hayward had conspired with three other companies to restrict the distribution of and artificially inflate the price of pool products in the U.S. The court tossed out the horizontal conspiracy claims but allowed the vertical conspiracy claims to proceed through discovery.

The case had a potential exposure of more than \$800 million after trebling, plus attorney fees. Ultimately, however, Hernandez negotiated a \$6.5 million settlement with the direct purchaser class and a \$1.5 million settlement with the indirect purchaser class.

In December 2014, Hernandez and his team obtained a favorable settlement on behalf of clients Emigrant Capital Corp., Emigrant Business Credit Corp., Emigrant Bank, Preferred Brand Holdings LLC and Boylan Bottling Co., Howard Milstein and Michael Milstein.

The plaintiffs had sued in Bergen County Superior Court, alleging

minority shareholder oppression, derivative claims, breach of contract, breach of the covenant of good faith and loyalty, unjust enrichment and waste.

The case had a potential exposure of \$8 million. But three weeks before fact discovery was scheduled to be completed, the parties reached a settlement for a fraction of that, severing the plaintiffs' ownership interests in Boylan, a Teterboro bottled soda maker.

Boccassini said McCarter's litigation clients run the gamut from multinational to emerging companies, but pointed out that while the firm doesn't represent major corporations exclusively, the matters it handles can almost always be classified as major cases.

"We're flexible enough to take the bet-the-company litigation and the bet-the-smaller-company litigation and the bet-the-midsize-company litigation," Boccassini said, noting that the true value of a case really comes down to how important it is to that particular client's business, regardless of size.

For example, Boccassini said, much of the litigation the firm handles for its startup clients might not necessarily fit the traditional definition of "bet-the-company," but is nonetheless potentially make-or-break for a fledgling business.

"The stakes may be a little bit different, but the risk is the same," he said. ■

McCarter & English by the Numbers

Department Headcount

Firmwide	245
New Jersey	137

Department as Percentage of Firm

Headcount	59%
Revenue	35%