

LEGAL & LITIGATION DEPARTMENTS OF THE YEAR



FROM LEFT TO RIGHT – Joseph L. Buckley, Beth S. Rose, Joseph B. Fiorenzo, Richard H. Epstein

SILLS CUMMIS & GROSS P.C.

WINNER, GENERAL LITIGATION,
MIDSIZED FIRM

COURTROOM ABILITY REAPS BUSINESS IN CHANGING LITIGATION ENVIRONMENT

BY DAVID GIALANELLA

For the litigation group at Sills Cummis & Gross, returning back to strength after a difficult recessionary period has required varying steps, but a commitment to trial practice—arguably litigation in

its purest form—never went away, according to Joseph Buckley.

“There aren’t as many big trials as there were 10 years ago, certainly,” said Buckley, chair of the Newark-based firm’s litigation department, and a member of the firm management and executive committees. “We don’t have as many associate hours as we did once upon a time.”

“Since the great recession, all the significant-size New Jersey firms, including ours, have had some ups and downs,” but as of 2015, “we were at max capacity” in the litigation group, he said.

And that means having courtroom capabilities: The group has improved on its rate of one trial or arbitration per month; there are five former assistant U.S. attorneys among the litigator ranks; and Buckley, along with Jeffrey Greenbaum, are certified civil trial attorneys. There was also the February 2015 hire of litigator Joseph Fiorenzo and four others from Sokol, Behot & Fiorenzo of Hackensack.

Of course, the group routinely handles mediation—“we do what our clients want us to do,” Buckley noted—but, “we want our adversaries to believe that, because [the clients have] hired us, they’re more than willing to go the distance,” he said.

As it turns out, going the distance isn’t always necessary, and the group nevertheless obtained numerous good results for clients last year.

Sills’ litigation group represented Contel Global Marketing in an action against Aldo Pesce Contrera, which stemmed from a business venture to sell Chilean produce to U.S. supermarkets. The client alleged that the defendant

inflated its costs to turn a greater profit. Sills agreed to take the matter to arbitration, and obtained an \$8.6 million award, including trebled damages under the Racketeer Influenced and Corrupt Organizations Act, which a federal court affirmed in August 2015, the firm said, noting that the matter was appealed but settled earlier this year.

In *Glodack Consulting Inc. v. DTL HS Holdings*, Sills represented the defendant, the mortgagor of a property on which the plaintiff sought to foreclose in the Superior Court’s Chancery Division. The group defeated a motion to preclude an affirmative defense by DTL—alleging third-party fraud against the owner of an adjacent property, an auto dealership—and also withstood opposition to subpoenas. The matter settled in late 2015, with the third-party dealership owner agreeing to pay \$4 million to Glodack and \$5.6 million to DTL, according to Sills.

Sills also defended the New York Mets and Live Nation in a suit claiming tickets to a 2008 Billy Joel concert at Shea Stadium—purportedly the last concert prior to demolition of the stadium—were improperly billed since a second show was added. The Supreme Court of New York in Queens County dismissed the action in 2015, holding that the tickets did not amount to a guarantee to see the last show at Shea Stadium.

In an intellectual property case, Sills represented MDx in Colorado federal court, defending claims that the company, owner of health-care provider-rating site *vitals.com*, infringed on patents held by Health Grades Corp. The court last year granted summary judgment to MDx in connection with 49 of the

50 claims against it, after which the matter settled, according to Sills.

In a dental malpractice case, Sills won dismissal for its client, one of the defendants in the matter: Brasseler USA, a distributor of dental equipment. The suit was lodged on behalf of child whose face was injured during a dental procedure, but the piece of equipment allegedly distributed by Brasseler was not preserved, and Bergen County Superior Court Judge Lisa Firko said in a written decision that the company could not be linked to the injury. The judge granted Sills’ summary judgment motion, and allowed the plaintiffs to amend their complaint with a spoliation count against the remaining defendants, according to Sills.

It’s true the litigation pie is shrinking, and what were once billable tasks no longer are. Some clients have vendors who do document review for \$30 an hour, and discovery often has been whittled down to 10,000 pages from upward of 500,000 before Sills gets the case, according to Buckley.

But the firm is doing a higher proportion of complex cases than it once did, and Sills’ real estate and corporate groups continue to funnel in business, he said.

As for keeping clients in the age of increased competition—and winning a few new ones—lawyers have to be “out in the community” and must achieve results, according to Buckley.

In order to do that, litigators must be tested, he said.

“You don’t make it through our gauntlet to make partner without a baptism as a trial lawyer,” Buckley said. ■