

Most Feared Plaintiffs Firm: Motley Rice

By **Daniel Wilson**



Law360, Washington (October 17, 2013, 8:03 PM ET) -- Helping to secure potentially the largest civil class action settlement in U.S. history in litigation over the Deepwater Horizon disaster was just one of a number of significant recent victories achieved by Motley Rice LLC, helping it earn a spot on Law360's Most Feared Plaintiffs Firms list.

Given the number of claimants in the Deepwater Horizon multidistrict litigation, combined with the wide variety of claims and multiple jurisdictions involved — including economic loss claims, wrongful death and injury claims and claims being brought under maritime law, among others — the case was enormously complex, according to Fayard & Honeycutt APC attorney Calvin Fayard Jr., one of the lead negotiators in the case alongside Motley Rice founding partner Joseph Rice.

"It was [like] just about the most complex law school exam you'll ever take," Fayard said.

This was compounded by the divergent views of the multiple defendants in the litigation, making it impossible to bring them to the negotiation table as a united group as plaintiffs' firms normally try to achieve in such sprawling cases, according to Fayard.

As a result, he and Rice took another tack, he said, working with the plaintiffs' steering committee to "solidify" the group and present a united front when negotiating with the defendants who were willing to come to the settlement table, ultimately leading to two settlements with BP PLC — an economic and property damages settlement and a medical benefits settlement.

The settlement deals, approved by the court in December and January respectively, are uncapped, and are set to provide billions of dollars to resolve claims, with BP — despite disputing aspects of the deals — having already paid out about \$5.8 billion in settlement claims so far, according to Rice.

This was a testament to the skills of Rice and his team in their role in helping to bring about settlement discussions and formulate a tentative deal leading to the ultimate settlements, Fayard claimed, praising the firm's ability to investigate cases in advance of negotiations with defendants and to help to organize plaintiffs' attorneys into a working group.

"[They've] been very successful in bringing [people together]," Fayard said.

Motley Rice holds a strong reputation among both plaintiffs' firms and defense firms alike, according to Fayard, noting he had specifically sought Rice's assistance after being appointed by the court to help resolve aspects of the case, a decision that proved to be both successful from a litigation standpoint and "extremely rewarding" personally, he said.

Motley Rice litigation partner Donald Migliori backed Fayard's claims of the firm's positive relationship with — and reputation amongst — other firms, saying it was often referred cases by its "great network" of national co-counsel, giving it the luxury of being able to choose strong cases to put its resources and expertise behind.

"We're not advertisers, we're not aggregators ... we're the firm those guys call up," Migliori said. "Our product is trial preparation [and] very, very talented lawyers who are trial lawyers."

One aspect of the firm that helps to drive its success and reputation is its "parallel track" arrangement, where attorneys who try cases usually work separately from those negotiating alternate resolutions to those cases, allowing attorneys to focus their efforts on discrete aspects of the case, according to Migliori.

He also paid tribute to founding partner Ronald Motley, who passed away in August, saying a large part of the firm's litigation ethos and reputation — built from an initial focus on mass torts involving multiple victims, backed by "rigorous" discovery — had been built on Motley's "tremendous" talents.

Motley's mentoring had been a "blessing," Migliori said, putting him in good stead for his own litigation practice, as evidenced by his successful role as lead trial counsel in the second bellwether trial in multidistrict litigation involving injury claims against medical device maker C.R. Bard Inc. over its Composix Kugel hernia mesh patches, with Motley Rice serving as co-lead plaintiffs' counsel in the MDL.

The case was hard-fought, involving an defense team "as good as they come" and a number of potential "sideshowes" involving claims of alleged alcoholism against the injured plaintiff and sanctions against another attorney involved in the case, leading to the exclusion of what the firm believed was important evidence, according to Migliori.

However, strong evidence came to light at the start of the trial in the form of photos of the mesh captured by a doctor after it was removed from the patient, and Migliori attempted to keep the jury focused on this evidence and "out of the rabbit hole," he said.

"You have to trust in the jury system, trust in their common sense ... the pictures spoke more than any attorney [could]," Migliori said.

The evidence in the photos seemed to come as a shock to Bard, and the result was a \$1.5 million jury verdict against the company in August 2010, which was "without question" a catalyst in Bard ultimately agreeing to a settlement in July 2011 — tentatively pegged at \$184 million in a regulatory filing made at the time by Bard — according to Migliori.

"I think they thought [any jury verdict] was worth less on the best day than what we pulled off," Migliori said. "I think this [verdict] put an end to [that line of thought]."

Migliori added that he believed the settlement had had a positive effect beyond helping to resolve the plaintiffs' claims in that MDL, helping to shape Bard's response to another MDL over injuries allegedly caused by trans-vaginal mesh products made by the company and other medical device makers, as well as drawing the attention of scientists for further studies into the wider effects of the Kugel mesh and other similar polypropylene-based patches on the body.

Motley Rice is also serving as co-counsel in that MDL, yet another example of its representation of clients across a wide number of cases, from the small to the large, expensive and complex, with the firm growing larger than Rice ever envisioned the firm becoming at its outset, he said.

Formed in 2003 on the back of its co-founders' long-running roles in pursuing asbestos-related disease litigation and in helping to spearhead litigation against the tobacco industry which led to the massive master settlement agreement — variously pegged between \$246 billion and \$248 billion — the Charleston, S.C.-based firm has since grown to encompass 75 attorneys and hundreds of support staff, across eight offices.

According to Rice, the tie-up allowed the pair to balance their different philosophies, with Motley's "aggressive" litigation instincts complementing his own business skills, first in mass tort and product liability litigation, before the firm's attorneys took the skills they had learned and applied their "drive and enthusiasm" to other types of cases when given an opportunity to dip a toe into the waters of different practice areas.

As such, it covers litigation involving a range of issues, from occupational disease and worker safety issues, to anti-terrorism and human rights cases, to a range of tort cases related to drugs and medical devices, environmental concerns, and catastrophic injury and wrongful death claims.

This includes the representation of 56 of the 96 families who opted out of the 9/11 terrorist attack victim compensation fund, having pursuing wrongful death claims for nearly a decade until the final claim was resolved in September 2011. The litigation ultimately led to more than \$500 million in compensation for those families, as well as serving as a de facto public inquiry into alleged airline and aviation security failures leading to the attacks, according to the firm.

More recently, securities and shareholder litigation has become a greater focus for the firm, leading to a number of victories over the past several years in cases in which the firm had served a major role.

These include an \$85 million settlement stemming from its role as co-lead counsel in a suit over Medtronic Inc.'s alleged deception of investors over its off-label marketing of its Infuse bone graft, leading to subsequent patient complications, as well a role as co-class counsel in a case ending in a \$164 million settlement for shareholders of Pharmacia Corp. — now a unit of Pfizer Inc. — reached in October 2012, over the company's alleged misrepresentation of clinical trial results for its anti-inflammatory Celebrex in order to make the drug appear safer than rival drugs.

When asked to explain the firm's philosophy of selecting cases, Rice said that the important factor, regardless of the type of case, was for attorneys to feel comfortable that they can present a legitimate, compelling case to the jury.

"The mentality for the jury is they've got to feel they're doing justice," he said. "You've got to have the right story to tell the jury."

--Editing by Katherine Rautenberg.