

New Jersey Powerhouse: Cole Schotz

By **Bill Wichert**

Law360, Clifton, N.J. (October 4, 2017, 4:33 PM EDT) -- Cole Schotz PC has notched bankruptcy wins in New Jersey that preserved Saint Michael's Medical Center Inc. in the state's largest city and enabled Hanjin Shipping Co. Ltd to dock billions worth of stranded cargo at U.S. ports, while also scoring a victory protecting lottery winnings from state income taxes.

Those cases over the last two years demonstrate how Cole Schotz has been able to successfully navigate federal and state legal channels in the Garden State for a mix of clients, landing it on Law360's New Jersey Powerhouses list as the firm prepares to celebrate its 90th anniversary in 2018.

The anniversary is "a tribute obviously to the firm's success and ... it's based upon really what's been a tremendously loyal client base," said Michael D. Sirota, co-managing shareholder of Cole Schotz.

"I would say the firm is just ... extraordinarily well-situated to succeed and grow for many years because of its conservative philosophy in running a business and entrepreneurial philosophy in representing its diverse client base," Sirota said.

Cole Schotz was started in 1928 in Paterson, New Jersey, by Mendon Morrill, who went on to become a New Jersey federal judge, and David L. Cole, a labor arbitrator and mediator who counseled every U.S. president from Harry Truman to Gerald Ford in national labor crises, according to the firm.

While the firm has expanded across the country over the past decade — to offices in New York, Delaware, Maryland, Florida and Texas — the center of its orbit remains New Jersey, where 85 of the firm's 138 lawyers work, Sirota said.

The firm's roster of attorneys includes former U.S. Bankruptcy Judge Donald H. Steckroth, who is a member of Cole Schotz's bankruptcy and corporate restructuring practice. Two former partners — Michael A. Chagares and Thomas J. LaConte — now serve as Third Circuit and New Jersey Superior Court judges, respectively.

The level of business from each of the firm's practice areas — such as real estate, litigation and bankruptcy — has been fairly even, with no one area contributing dramatically more than another,



Sirota said.

Cole Schotz also does not represent any major lenders, separating it from many other firms and allowing Cole Schotz to represent a diverse array of clients taking adverse positions toward such institutions, Sirota said.

“I think our diversity of clientele and not having any one client control our destiny or represent a major portion of our revenue is, I think, a product of not representing large lenders,” Sirota said.

An example of that dynamic can be found in the Saint Michael’s bankruptcy action in New Jersey federal bankruptcy court. Had Cole Schotz done work for the Bank of New York Mellon, a party to that matter, the firm could not have represented the hospital in the Chapter 11 case, according to Sirota.

After seeking state approvals of the Newark hospital’s sale to Prime Healthcare Services for roughly three years, Saint Michael’s retained Cole Schotz to file for bankruptcy protection. The August 2015 filing was meant to get the state to approve the transaction, Sirota said.

One of the firm attorneys who worked on the case, Sirota said that “we used the bankruptcy process to put a very, very bright light on what the state was doing and, more importantly, not doing over the last three years.”

An auction drove up a Prime Healthcare unit’s sales price to \$62.2 million, and U.S. Bankruptcy Judge Vincent F. Papalia approved that bid in November 2015. After state officials ultimately approved the deal, Prime Healthcare and Saint Michael’s announced in May 2016 that the acquisition had been completed.

“I’m extraordinarily proud that our firm handled the matter and ... was able to preserve a vital health care facility,” said Sirota, co-chairman of the firm’s bankruptcy and corporate restructuring practice. “I felt good to be part of an exercise ... that unlike other bankruptcies, just didn’t result in returning money to a secured creditor or providing an unsecured creditor dividend. This had a real community purpose.”

A few months after the hospital sale was finalized, Cole Schotz moved in New Jersey federal bankruptcy court in September 2016 for Chapter 15 recognition of Hanjin Shipping Co.’s South Korean insolvency proceeding. U.S. Bankruptcy Judge John K. Sherwood soon granted the provisional relief sought by Hanjin’s foreign representative.

That ruling protected Hanjin’s 14 U.S.-bound vessels from creditors seeking to arrest the ships, enabling them to dock at U.S. ports, deliver goods belonging to Samsung, Hewlett-Packard and other cargo owners, and then continue on their way, said Ilana Volkov, one of the firm attorneys who represented the company’s foreign representative in the matter.

Given the threat of arrests, Hanjin was not going to let the ships come into U.S. waters without those protections, Volkov said. If the vessels entered U.S. territory without such relief, the vessels would have been arrested, berthed at the ports and then prevented from leaving, she said.

“They’re not supposed to dock doing nothing,” Volkov said. “They have a job to do.”

Volkov later added, “What I kept saying to the judge is, ‘We need to continue the flow of commerce.’” In December, Judge Sherwood granted final recognition.

Soon after Cole Schotz secured that provisional relief for Hanjin, the firm won partial summary judgment in New Jersey Tax Court on behalf of Melvin Milligan and his wife, who challenged the application of state income taxes to annual installments of a \$46 million lottery prize he won in 2000.

In an effort to generate lottery ticket sales, New Jersey officials in 2000 had advertised that state lottery winnings were not subject to state income taxes, according to Tax Court Judge Patrick DeAlmeida's Sept. 26, 2016, decision. A 2009 law made state lottery winnings exceeding \$10,000 subject to state income taxes, starting with the taxable year beginning Jan. 1, 2009.

Given the state's prior advertisements, however, Judge DeAlmeida ruled that under the square corners doctrine, the state may not impose state income taxes on any lottery prize won before Jan. 1, 2009, writing that "the State should live up to the representations it makes in the marketplace."

That decision required that the Milligans receive tax refunds with interest and led to settlements with the state in other similar actions from Cole Schotz clients, according to Steven R. Klein, co-chairman of the firm's litigation department and one of the attorneys who represented the couple.

Klein recalled how he had discussed the Milligans' case with a firm colleague who deals with tax matters and that lawyer suggested pursuing a square corners doctrine claim, illustrating the value of such collaboration.

"Here it's kind of evident how valuable that was because we came up ... with the winning claim," Klein said.

--Editing by Jeremy Barker.