

Most Admired Attorneys: Lynn Bergeson

By Christopher Norton

Law360, New York (August 30, 2010) -- No one knows the ins and outs of chemical product approval like Bergeson & Campbell PC co-founder Lynn Bergeson, and her unrivaled command of the field's cutting edge makes her one of the most sought-after chemical regulatory lawyers in the nation and one of Law360's Five Most Admired Environmental Attorneys.

"She knows the law better than anybody," Barry Hartman of K&L Gates LLP said. "She's extraordinarily effective for her clients, particularly on the approval and registration side. She's great at getting them done in a quick and effective way. She has a great deal of credibility with the regulators."

Bergeson's practice is tightly focused on domestic chemical product approvals under the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act, two very focused statutes and regulatory programs that cover a lot of real estate in terms of domestic and international chemical producers.

"I don't know a lawyer who understands the TSCA and FIFRA process in the country better than Lynn," Hartman said. "She's the undisputed leader in the country for policy and regulatory issues relating to TSCA and FIFRA."

"We have a niche practice but it's very cool, very cutting-edge and very challenging," Bergeson said. "The issues are new, and it always involves the confluence of law, science and policy."

The Grosse Pointe, Mich., native went to law school at Catholic University in Washington and never left the capital. Her small firm, about 25 professionals strong, has been busy and uniquely challenged over the years by changes in the scrutiny provided to chemical applications in the U.S. Environmental Protection Agency and elsewhere.

For over 20 years, Bergeson and her partner Lisa Campbell have built up a watertight brand identity in the chemical and pesticide community when it comes to such regulatory issues as BPA, phthalates and nanotechnology.

"There aren't a lot of Fortune 50 or 100 chemical companies that we haven't worked for at one time or another," Bergeson said.

Chemical companies flock to Bergeson because of her understanding of the relevant law and regulations, which very few attorneys possess.

FIFRA matters in particular are “all done by policies and practices, and not by regulations,” Hartman said. “She knows it, and that makes her effective.”

Bergeson & Campbell keeps a number of scientists on staff in addition to its stable of attorneys, and Bergeson particularly “recognizes the value in having technical people talk to technical people, rather than getting lawyers involved,” according to Hartman.

“She knows when to back off and let it be a technical issue, and how to marshal the information for her technical people to convince the EPA's technical people that something should be approved,” Hartman said. “That's a huge issue. Having those technical people on staff is a tremendous advantage with her.”

The firm's scientific expertise can handily challenge that of the regulators themselves.

“When the EPA listed a whole class of chemicals under the Resource Conservation and Recovery Act identified as 'when discarded' that would qualify as a listed hazardous waste under RCRA, we had the DC Circuit invalidate all but one listing, on the grounds that the agency had not met its burden under RCRA,” Bergeson said. “It's always nice to have a final regulatory action overturned.”

One of the biggest issues the firm has recently tackled has been the explosion of attention to BPA. Bergeson & Campbell represents the North American Metal Packaging Alliance, as well as a host of food companies, beverage companies and chemical companies that make the epoxy resin liner in which BPA is a component, as well as the actual can manufacturers fill with the resin fluid that is then marketed to the public.

The firm has been deeply involved in demonstrating BPA's safety and efficacy as an epoxy resin liner when it comes to blunting the possibility of foodborne illness developing from pathogens.

“It is very, very effective and, we would argue, safe when used as intended,” Bergeson said. “The data are overwhelmingly compelling. We appreciate that reasonable people disagree, so we're helping to find efficacious alternatives, because we all want safe products.”

Bergeson's path to success is unique in that it has not been littered with major litigation victories along the way. The firm works hard to keep its clients and cases out of the news and under the radar, making sure that clients' products receive approval with no muss and no fuss.

The firm wouldn't provide any names of representative clients or cases, since “our success is often measured on what you don't see,” according to Campbell.

“A lot of the success is in not having something happen,” Campbell said.

Instead of trumpeting her major victories for the world to hear, Bergeson excels at quietly positioning herself and her firm at the head of the pack as new scientific advances conspire to upend the playing field for regulators and chemical makers alike.

Bergeson & Campbell has successfully had some of the first nanoscale materials approved by the EPA's Office of Pollution Prevention and Toxics, including the brand-new field of nanopesticides. There have

not been many nanoscale applications submitted to the EPA that have received approval under the TSCA program, but Bergeson has been very active in getting a wide variety of materials approved under the TSCA inventory or exempted from approval.

“Lynn recognized years ago that nanotech was going to be a very complex area of regulation, given the science and existing statutes,” Campbell said. “We’re seeing today that those are exactly the questions she predicted and worked on years ago.”

Bergeson vociferously reads all of the industry press, when she’s not actually contributing to it herself.

Mark Duvall of Beveridge & Diamond PC, who has worked with Bergeson on committees of the American Bar Association’s Section on Environment and Energy Resources, recalled her outstanding leadership on a nanotechnology project that resulted in the first analyses of how nanotechnology could be regulated under the various EPA statutes.

The project led to some papers and subsequently to a book Bergeson edited, which came out earlier in 2010, according to Duvall.

“She is able through her own efforts as well as her leadership with others to get interesting, timely articles made available to the public,” he said.

Helping clients make the most of their regulatory situations, of course, requires making the most of one’s client relationships, and this is one arena where Bergeson unquestionably stands out.

“I believe that every one of her clients think that they’re the only client and she has nothing else in her life but their problems,” Campbell said. “She is really good at making people feel, whatever side of the table they’re sitting on, that she completely understands their perspective.”

To be a good attorney you have to be able to understand your client’s problem as well as the other side’s position, and be flexible in finding agreement between the two to pave the way forward, she said.

People skills such as Bergeson’s “are going to be essential if you’re going to solve problems and work toward a good solution, and clients appreciate that,” Campbell said.

“She’s got a good sense of humor,” Campbell said. “She’s very interested in everybody. She makes a point of knowing things about people.”

That personal touch is the only way to run a small, tightly targeted firm, and Bergeson uses Bergeson & Campbell’s size to her advantage at every turn.

“She does a great deal to cover the waterfront using a very small staff,” Duvall said.

“It is very rewarding, personally and professionally, because if you have a very clear vision of where you’re dropping your anchor, of what is your brand, if you have a pretty good sense of what it is you wish to do and for whom and in what jurisdictions, being the master of your own universe allows you to be very nimble,” Bergeson said. “You can deploy the people and the resources that are needed to achieve a goal without having to run it through 36 agencies in 12 nations.”

“We have been offered many times to hitch our wagon to a bigger firm, sell my practice or have my practice absorbed into a bigger firm, but have always declined,” she said. “The world is not just great big law firms and itty bitty ones. There's plenty of room for people who are very passionate about what they do to service a niche area.”

“It's my nature,” she laughed. “I like what I do and how I do it.”

Methodology: From May 25 through June 11, Law360 invited readers to nominate attorneys they admire to be profiled for the "Most Admired" series. Readers were asked: "Is there an attorney you've argued against in court who you respect — or whose briefs you fear? What about a lawyer whose views on the latest hot-button issues you eagerly seek out? Or a former classmate who is practicing the law in novel ways?" Survey participants were not permitted to nominate attorneys from their own firms and submissions from public relations and marketing professionals were not considered.

Separately, Law360 sought out nominations from practice group heads at the 100 largest law firms in the United States. In total, 1,016 nominations were received.

Nominations were reviewed by a board comprising experienced lawyers and Law360 editorial staff. 65 attorneys covering 7 practice areas of the law were then selected to be profiled for the "Most Admired" series.

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