

## THE 2019 CLAY AWARDS

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### ENVIRONMENTAL

## Counseling the The Ocean Cleanup in uncharted waters could lead to cleaner environment



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While lawyers at Latham & Watkins LLP often help clients navigate complex environmental regulations, the firm's pro bono work with The Ocean Cleanup has led a Southern California-based team of attorneys into uncharted waters.

The group has spent the last two years helping the Dutch nonprofit ensure regulatory compliance, establish relationships with regulators and evaluate potential environmental risks associated with the deployment of its advanced ocean-cleaning technology.

Unprecedented in its scope and ambition, The Ocean Cleanup aims to collect half of the plastic in the "great Pacific garbage patch" — an area between California and Hawaii where some activists say circulating currents have caused more than a trillion pieces of plastic to accumulate on the ocean's surface — in five years. The organization hopes to remove 90 percent of ocean plastic by 2040.

The novel system captures buoyant debris using a 2,000-foot floating pipe designed to drift slightly faster than free-floating plastic. The plastic ac-

cumulates in the mouth of the U-shaped system, where it can then be extracted by a ship.

In September, The Ocean Cleanup launched a prototype—known as System 001 or by its nickname, Wilson—from San Francisco Bay for a two-week trial run, before being deployed to the debris field in October.

"The plastic in the ocean gyres has been accumulating for decades, and the problem continues to be exacerbated with additional plastic finding its way into the oceans every day," said Michael J. Carroll, a partner with Latham & Watkins. "So it's a huge problem in terms of scope. But it's also a serious problem because it not only affects the ocean ecosystem but, as the plastics make their way into the food chain, they eventually make their way into humans."

Leading up to the launch of System 001, the pro bono team worked with The Ocean Cleanup organizers to gain a better understanding of which laws would—or would not—apply to the project. Carroll said the undertaking was challenging given the unusual nature of the project, which featured a Dutch technology being towed by a Danish

### *The Ocean Cleanup*

vessel from U.S. waters into international waters.

"Obviously, nothing like this was contemplated by those who wrote the Marine Mammal Protection Act or the Endangered Species Act," Carroll said. "So that made it fairly complicated from a legal perspective."

Working alongside Nikki Buffa, who is counsel in the firm's Orange County and Washington D.C. offices, and six associates, Carroll also facilitated meetings between The Ocean Cleanup and nonprofits, politicians, regulators and government scientists to solicit feedback and to maintain the flow of information related to the project, Carroll said.

Buffa said the legal team spent the bulk of its time facilitating interactions with government agencies ranging from U.S. Customs and Border Protection to the U.S. Coast Guard. "The Department of Defense was briefed on this so they understood what we were doing out there on the high seas," she added.

In October, System 001 was deployed in the "great Pacific garbage patch," where it collected thousands of pounds of plastic before a structural malfunction forced the project team to tow the system to Hawaii for repairs and modifications. The Ocean Cleanup team is evaluating what went wrong, and plans to share its findings in the coming weeks, according to the nonprofit.

Noting that System 001 was "very much a test," Buffa said the project team "fully expected" to experience setbacks, and that the first phase enabled the team to gather substantial data that will inform their efforts moving forward.

The Ocean Cleanup envisions scaling to 60 systems in the North Pacific over the next two years, and deploying additional systems in the planet's four other major ocean gyres.

Despite the unique legal challenges that may arise, Latham & Watkins — which, as a firm, provided around 245,000 hours of free legal service valued at more than \$177 million last year—will be ready.

"What The Ocean Cleanup is trying to do has never been done before," Buffa said. "It's new and novel and quite exciting. And I think a lot of people believe it's important. You can't just leave all that plastic out there."

— Mark Armao