

Morgan's protocol exit was 'bait-and-switch,' \$660M team says in lawsuit

By Andrew Welsch

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An ex-Morgan Stanley team is taking a unique approach to rebutting a lawsuit by their former employer: They're going after the wirehouse's decision to leave the Broker Protocol.

The team, which managed \$660 million and [moved to Stifel earlier this month](#), accuses Morgan Stanley of pulling a "bait-and-switch."

The firm got team members to sign an agreement containing non-solicitation language just days before its protocol exit in November 2017, according to the six advisors say. Morgan's lawsuit accuses them of breach of contract.

The case is the latest example of how [Morgan Stanley's withdrawal from the Broker Protocol a year ago](#) continues to scramble advisors' career planning.

The wirehouse [has filed several successful lawsuits](#) against brokers it alleges violated non-solicitation agreements after they left for rival firms.

In this newest case, Morgan Stanley accuses the Bourbonnais, Illinois-based team of violating non-solicitation agreements contained in a joint production agreement. Two of the six advisors also had such agreements contained in their employment agreements, the firm says.

Morgan Stanley claims clients have complained to the firm of being solicited to move their business. The firm did not name these clients in documents filed last week in federal court in Chicago. It did point to a Facebook post from a wife of one advisor that it said clients had liked or commented on. The woman said in the post she was proud of her husband and his colleagues' career move, according to a screenshot Morgan Stanley included in its court filing.



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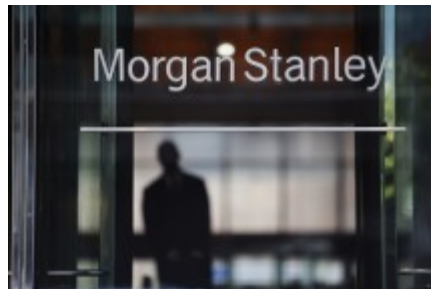
Advisors Ronald Ouwenga, Brian Thomas, Myron Hendrix, Michael Bruner, Jeff Schimmelpfennig, and Zachary Birkey deny the firm's charges, arguing they took no documents and solicited no clients.

In addition, the brokers contend the joint production agreements were dated Nov. 3 — three days before Morgan Stanley exited the Broker Protocol. This

was well after Morgan Stanley sent notice on Oct. 24 of its withdrawal to the law firm that administered the protocol, "which means that [Morgan Stanley] knew that it was exiting the protocol but omitted this from defendants leading them to believe that the protocol would be applicable," the brokers claim.

The firm's withdrawal was not made public until Monday Oct. 30.

(Bloomberg News)



But convincing a judge that this potential fact pattern is compelling could be an uphill struggle, says Ross Intelisano, an attorney at Rich, Intelisano & Katz and who is not affiliated with the case.

"It's a tough issue because they signed an agreement," says the New York-based Intelisano. "But perhaps the combination of that could potentially sway a judge. It's certainly not automatic, but I find it interesting and a judge may well too."

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There could also be validity to an argument based on Morgan Stanley's Broker Protocol reversal, since advisors had been recruited under it for years, according to Jim Eccleston, another lawyer not affiliated with this case.

"There is a long standing principle that someone cannot come into an equity court with unclean hands. I could see this judge ruling along those lines, meaning that Morgan Stanley has unclean hands because it did up until recently did exactly what these reps are accused of doing," the Chicago-based Eccleston says.

A spokeswoman for Morgan Stanley declined to comment on the case. A Stifel spokesman and attorneys for the advisors could not be reached for comment — the team is represented by lawyers Gary Blackman, Jason Hirsh and Jamie Burns at Chicago law firm Levenfeld Pearlstein.

Still, the advisors contend this history is "critically important" to the judge's analysis.

Morgan Stanley is "filing countless lawsuits" against advisors such as the Bourbonnais team "who joined the firm with one expectation only to now have their hands tied for reasons outside their control."

The team also contends that the wirehouse makes no specific complaints against four of the six advisors and that Morgan Stanley's non-solicitation agreements are not enforceable under Illinois law.

Judge Joan Gottschall has yet to rule on Morgan Stanley's motion for a temporary restraining order.

The firm is also pursuing a FINRA arbitration case against the advisors, according to court filings

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