

4 Firms Are Champions In Class Action Litigation, GCs Say

By **Ama Sarfo**

Law360, New York (September 10, 2013, 2:05 PM ET) -- When corporate counsel are confronted with potential class actions by disgruntled consumers or investors, there are four law firms they want on their side, according to a new report.

K&L Gates LLP, Kirkland & Ellis LLP, Littler Mendelson LLP and Morgan Lewis & Bockius LLP are the firms that in-house counsel most want to defend them against class actions and mass torts, according to the BTI Litigation Outlook 2014 **report** by BTI Consulting Group Inc. (Wellesley, Mass.). The firms were named as powerhouses based on interviews with 300 corporate counsel.

When presented with potential class actions, these four firms routinely call on their best and most experienced attorneys in the initial strategy phases before taking any action, which makes their success rate that much higher, BTI President Michael Rynowecer told Law360.

"In some firms, whoever gets the lead on a class action keeps it, whereas in top firms, whoever gets it shares it with the most experienced," Rynowecer said. "Not all firms take that approach to business development."

Rynowecer added that the powerhouses are good at listening to their clients and being able to sort through the multiple voices that are involved in class actions.

And lawyers in the four firms resoundingly agreed that their success is partly due to their willingness to seriously study the substantive legal areas of the industries in which they litigate.

"There is no substitute for expertise in the substantive areas of the law and intimate familiarity with developing case law," John Rotunno, a K&L Gates litigation practice leader, told Law360.

K&L Gates has a broad-ranging class action practice that includes securities, antitrust, employment, discrimination, product liability, environmental and consumer litigation. A focus is the firm's consumer finance class action practice, which recently scored a win in a federal jury trial defending Wells Fargo Bank NA in a mortgage referral kickback class action.

And in recent years, the firm has seen an increase in class actions accusing home loan servicers of failing to engage in loan modification and debt collection efforts and alleged unfair and deceptive practices cases, amongst other mortgage-related actions, according to R. Bruce Allensworth, a partner in the firm's Boston office who was instrumental in forming what is now K&L Gates' financial institutions and services litigation practice group.

Allan King, co-chair of Littler Mendelson's class action group, told Law360 that his firm's practice has been growing at around 15 percent for the last 7 or 8 years, thanks to the firm's market position as the nation's largest labor and employment firm and a broad team of litigators who specialize in nuanced areas, like statistics and e-discovery.

King said that when he became co-chair about 10 years ago, Littler Mendelson handled a heavy mix of discrimination cases. Now, the firm's class action workload is about 40 percent federal Fair Labor Standards Act cases, 40 percent California labor code cases and the remainder discrimination and Employee Retirement Income Security Act matters, he said.

Kirkland & Ellis, which BTI's 2014 report named as one of the four most feared litigation firms, was also ranked as a class action powerhouse in last year's BTI survey. About 250 Kirkland attorneys are involved in class actions on a regular basis, according to senior litigation partner Jay Lefkowitz.

“Our clients understandably view litigation as a major distraction and a means of last resort. Therefore, we try to use our skills as trial lawyers to discourage potential litigants from bringing actions against our clients,” Lefkowitz told Law360. “Where that is not achievable, the next best outcome is reach a quick, cost-effective resolution of any action, whether through motion practice or negotiation, or if necessary, trial.”

This aggressive stance has paid dividends for the firm, which has successfully defended 24 Hour Fitness, AOL, Hertz Corp., Cigna Corp., DirecTV Inc., The Dow Chemical Corp. and other major corporations in an array of class actions in recent years.

“It's very hard for companies to avoid being the target of a lawsuit, particularly those that may be frivolous, and so they must react strongly and swiftly, particularly if they're in an industry where they can be subject to repetitive actions,” Lefkowitz added. “They must demonstrate that they're willing to take on plaintiffs in a rigorous manner.”

For Morgan Lewis, its success in the class action realm is attributable in part to its belief that class actions are much more than mere legal issues, J. Gordon Cooney, managing partner of Morgan Lewis' Philadelphia office told Law360.

“A class action nearly always challenges some aspect of your client's business and you need to be thinking about the business impact, not just the litigation,” he said.

Some of the broader issues that must be considered are shareholder issues, customer issues, media coverage and government investigations, according to Cooney.

“We can handle many, if not all of those areas, and if a client hires other counsel, we've also been very successful in working with the client and other firms to help develop a strategy to address the business problem that the client might have,” firm litigation partner Joseph Duffy added.

BTI's report also named 13 other firms as "standouts" in this arena. The firms are Alston & Bird LLP, Bartlit Beck Herman Palenchar & Scott LLP, Bingham McCutchen LLP, Dechert LLP, DLA Piper, Hogan Lovells, Jones Day, O'Melveny & Myers LLP, Orrick Herrington & Sutcliffe LLP, Quinn Emanuel Urquhart & Sullivan LLP, Scopelitis Garvin Light Hanson & Feary PC, Shook Hardy & Bacon LLP and Skadden Arps Slate Meagher & Flom LLP.

Additionally, 41 other firms made BTI's "honor roll" for class actions and torts.

--Editing by Andrew Park.

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