

Law Schools Brace For Attacks On Employment Statistics

By **Erin Fuchs**

Law360, New York (February 10, 2012, 4:49 PM ET) -- Law school graduates are expected to file dozens of new proposed class actions in the coming months attacking their alma maters' employment statistics, and while the suits could spur more transparency in law school recruiting, the litigation itself likely has fatal flaws, lawyers said.

Fifteen law schools are already being forced to defend their employment statistics in response to recent suits from disillusioned law grads. On Feb. 1, a dozen law schools including Chicago-Kent College of Law and Brooklyn Law School were accused in proposed class actions of inflating postgraduate job and salary statistics.

The suits followed similar claims against Michigan-based Thomas M. Cooley Law School — the self-described largest law school in the U.S. — New York Law School and Thomas Jefferson School of Law, and more are on the horizon as many graduates continue their struggle to find legal work, according to plaintiffs' attorneys.

“We think [our clients] paid for degrees that were worth substantially less than they were made out to be” worth, said Jesse Strauss, a plaintiffs' attorney who is co-leading most of the litigation. “We represent people who are working in pet stores, people who are working at Starbucks, people who who are working as babysitters.”

The 15 cases filed so far on behalf of disgruntled graduates mark the beginning of a legal assault that will, according to Strauss, saddle roughly 20 law schools with similar actions every couple of months.

The suits come amid broader calls for reform, including a promise by the American Bar Association in October that it would require law schools to provide more specific postgraduate employment data in 2012 after Sen. Barbara Boxer, D-Calif., chastised it over its older rules.

While the litigation may bolster these clamors for transparency, the suits themselves will likely fail as class actions because of varied situations of individual class members, and could even face some hurdles on the merits of the claims, lawyers said.

“These complaints read to me like a crusade in want of a viable legal theory, and they have not found one yet,” said Scott T. Schutte, co-chair of the class-action group at Morgan Lewis & Bockius LLP.

The suits allege fraud and deceptive trade practices claims under state consumer protection laws, asserting that schools used various tactics to mislead prospective students about their employment outlook, Strauss said.

Data released by law schools on graduates who have gotten jobs conflates legal and nonlegal jobs, as well as part-time, full-time and short-term jobs, in a way that has misled prospective students, according to Strauss.

The schools also failed to reveal that many of the graduates who responded to their salary surveys were high earners, he said. As a result, Strauss said, his clients paid for degrees with inflated prices and are seeking damages to make up the difference.

“The impression that was left was incredibly misleading,” he said.

However, the attorneys pursuing these cases could have difficulty showing the class members all suffered the same damages, according to lawyers including Andy Friedman of plaintiffs' firm Cohen Milstein Sellers & Toll PLLC.

“There will be damage issues across the board,” said Friedman, who heads Cohen Milstein's consumer protection and unsafe products group. “There is a huge disparity in the damages there.”

Currently, the cases' class definition includes attorneys whose schools might not have damaged them at all, Schutte pointed out. He wondered how a graduate who relied on the alleged misrepresentations but then got a highly paid BigLaw job might prove damages.

“How about a person who gets offered a job at a top salary but chooses to work at a much lower salary in a public service job?” Schutte said. “Under the current class definition, all these folks would be in the class, but it's hard to see how they've been damaged.”

Moreover, in Illinois, where several of the cases are being fought, plaintiffs must show a link between an alleged misrepresentation and harm — which could be tough on a classwide basis, Schutte said.

“That means there is a factual issue as to whether each class member saw the statements at issue,” he said.

For their part, lawyers at Venable LLP said they believed they could defeat the graduates suing their client New York Law School on the merits of the case before the court even briefs class certification.

Among other defenses, Venable plans to assert that New York Law School's employment statistics complied with ABA regulations, and that compliance with such rules provides a defense against a claim under New York's deceptive trade practices law, said partner Michael Volpe, who graduated from New York Law School.

“The ABA promulgates rules or regulations or standards that all accredited schools comply with,” he said.

However, complying with an ABA regulation is not the same as complying with a government regulation or a ruling handed down by the Federal Trade Commission, noted Richard Alderman, the director of the Consumer Law Center at the University of Houston.

“I think that if a school knew that strictly following the ABA in its publications and literature ... provided a misleading picture — I don't think that's a defense,” Alderman said, referring to a law school potentially using its compliance with ABA rules to fend off consumer protection suits.

While the suits face steep hurdles to class certification, individual law school graduates may be able to gain some traction on the merits of their cases if they can demonstrate that they read the employment statistics and actually relied on them, Alderman said.

Unlike many consumer class actions, which are brought together because they involve paltry amounts, these cases could be brought individually because of the high cost of law school tuition, Schutte said. And a “one-off,” individual case could even lead to an injunction changing the way a school reports its statistics, he pointed out.

Regardless of how the suits play out in court, the schools are under pressure to improve the transparency of their employment statistics. In a Feb. 6 report, Moody's described the recent suits filed against the dozen schools as “credit negative,” citing reputational damage that could take a toll on enrollment.

Indeed, the litigation is likely to impact how future crops of students view the value of a law school education, said Jessie Kornberg, an attorney at litigation boutique Bird Marella and board member of nonprofit Ms. JD.

“[R]egardless of the impact on post-graduation employment, the lawsuits have brought the issue to prospective law students' attention so that they may be more likely to sign up for law school (and loans) with better information or at least a healthy dose of caution,” she said.

--Additional reporting by Dietrich Knauth and Sindhu Sindar. Editing by Jocelyn Allison and Elizabeth Bowen.