By MODINAT "ABBY" KOTUN

The Rising Tide of Law Firm Pay Discrimination Suits

Women attorneys as a group have experienced minimal progress with respect to pay and advancement. Women make up 50% of law students and 46% of associates. However, women only make up 30% of non-equity partners and 19% of equity partners. And when women reach the partnership ranks, there is no guarantee they will be paid on par with their male counterparts. Across the Am Law 200, the median woman equity partner makes 94% of what the median man equity partner makes. (This number is 90% for non-equity partners and 94% for associates.)[1]

At the same time, there appears to be an awakening across the country in the area of pay equity. Women in all industries and the public generally are demanding equal pay for equal work. Large companies are vowing to close pay gaps in their workforces. New legislation is sweeping the country, from Oregon and California to Philadelphia and Maryland.

Until recently, it seemed as though women in the law were not benefiting from this trend. But women in law firms are fighting back, asking for parity, and suing their firms if they are not heard. In January 2018, employment law powerhouse Ogletree, Deakins, Nash, Smoak & Stewart, P.C. joined the growing list of law firms embroiled in pay discrimination lawsuits across the United States, including suits against Chadbourne & Parke, Winston & Strawn, Steptoe & Johnson, Proskauer Rose, and LeClairRyan. This article briefly explores the facts and issues associated with these cases.

I. *Knepper v. Ogletree, Deakins, Nash, Smoak & Stewart, P.C.*, No. 3:18-cv-00303 (N.D. Cal. filed Jan. 12, 2018)

The most recent allegations to be lodged against a law firm come from Dawn Knepper, who seeks $300 million in damages on behalf of herself and other similarly situated female non-equity shareholders at Ogletree. According to the complaint, 58% of Ogletree's associates are women, but women make up less than 42% of non-equity shareholders and less than 20% of equity shareholders. Knepper's complaint details her asserted reasons for the "dwindling proportion of women at each successive level of Ogletree's hierarchy."

According to the complaint, "the over-representation of men in [leadership] is both the source and product of continuing systemic discrimination." Knepper asserts that women shareholders are discriminated against in compensation and promotion policies and in business development and job assignment practices. "Ogletree's shareholders receive credit [towards compensation] in five main categories: originating credits, managing credits, responsible credits, working credits, and billable hours."

Knepper alleges that originating and managing credits are more highly valued, but women shareholders disproportionately end up saddled with casework and tasks that are not so highly valued. She also claims that women shareholders are less likely to be invited to pitches or supported in other business development that leads to originations. As an example, Knepper states that in "her over 12 years with Ogletree, [she] has never been invited on a business pitch to a prospective client." Knepper gives further examples of male non-equity shareholders being promoted to equity status over her, even when she allegedly outperformed them with respect to billable hours, originations, responsible credits, and working credits.

Knepper's lawsuit includes pattern or practice pay discrimination claims under Title VII, claims under the federal Equal Pay Act, California Equal Pay Act, and California Fair Pay Act, and retaliation claims, among others. As of the date of this writing, responsive pleadings were not yet due from Ogletree.

II. *Campbell v. Chadbourne & Parke LLP*, No. 1:16-cv-06832 (S.D.N.Y. filed Aug. 31, 2016)

Kerrie Campbell worked for years as a non-equity partner at a Los Angeles-based firm before joining Chadbourne as an equity partner in January 2014. At Chadbourne, according to Campbell, her productivity and revenue generation were consistent with the firm's top performing male partners but she was paid at levels commensurate with male partners with far less originations and billings. Campbell complained to firm leadership, but no substantial changes to her compensation were made. Although Chadbourne denies this version of events, Campbell asserts she was asked to leave and, when she did not, her compensation was cut. Campbell filed suit, and Chadbourne partners voted her out of the partnership shortly before merging with Norton Rose Fulbright.

Campbell brought claims for pay discrimination under Title VII and the federal Equal Pay Act, retaliation, and alleged violations of various New York and New York City laws. Interestingly, two other former Chadbourne female partners joined the $100 million suit as plaintiffs. One such partner, who spent her entire 35-year career at Chadbourne, alleged that the firm knew of the pay disparities for years because she made them aware at the highest levels. The parties recently submitted a consent motion for approval of a settlement to the tune of $2 million to the named plaintiffs plus attorneys' fees.

III. *Doe v. Proskauer Rose*, No. 1:17-cv-00901 (D.D.C. filed May 12, 2017)

The suit against Proskauer Rose brought in May 2017 by an equity partner is unique in that the plaintiff still works at the firm and was allowed to proceed under a Jane Doe pseudonym. Although the firm knows Doe's identity and it can likely be deciphered from the available information in court filings, the assigned district judge granted Doe's request for temporary anonymity, filed concurrently with the complaint. Doe, a firm practice group head, sues for $50 million in damages for pay discrimination under the federal Equal Pay Act, violation of the Family and Medical Leave Act, retaliation under both statutes, and violation of District of Columbia and Maryland laws. In support of her claims, Doe points to several male comparators who allegedly received higher compensation than Doe despite lower originations, lower billable hours, and lower total hours worked over multiple years. She details repeated complaints about her pay and the firm's alleged non-response and later retaliation. According to Doe, the firm's treatment of her after her complaints "took a psychological and physiological toll" on her, resulting in adverse health consequences. In requesting anonymity, Doe argued that it was necessary to protect confidential information about her health and her family and to protect her from potential reputational damage. It remains to be seen if the anonymous filing route will be successfully used by future plaintiffs. The case is ongoing with a pending motion for summary judgment by Proskauer Rose.

IV. *Ramos v. Winston & Strawn*, No. CGC-17-561025 (Sup. Ct. Cal. S.F. filed Aug. 30, 2017)

Constance Ramos joined Winston as an income partner (a non-equity partner) in 2014 after having been a non-equity partner at another large firm. She and two other attorneys hired at the same time were considered a trio of "deep experience in the semiconductor and electronics industries"; the two other attorneys left the following year. Ramos was eventually asked to also leave, but did not want to, as she had intended to grow her practice at Winston. After several more requests for Ramos's resignation, Ramos's compensation was decreased twice, from $450,000 upon hire to $200,000. Ramos later resigned "under protest."

Ramos sued Winston under California law for sex discrimination, retaliation, and violation of the Fair Pay Act, among other claims. In response to her complaint, Winston filed a motion to compel arbitration and dismiss or, alternatively, to stay proceedings. Winston based its motion primarily on the firm's Partnership Agreement and that agreement's mandatory arbitration clause. Any challenge to the enforceability of the arbitration clause would fail, according to Winston, because Ramos was an income partner and not an "employee." The California Superior Court granted the motion to compel arbitration and stayed the lawsuit. Ramos appealed, arguing that arbitration is not the proper venue for her claims because the "AAA commercial rules... are inadequate for handling employment disputes" and the arbitration clause's mandate that each arbitrator selected be a partner in a large law firm is essentially the "fox guarding the henhouse."[2]

This case is worth following for its treatment of the mandatory arbitration clause and whether an income partner is an employee within the meaning of California employment laws. A similar case was settled in 2017 between Sedgwick and a non-equity partner after a court granted a motion to compel arbitration.[3] In another similar case, an equity partner argued that she was not bound by an arbitration agreement because she had not signed it.[4] The district court disagreed and granted a motion to compel arbitration. The plaintiff unsuccessfully appealed the district court's ruling.

V. *Houck v. Steptoe & Johnson*, No. 2:17-cv-04595-ODW-AFM (C.D. Cal. filed June 22, 2017).

Plaintiff Ji-In Houck was hired by Steptoe as a "contract attorney," after two years working elsewhere as a litigation associate where she had managed significant responsibilities. At the time of her hire, according to the lawsuit, male attorneys at Steptoe who were admitted to the bar at the same time as her earned almost double her salary of $85,000. She was told that the firm would consider changing her title to "associate" after her first year at the firm. The next year, Houck was made an "associate," and her salary was increased. By the time she was a fourth year associate, she was allegedly making what first year associates at the firm made. Houck complained to management and eventually received another raise, falling short of what her male counterparts were making by $30,000. She left the firm soon thereafter.

When Houck was hired, and again when she was made an associate, she signed a contract with an arbitration clause. Houck argues, however, that the arbitration clause in her contract is invalid pursuant to *Morris v. Ernst & Young, LLP*, currently before the United States Supreme Court.[5] Pending a decision in the *Morris* case, the District Court stayed the litigation, including Steptoe's pending Motion to Dismiss and for Summary Judgment and Houck's Motion to Certify).

Conclusion

These lawsuits are still in their infancy and it remains to be seen how they will be resolved and what, if any, long-lasting change they will bring. But it is clear that there is a rising tide of these allegations finding their way into the halls of justice.

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Endnotes

1. DESTINY PEERY, NAT'L ASS'N WOMEN LAWYERS & NAWL FOUND., Report of the 2017 NAWL Survey on Promotion and Retention of Women in Law Firms (2017).
2. *Ramos v. The Superior Court of the State of Cal. for the Cty. of S. F.*, No. A153390 (Cal.App. 1 Dist. filed Jan. 19, 2018).
3. *See Ribeiro v. Sedgwick LLP*, No. 3:2016-cv-04507 (N.D. Cal. filed Aug. 10, 2016).
4. *See Craddock v. LeClairRyan, P.C.*, No. 3:16-cv-00011 (E.D. Va. filed Jan. 6, 2016).
5. *Morris v. Ernst & Young, LLP*, 834 F.3d 975, 980 (9th Cir. 2016), cert. granted, 137 S. Ct. 809 (2017).