

Employment Group Of The Year: Orrick

By Adam Lidgett

Law360 (January 28, 2019, 11:19 AM EST) -- Orrick Herrington & Sutcliffe LLP continued to establish itself as a leader in the employment sector last year by helping clients like Microsoft and Twitter escape class certification bids in bias suits against them, making it one of Law360's Employment Groups of the Year.

In June, a Washington federal judge refused to certify a class of more than 8,000 female Microsoft Corp. information technology workers and engineers who claim the company's promotion scheme and allegedly male-dominated culture caused them to earn significantly less than men. That case is now on appeal.

Jessica R. Perry, an Orrick employment group partner in Silicon Valley who was on the case, said it was a three-year-long battle, but, ultimately, she thinks the court saw it much the way her team did: There were highly individualized issues that impacted the case and a lack of commonality that tied the different allegations together.

"With litigation like this, you don't always win every battle, so it is important to stay focused on the class certification issue because that is the most important one," Perry, the head of the firm's litigation practice globally, said. "And we were constantly thinking about our strategy and what the evidence was showing along the way. It became very clear that the theories plaintiffs were pursuing just weren't borne out by the evidence, and that was confirmed by how their theories kept changing along the way."

Additionally, in July, a group of female Twitter employees were denied class certification by a San Francisco state court judge, who said that, under the U.S. Supreme Court's *Walmart Stores v. Dukes* standard, the workers' individual allegations over the tech company's allegedly sexist promotion process were too diverse to be lumped together.

In a case that is also on appeal, California Superior Court Judge Mary Wiss said the proposed class couldn't show Orrick client Twitter had a "common mode of exercising discretion" for denying promotions to women as required by the *Dukes* decision.



"We always try to be cognizant of what is going on more broadly that could impact any particular case. And certainly there is a lot of attention and scrutiny on gender issues in the workplace, and in tech in particular," Perry said. "But both Microsoft and Twitter invest deeply in diversity and are committed to getting better at these issues. And regardless of the broader movement, the facts in these cases and the applicable law showed a class action wasn't the right vehicle to solve a bigger societal issue."

The firm had numerous other wins for clients in the past year, including settling a case brought against a client sued by IBM. In that case IBM told a New York federal judge in March that it had settled a lawsuit against former top executive and Orrick client Lindsay-Rae McIntyre, who the company claimed violated a yearlong noncompete agreement when she accepted a job as Microsoft's chief diversity officer.

Mike Delikat, an Orrick partner in New York City, said it was the first case the firm had seen where someone in the role of chief diversity officer was the object of an attempt to enforce a noncompete agreement.

"That case did garner a fair amount of press attention because of the somewhat novel ... issue of whether diversity efforts are a protectable trade secret," Delikat, who is a co-employment practice group leader, said.

Delikat said the firm has about 70 attorneys globally working in the employment field. He said the firm has a major employment presence in California, with lawyers spread across the state in places like Silicon Valley, San Francisco, Sacramento and Los Angeles.

The firm has 11 employment law attorneys in Paris and has a presence in London, Dusseldorf, Milan and Tokyo, he said.

Delikat noted the employment practice isn't the largest by the numbers, but he said it is still a marquis practice for the firm.

"We continue to grow mostly organically through elevating associates to partner, but we also look for other opportunities," he said.

--Additional reporting by Braden Campbell, Cara Bayles and RJ Vogt. Editing by Alyssa Miller.