

The 6 Firms GCs Want to Hire for Securities Suits

Six law firms' ability to integrate legal insights with a sophisticated understanding of business risks make them the top choice for general counsels looking to navigate the tricky waters surrounding securities and finance litigation, according to a recent survey.

Dentons, Jones Day, Kirkland & Ellis LLP, Latham & Watkins LLP, Skadden Arps Slate Meagher & Flom LLP and Sullivan & Cromwell LLP were named securities and finance litigation powerhouses in the BTI Litigation Outlook 2018 report, an annual analysis of the legal landscape conducted by BTI Consulting Group (Wellesley, Massachusetts).

According to BTI President Michael B. Rynowecer, what sets these firms apart is their ability to help clients put out fires before they start by providing advice that fuses deep legal expertise with a keen grasp of the unique risks facing their clients' businesses.

"They're ahead of the game," Rynowecer said. "They're not waiting for clients to call up and say, 'What's our exposure?'" These firms will have regular briefings with their clients and potential clients on what they need to worry about next, what the triggers will be, and what they should be looking for within their companies to identify risk factors."

BTI's report is based on 350 in-depth telephone interviews conducted between February and July with top legal decision-makers at organizations with at least \$1 billion in revenue. The decision-makers included general counsels, chief legal officers and other heads of litigation hailing

from more than 15 industries, ranging from banking to health care to wholesale trade.

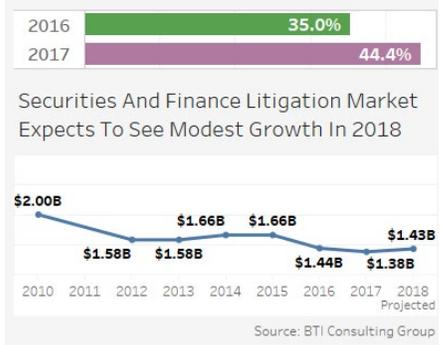
Those surveyed identified the six firms as the best choices to turn to for securities and finance litigation, which a growing number of companies are facing. More than 44 percent of companies are involved in securities and finance litigation, this year's report found — up from 35 percent a year ago.

Driving that increase is the heightened scrutiny companies are under from activist investors, a group that has grown from a handful of private equity firms to include large pension funds and other more traditionally conservative shareholders, Rynowecer said.

And although the 2016 election ushered in an era of unified Republican government in Washington that has prompted speculation about a pullback in U.S. Securities and Exchange Commission investigations and enforcement activity, Rynowecer said the legal decision-makers he's talked to aren't letting down their guards. Even if the SEC becomes less aggressive, he said, other regulatory agencies have indicated they are not backing down, leaving open the possibility of follow-on securities suits.

"Right now you're seeing growth in large, complex labor matters which can easily turn into class actions or become very public, and those can be the cause of a securities litigation because someone's going to claim it impacted the stock price or management didn't disclose it," Rynowecer said.

Companies With Securities And Finance Litigation Increases 27%



Still, even as BTI spotted a jump in the number of companies expecting securities litigation, the report found relatively flat growth in the market size for this practice area, which is projected to rise to \$1.43 billion next year, up from \$1.38 billion this year. That 3.6 percent in projected growth clocks in slower than the 5.1 percent in growth expected across the entire U.S. litigation market and is a manifestation of what BTI recorded as an across-the-board surge in settlements — a record-high 60.7 percent of active matters were reported settled in 2017, compared with 49.3 percent last year. BTI found clients expect settlements to ease next year to 55.7 percent of active matters, but that rate would still come in above those seen between 2012 and 2016.

"Even though there's a big increase in the client base, the penchant to settle is extraordinarily high in securities and finance [litigation] because the impact on the stock price and the public nature of the outcome is way more risk than companies want to handle, so their first

thought is, ‘How do I find a way to have a settlement?’” Rynowecer said.

With companies facing an increasing number of complex legal matters, BTI sees the biggest opportunities for the firms that invest in developing a nuanced understanding of the nuts and bolts of their clients’ businesses. This is a key differentiator that establishes a firm as a powerhouse, according to Rynowecer.

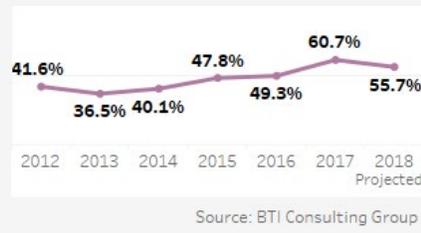
At Sullivan & Cromwell, that understanding comes in part from having built and nurtured longstanding relationships with clients that cut across the various practice areas at the firm, creating what Robert J. Giuffra Jr., who heads the firm’s securities litigation practice, describes as a “seamless practice.”

“Our firm is not siloed in the way that other firms are,” Giuffra said. “Most of the people who work here are lifers, and everybody’s grown up through the system. It’s a generalist law firm, so people are not pigeonholed into narrow specialties.”

Not only can that nuanced understanding help a law firm spot risks before they turn into full-blown litigation, but according to Latham & Watkins’ Jeff Hammel — global co-chair of the firm’s securities litigation and professional liability practice — it’s also crucial to formulating the right legal strategies for clients.

“Although we’re litigators and that’s our profession, we’re practical businesspeople

Settlements Expected To Stay Elevated After Record 2017



as well,” Hammel said. “We pride ourselves on not just being hammers for whom every problem looks like a nail, but we are able to — in a nuanced way — understand what may be the right outcome for a particular problem that may not always just be litigating it until the very, very end.”

A similarly multidisciplinary ethos was a common feature of the other powerhouse securities and finance litigation firms identified by BTI, like Jones Day.

“It’s in our DNA,” Jayant Tambe, co-head of Jones Day’s financial institutions litigation and regulations practice, said. “We naturally think across disciplines. It’s not just securities lawyers speaking with the financial litigation lawyers; we’re also talking to our banking and finance colleagues, and it’s not just domestic, it’s global.”

This flexibility to create custom-tailored solutions for clients is also what Andrew Clubok considers a source of strength at Kirkland & Ellis, where Clubok leads the firm’s securities and shareholder litigation practice group. This “holistic approach,”

as Clubok describes it, allows Kirkland’s attorneys to examine their clients’ securities-related matters from multiple legal angles to help pinpoint and address the specific risks that may give rise to litigation.

“We have a free-market system here from the day you walk in the door as a first-year associate such that you’re very strongly encouraged to work in all kinds of areas of litigation,” Clubok said. “All of us have grown up litigating every kind of case you can imagine, whether it’s a products liability case, a white collar case, or an accounting case.”

BTI’s Rynowecer underscored how valuable this proactive, “risk-avoidance” counsel can be to clients.

“There are firms that can bring the business risk issues, there are firms that can bring the legal issues, but there’s not a lot of firms that can really make those one, have equal weight and blend them into their advice,” Rynowecer said. “That’s one thing the powerhouses really stand out for.”

The full report [is available here](#) at BTI Consulting Group’s website.



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