

The 4 Firms In-House Counsel Fear The Most

By **Andrew Strickler**

Law360, New York (September 09, 2013, 5:40 PM ET) -- Four firms strike fear in the hearts of corporate counsel more than any others thanks to their relentless approach to high-stakes litigation and a knack for building legal teams that go for the jugular, according to a new survey.

Jones Day, Kirkland & Ellis LLP, Quinn Emanuel Urquhart & Sullivan LLP and Skadden Arps Slate Meagher & Flom LLP carry those traits in abundance, according to a survey by The BTI Consulting Group (Wellesley, Mass.), and were recognized as the "fearsome foursome" firms in the BTI Litigation Outlook 2014 report.

Drawing on hundreds of interviews with general counsel and law department heads, these firms stood out as those most likely to trigger dread in opposing counsel for their tenacity and their ability to anticipate their legal opposition's strategy, said BTI President Michael Rynowecer.

"They have a take-no-prisoners attitude, and they don't contemplate not winning," Rynowecer said. "They bring the right people, the right chemistry. It's all about the level of commitment, and not just in courtroom strategy, but in getting the right resources together."

Kirkland & Ellis and Skadden appeared in previous "fearsome" lists from BTI in 2012 and 2010, with Jones Day among the group last year. BTI also recognized four firms —Boies Schiller & Flexner LLP, Cravath Swaine & Moore LLP, Hogan Lovells US LLP, and Jenner & Block LLP — for an "Awesome Opponent" citation.

The recognitions were based on about 300 one-on-one interviews with litigation heads, general counsel and other law departments leads conducted between March and June, according to BTI. The represented companies had an average annual revenue of \$14.3 billion.

At Quinn, which also appeared in BTI's Fearsome Foursome in 2010, trial lawyers clients, and the firm's outsized reputation have benefited from a winning litigation strategy rather than professional combativeness, said partner A. William Urquhart.

"Everyone knows that when we say we'll try a case, we will try it and we'll do a very good job of it, and in many cases that brings about earlier settlements," he said. The firm also draws on the firm's full-time trial and jury specialist, counsel Douglas Post, who Urquhart said has an "uncanny" ability to figure out what resonates with juries.

In July, the firm led Federal Housing Finance Agency to a favorable \$885 million settlement with Swiss bank UBS AG over allegations UBS misrepresented mortgage-backed securities it sold to Freddie Mac and Fannie Mae before the 2008 financial crisis. That deal followed the \$1.7 billion settlement in May for Quinn client MBIA Insurance Corp. which ended claims against Bank of America Corp. over the bank's Countrywide Home Loans Inc.'s allegedly faulty MBS offerings.

"Internally, we discuss this idea of 'jugular' litigation," Urquhart said. "In a big case, there may not be 10 documents that really matter, and we try to figure out the few that do before the other side does, and we focus on that to the exclusion of what doesn't matter."

Kirkland litigators helped further their reputation in the U.S. Supreme Court this year with the reversal of an appeals court ruling against client Mutual Pharmaceutical Co. that a generic-drug user can bring a state-law design defect claim against the manufacturer, the high court's first major decision on generic-drug manufacturer liability since the 2011 Mensing ruling.

In October, Kirkland also won an en banc Federal Circuit ruling that the U.S. Congress' efforts to withhold judicial salary adjustments previously established by law violated the Compensation Clause of Article III of the Constitution, overruling a precedent on the same issue in *Williams v. United States*.

"Our litigators work very hard to serve our clients' objectives, so it's great to be recognized by corporate general counsel for the quality of our work," said Jay Lefkowitz, a senior litigation partner in the firm's New York office.

Mickey Pohl, leader of Jones Day's business and tort litigation practice, credited the firm's Midwest roots for a foundation of well-trained litigators. While many New York-based firms concentrated on securities and financial work through the legal industry's expansion since the 1970s, Jones Day's clients more often called on the firm to take on a variety of litigation and trials of all sizes, he said.

"At Jones Day, in the culture of the firm, you've got to be able to go to court on small cases and big cases, and eventually run big projects," Pohl told Law360. "Among the mega-firms, Jones Day has always seen litigation as a big player, as a cornerstone of the big firms of the 21st century, and we've planned accordingly."

The 2,400-lawyer firm currently has about 560 lawyers in the business and tort litigation practice, and about 200 additional lawyers available for litigation work.

Pohl highlighted the firm's representation of R.J. Reynolds Tobacco Co. in a swarm of Florida suits springing from the state Supreme Court's landmark Engle ruling and the ongoing Eleventh Circuit challenge to that ruling as exemplifying the litigation team's ability to manage complex projects.

He also pointed to the firm's involvement in the blockbuster D.C. Circuit ruling from January striking down President Barack Obama's recess appointments to the National Labor Relations Board. The U.S. Supreme Court agreed in June to review the ruling in what will be a significant test of executive branch power.

"If you're invited into the biggest cases and litigations against the government, it says something about what people think of your practice," Pohl said.

Skadden litigators continued to win for companies caught in Bernie Madoff's Ponzi scheme, including in a recent landmark Second Circuit ruling on behalf of UniCredit SpA, which ended Madoff trustee arguments that the 35-year-old case of *Redington v. Touche Ross* still carried precedential power.

In December, a Skadden securities team — which was also recognized in BTI's securities and finance "powerhouses" category — also won a Second Circuit affirmation of the dismissal of derivative suits against Bank of America Corp. related to subsidiary Merrill Lynch, and again turned back allegations that the BofA board wrongly failed to sue Merrill directors for their bad bets on subprime mortgages and mortgage-backed securities investments.

"Economic uncertainty and regulatory scrutiny have raised the stakes for clients facing the threat of litigation or government enforcement," said David M. Zornow, global head of Skadden's litigation and controversy practices. "Skadden's global presence and depth of expertise has allowed us to address our clients' needs by understanding their business objectives and creating innovative, efficient solutions to their increasingly complex disputes."

--Editing by Sarah Golin.