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BigLaw's Pay Traditions May Fuel Gender Bias Fire

By **Aebra Coe**

Law360, New York (September 1, 2016, 9:55 PM EDT) -- At least three major U.S. law firms have been hit with gender discrimination suits so far in 2016, a phenomenon experts say is likely fueled by murky and subjective methods of determining partner pay that are pervasive in the legal industry.

In the latest suit, filed Wednesday, Chadbourne & Parke LLP partner Kerrie Campbell brought a \$100 million class claim against her firm, saying an "all-male dictatorship" makes biased pay decisions that are discriminatory toward the firm's female partners. One month earlier, Sedgwick LLP partner Traci Ribeiro slammed her firm with similar allegations, and in January, former partner Michele Burke Craddock accused LeClairRyan of pay discrimination.

There is a certain lack of objectivity in determining pay that is exceedingly common among large law firms where mostly male firm leaders and committee members have the flexibility to make off-the-cuff judgment calls on partner compensation, according to Barbara Mayden, co-founder of legal recruiting firm Young Mayden Legal Search. It's a system that experts say can fuel the fire of discrimination claims.

"There are many compensation methods out there, from lockstep to eat-what-you-kill, with formulas and layers of subjectivity in between," Mayden said. "It's that subjectivity that can give rise to actual and perceived unfairness."

She explained that when compensation is subjective, female partners can feel shorted simply because they disagree with the reasoning of the person who determined their cut. It can also allow for actual bias to seep into the process, whether the bias is intentional or not, creating systemic discrepancies in pay.

"Study after study shows those inherent biases we all read about persist. Introduce subjectivity into the compensation formula, and those pesky assumptions sometimes raise their ugly heads," Mayden said.

In her complaint alleging widespread discrimination, Campbell points to a 2015 survey by the National Association for Women Lawyers, which found that the typical female equity partner earns 80 percent of what a typical male equity partner earns. The study also found that the median compensation reported by those surveyed was \$504,000 for female equity partners and \$629,407 for male equity partners.

The attorney hones in on her firm's pay structure as a source of the inequity that she alleges, saying it has been developed and is carried out entirely by an all-male committee without any input from others at the firm.

The study Campbell cited also found that 82 percent of equity partners in the U.S. are men, and the typical law firm has two women and eight men on its highest U.S.-based governance committee. And, the percentage of women on a firm's compensation committee correlates directly with the pay gap between women and men at that firm, the study found.

In firms that reported having two or fewer women on the compensation committee, the typical

female equity partner earned 77 percent of that earned by her male peers, while the typical female equity partner at a firm with three or more women on its compensation committee earned 87 percent of that earned by men in a similar position.

"When you have a system that on paper appears fair but allows for a lot of discretion — and the people that have the discretion are almost all male and white — those systems are often the foundation for discrimination claims," said Gloria Sandrino, head of partner recruiting at Lateral Link.

One of the ways that compensation determinations can lead to either perceived or real bias are the gray areas involved in parsing out who deserves how much credit for bringing a client to the firm, according to Sandrino.

Often, a partner who has been with the firm many decades brings a big client in and then rides the laurels of that work into perpetuity, but that doesn't acknowledge the many facets of origination, she said. There are also partners who foster new work in new areas from longtime clients — for instance, shifting the relationship from litigation to transactions or vice versa.

Some firms have moved to a project-based system of origination, rather than client-based, which can be more favorable for younger partners rather than the longtime partners and firm leaders, who are often largely men, Sandrino noted.

Additionally, because origination and other factors used to determine compensation are often decided by mostly male committees, those committee members may value certain contributions to the law firm to a different degree from the woman whose pay is being determined.

"It's just a lose-lose for women," Sandrino said. "You have no one at the table, saying 'This woman is great at mentoring,' or 'This woman was able to get us some really great associates at top law schools.' You don't have that woman sitting at the table that brings that perspective."

But an all-male or mostly male committee offering higher pay to men is not always the result of overt biases, according to Sabina Lippman, co-founder of global legal recruiting firm Lippman Jungers LLC.

"I think that representation counts, and people tend to want to reward people who look like them," she said, but sometimes men are able to develop social relationships with one another by bonding through shared interests that a woman may be less likely to take interest in or have the opportunity to do so because of greater "second shift" responsibilities.

"Even if they're not discriminating, not having women represented on those committees does give off a bad vibe and gives the impression there isn't someone to represent these folks' interests," Lippman said.

In other instances, it may just be that men push harder for more pay than women do, she suggested.

"I don't find that women are quite as aggressive about being the squeaky wheel on compensation," she said. "And a lot of times, firms feel they need to react to the squeaky wheel."

One solution to remedy both real and perceived pay bias is for firms to implement oversight of objective criteria when determining things like billing credit and origination credit, Mayden suggested.

"Clear metrics even for the 'soft' skills — teamwork, mentoring, commitment — which should not include factors that are unquantifiable or more susceptible to interpretation via a male model lens, should be used," Mayden said. "And the arbitrators of these objective and subjective criteria — the comp committee — must be comprised of all the genders."

But Lippman said she believes a certain degree of subjectivity, while it sometimes holds the potential of introducing personal biases, is important for law firms because it allows them to recruit and reward partners who have done something especially valuable for the firm in a way

that is hard to quantify.

"You could have a much more formulaic process in terms of compensation that is less subjective," she said. "But there are a lot of disadvantages to that from a recruiting standpoint."

For instance, if a firm wants to build its private equity or digital media or life sciences practice and a star partner in that practice area comes on the recruiting scene, firms often like being able to go outside their typical formula and pay more to attract that person.

"You could, say, have a formula that has one portion for strategic hires — you could incorporate that, but it requires intense detail. It makes it a little harder for firms to maneuver," she said.

--Editing by Christine Chun and Catherine Sum.

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