

Employment Group Of The Year: Orrick

By **Amanda Ottaway**

Law360 (December 3, 2020, 9:10 PM EST) -- Orrick Herrington & Sutcliffe LLP scooped up big wins in pay bias and discrimination cases for a handful of tech giants including Oracle, Microsoft, GitHub and Twitter, earning it a spot among Law360's 2020 Employment Practice Groups of the Year.

Several attorneys from the practice estimated that in the last year alone, Orrick has saved those four clients over \$1 billion in damages.

The firm's employment law and litigation practice group boasts 78 attorneys worldwide including 20 partners, according to California-based Julie Totten, who heads it up. More than 40 percent of the group's attorneys are based in the Golden State.

One of the firm's biggest wins in 2020 came on behalf of computer technology giant Oracle, after the U.S. Department of Labor's Office of Federal Contract Compliance Programs — which handles alleged bias by government contractors — lodged a \$400 million administrative pay bias suit alleging the company underpaid women and nonwhite workers, and spurned non-Asian applicants.

Erin Connell, a San Francisco-based Orrick partner who represented Oracle in the case, called it "the biggest and most significant pay discrimination case that OFCCP had ever brought" and said the agency's expert estimated the damages at between \$300 million and \$800 million.

The judge's nearly 300-page September ruling, Connell said, embraced Oracle's legal framework for using statistics in employment discrimination cases, which she called a "huge victory."

"Any class plaintiff can't prevail with just any statistical model," Connell said. "It has to have sound methodology, it has to have explanatory power, it has to compare apples to apples — it has to compare similarly situated employees — and it has to account for the major factors that impact pay."

Though the judge expressed concern with the "raw disparities" in the case, Connell said he also recognized it wasn't about whether general gender or other disparities exist, but instead whether that particular employer actually discriminated.



The OFCCP has until Dec. 7 to appeal the decision.

"Clients oftentimes come to us when they are facing their very hardest cases," said Silicon Valley-based Jessica Perry, an employment litigator and Orrick's managing partner for practice and sector alignment. For that reason, she said, the firm regularly sees novel issues and high-profile plaintiffs, such as tech companies, that are "under a microscope" when it comes to pay and gender discrimination.

In a December 2019 win for Twitter against a group of female engineers who claimed gender bias in pay and discrimination, the First District Court of Appeal upheld a California state court judge's denial of class certification, Perry said. Perry, who also serves as Orrick's global head of litigation, was one of several firm attorneys to represent Twitter.

Tina Huang sued the social media company in 2015, claiming it wrongly fired her as a result of a promotion process in which qualified female employees are less likely to be promoted than their male counterparts. Siding with Twitter, the appeals court found Huang hadn't shown Twitter employed a common practice of denying promotions to women.

Also in December 2019, Orrick snatched a victory for Microsoft when the Ninth Circuit upheld a lower court's decision to break up a class of almost 8,600 female engineers and IT employees alleging gender discrimination in pay and promotions, Perry said.

The decision in *Moussouris v. Microsoft* was critical for the tech company, the firm said. Perry cited an "evidentiary gap" in the case that she said Orrick attorneys helped expose. In its decision, the Ninth Circuit noted that there could not be a "common question" in the case because the Microsoft women held more than 8,000 different positions all over the country.

"There was simply no common policy or practice that supported any sort of widespread discrimination at Microsoft," said Perry.

In November 2019, she said, Orrick helped GitHub dodge a suit by its former assistant general counsel, who alleged the company discriminated against her on the basis of race and gender, when a California state court judge granted the company's motion for summary judgment.

Perry and Connell said representing employers in tech pushes them to be creative.

"One of the things about the practice that is so interesting and challenging is how fast tech innovates," said Perry. "We often deal with issues where the law hasn't quite kept up yet, so being pragmatic about how can you find the best business solution ... where the regulations or the legal framework hasn't yet caught up to where business is, that's a really interesting aspect of what we do."

--Editing by Bruce Goldman.