

Employment Group Of The Year: Akin Gump

By **Kevin Penton**

Law360, New York (January 14, 2016, 11:20 PM ET) -- Akin Gump Strauss Hauer & Feld LLP's employment practice helped get a client off the hook for a \$100 million pension payment and prompted a judge in another case to cite Kenny Rogers' "The Gambler" when ordering a federal agency to pay \$1 million in attorneys' fees, earning a spot among Law360's Employment Practice Groups of the Year.



Securing the award for the third time in six years, employment attorneys with Akin Gump also successfully represented Ernst & Young LLP in a case that helped define the enforceability of arbitration agreements.

Akin Gump's labor and employment group saw its size jump from 39 attorneys to 47 in the past year, an increase its head, Robert G. Lian Jr., attributes to the firm's being in tune with its clients' needs, with some looking for representation not only in higher-profile cases that garner headlines and awards, but also in more local matters.

"We try to identify our clients' needs and be responsive to them," said Lian, who noted that the group saw particular growth in its Texas, New York and Washington, D.C., offices.

In the case that cited Kenny Rogers, Akin Gump attorneys convinced the Fourth Circuit that the U.S. Equal Employment Opportunity Commission continued to rely on an expert who was shown to have done "slipshod work" when analyzing whether the firm's client, event planner Freeman, improperly used background checks, according to the appellate court's opinion.

Akin Gump was able to spare Freeman more costly discovery work as it zeroed in on what it recognized as inconsistent analysis by the EEOC's expert, Lian said.

“That the EEOC doubled down is what led the case to its conclusion,” Lian said. “In the face of those challenges, they continued to pursue the case.”

After the Fourth Circuit upheld the Maryland federal court’s dismissal of the case, Akin Gump in September successfully obtained attorneys’ fees for Freeman, which the firm characterizes as rare for cases involving Title VII violation allegations.

Quoting the “world-renowned poker expert Kenny Rogers” in his opinion, U.S. District Judge Roger Titus said the EEOC didn’t heed the song’s advice that “you’ve got to know when to hold ’em. Know when to fold ’em. Know when to walk away.”

“In this case, once defendant Freeman revealed the inexplicably shoddy work of the EEOC’s expert witness in its motion to exclude that expert, it was obvious Freeman held a royal flush, while the EEOC held nothing,” the judge says. “Yet, instead of folding, the EEOC went all in and defended its expert through extensive briefing in this court and on appeal. Like the unwise gambler, it did so at its peril.”

In the pension case, Akin Gump worked to secure a victory for the Pipe Line Contractors Association before the Seventh Circuit in a matter involving the trade association’s exit from the Central States, Southeast, and Southwest Areas Pension Fund.

The fund argued that the association actually exited the fund in 2012, once a new collective bargaining agreement was struck, but Akin Gump convinced the appellate court that the entity properly left in November 2011 after executing a temporary CBA that allowed it to do so, a swing of approximately \$100 million, according to the firm.

While the argument between the two sides over when the association properly left the fund was “arcane,” Lian noted that “the difference was extraordinary in terms of the dollar amount.”

In a case that helped further cement the importance of the U.S. Supreme Court’s 2011 ruling in *AT&T Mobility LLC v. Concepcion* — which held that the Federal Arbitration Act preempts state law rules that amount to outright bans on arbitration — Akin Gump successfully defended Ernst & Young before the Second Circuit, allowing the company to enforce an employee arbitration agreement.

The Second Circuit determined in January that Ernst & Young could make Stephanie Sutherland undergo arbitration rather than pursue a putative class action alleging the company misclassified accountants as exempt from the Fair Labor Standards Act’s overtime requirements. The appellate court also allowed the company to enforce a class action waiver in Sutherland’s contract, said Greg Knopp, an attorney who worked on the case.

Akin Gump has 948 attorneys who work out of 21 offices in the U.S., Europe, the Middle East and Asia, according to the firm.

--Additional reporting by Aaron Vehling. Editing by Mark Lebetkin.
