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Legal Affairs: Class Actions

THE SWAT TEAM OF BIAS LITIGATION

In late December, seven women stood before TV cameras and charged their employer, Atlanta's popular superstore chain Home Depot Inc., with sexual discrimination. Cheryl L. Williams, 41, told how she trained two young men in the flooring-and-tile department at a store in Corona, Calif. Soon afterward, despite good performance reviews, Williams says she was laid off, and the two men got her job. Then, Jacqueline Genero, 22, explained how managers asked for a recount after she was voted the first female Employee of the Year by fellow workers in 1993. Although she won on recount, Genero claims she was denied the traditional $500 prize.

These and other incidents provide the basis of an employment-discrimination class action filed against Home Depot. Plaintiffs claim they will expose a company that fails to train, promote, and pay fairly its female workers. "Women's employment opportunities are determined not on the basis of their interest, experience, or abilities, but on the basis of their sex," says the plaintiffs' lawyer, Barry Goldstein.

BIG COMEBACK. Home Depot says it has launched an internal inquiry and is taking the lawsuit "very seriously." It ought to. The Oakland (Calif.) firm representing the plaintiffs, Saperstein, Goldstein, Demchak & Baller, has collected more than $600 million in damages and legal fees from companies its clients have sued for discrimination over the past three years (table). Their winning formula: target high-profile corporate defendants and use elaborate statistics to make the case.

Saperstein isn't just bringing in big paydays for its partners. It's also spurring other lawyers and disgruntled workers into action--so much so that employment-discrimination class actions are making a comeback. After two decades of decline, the number of such lawsuits filed last year jumped 30%--from 39 in 1993 to 56 in 1994, according to the Administrative Office of the U.S. Courts.

Recent changes in legislation are also encouraging such cases. The Civil Rights Act of 1991, for instance, for the first time allowed for punitive and compensatory damages of up to $300,000 per person--in addition to back pay--in employment class actions. And years of activism aimed at equality on the job are bearing fruit. "We're seeing more groups of women come forward," says Kathryn B. Dickson, an Oakland lawyer currently suing Chevron Corp. for gender discrimination.

Of course, compared with the 1970s civil-rights litigation boom, in which employment class actions hit an annual high of 1,174, the current wave looks small. But consultants and lawyers are advising corporate clients to watch out. Despite programs to promote workplace diversity, "in the current environment, no company is immune from these lawsuits," says Peter C. Robertson of Organization Resources Counselors, which tracks employment-related class actions.

And few law firms make executives squirm the way the 14-lawyer team at Saperstein does. "Getting a summons from you is like getting a call from 60 Minutes," an attorney once told Goldstein. The firm hit corporate radar screens with a case against State Farm General Insurance Co., charged with denying 1,000 women jobs as agents. When the company settled for $250 million in 1992, it was an achievement that had been 13 years in the making. Partners at Saperstein, working on a contingency-fee basis,

had even taken out second mortgages on their houses to cover expenses.

Among the most effective--and most expensive--of Saperstein's tactics is to dissect corporate records on hiring, promotion, and pay raises. Specialists in the firm and computer-savvy consultants mine the data, usually kept on huge mainframe tape reels, to identify discriminatory patterns. In the State Farm matter, consultants spent 2,000 hours evaluating employment records.

For years, the complexity of these suits kept all but a handful of dogged plaintiffs and devoted lawyers out of court. But other lawyers have watched Saperstein rack up big settlements and want a piece of the action. Houston's Robert S. Bennett, a general business lawyer, initially brought a race-discrimination case against Fort Worth's Color Tile Inc. chain in 1992 on behalf of a single plaintiff. But a Saperstein class action, charging Denny's restaurants with refusing to serve African-American customers, gave Bennett the idea to seek class-action status in the Color Tile suit. The Denny's case "was kind of inspirational," he says. Color Tile attorney Paul D. Inman says the court isn't likely to grant class-action status.

NUDE POSTERS. Lawyers are also breaking some new ground. In 1993, a sexual harassment case for the first time gained class-action status. Sprenger & Lang in Minneapolis brought the case, charging Eveleth Mines in Duluth, Minn., with allowing male workers to post nude posters and graffiti identifying female "hot spots" on its office walls. Eveleth did not return calls seeking comment.

Other such suits have been denied class-action status. In a case against Chevron, plaintiffs told a federal judge that pornographic E-mail was sent to personal computers at Chevron's information-technology division, including a picture of a bound woman with the caption "Taming of the Arrogant Little Techno-Bitch." But the judge ruled that harassment claims cannot be brought collectively because they are based on individual experiences. Chevron says: "We do not tolerate discrimination or harassment in the workplace."

The pressure brought to bear by firms such as Saperstein does lead to change, not just costly legal woes. At Shoney's Inc., 25% of management positions today are held by minority-group members, up from 14.5% in 1989, when it was first sued. At State Farm, two of every five agents hired in the wake of the suit have been women. Companies might want to review their own employment records before Saperstein does it for them.By Russell Mitchell in Oakland, Calif., with Jonathan Ringel in Atlanta