

M&A Atty Team Leads Are Rarely Women, Study Finds

By **Emma Whitford**

Law360 (August 11, 2021, 6:39 PM EDT) -- Female attorneys are underrepresented as lead advisers on mergers and acquisitions at major law firms such as Wachtell, Davis Polk and Cleary Gottlieb, according to a new study slated for publication in the University of California, Irvine Law Review.

Looking at the top 100 deals by dollar value between 2014 and 2020, the study found that women were appointed as lead buy-side counsel just 24 of the 243 times the role was designated. The share of women as lead counsel on these deals did not stray far from 10% in any given year.

The data indicate "that the percentage of women as leaders in large M&A deals is even less than the percentage of women in law firm partnerships more generally," report author Afra Afsharipour, a professor at the University of California, Davis School of Law and former corporate attorney at Davis Polk & Wardwell LLP, wrote. "Thus, even women who have made the investment and sacrifice to achieve partnership are not leading the largest deals."

The study, "Women and M&A," is available online now at SSRN.com and is scheduled for publication in the law review in 2022. The report also examines the "dearth" of women on corporate boards and in executive management.

Female corporate lawyers have fared slightly better as lead advisers for target companies, the study found, with their share increasing in recent years from less than 10% in 2017 to nearly 20% in 2020. Yet across 263 instances where a lead target-side adviser was identified during the study period, women were still only named 33 times.

To assess how specific law firms compared on gender equity across 700 total M&A transactions, Afsharipour broke out the 20 firms responsible for the highest volume of deals between 2014 and 2020, representing both buyer and target companies.

Wachtell Lipton Rosen & Katz, the firm involved in the highest number of transactions with 266, had a weak record on gender equity, Afsharipour found.

"The most dominant law firm over the 7-year period of the data, Wachtell Lipton Rosen & Katz, had the lowest proportion of women named as lead counsel," the article states. "Six women from Wachtell held thirteen named lead counsel roles on deals from 2014 to 2020, compared to 40 men holding 299 roles."

Women were also "severely underrepresented" at Davis Polk and Cleary Gottlieb Steen & Hamilton LLP, both of which named women as leads in just two instances each during the analysis period.

Davis Polk, which ranked as the 10th-busiest firm for deals during the analysis period, named male lead attorneys 81 times during that span. Cleary, which ranked 15th, named men 60 times.

While Skadden Arps Slate Meagher & Flom LLP and Kirkland & Ellis LLP named the most individual women to their teams out of the top 10 most active firms, the vast majority of their lead positions were still granted to men, the article found.

Of the 20 most prolific firms, only Cooley LLP, ranked 17th in terms of deal volume, granted the same number of lead positions to women as it did to men. Cooley's M&A practice is co-chaired by two women, Barbara L. Borden and Jamie K. Leigh.

A spokesperson for Cleary told Law360 that while the firm is "not able to comment on the details of the report," it recognizes that "as leaders in the legal profession and M&A field, our firm must be committed to ensuring we offer an inclusive environment with equitable opportunities for all who practice law to thrive, including our women lawyers."

Representatives of Wachtell, Davis Polk, Skadden, Kirkland and Cooley did not immediately respond to requests for comment Wednesday.

Gender disparities in M&A may be attributable to "perceptions about the necessary attributes for successful M&A practice," according to the article.

"In M&A practice which tends to be more confrontational than other areas of transactional law, women often report being judged more harshly if they are perceived as aggressive or combative, but they also report expectations that M&A attorneys will act aggressively," Afsharipour wrote.

M&A attorneys also tend to work long hours, which can be challenging for women with family responsibilities. Women also report a dearth of role models in M&A, according to the analysis.

Laying out the implications, the article notes that top M&A lawyers are "typically high in demand and highly compensated" and that the practice area is "often associated with high billing rates."

Afsharipour also found that men were more likely to be named as lead counsel repeatedly over the study period. While 15 women appeared as lead counsel more than five times in seven years, the majority, more than 65%, were named only once.

Faiza J. Saeed of Cravath Swaine & Moore LLP was the woman named most frequently as lead counsel — 14 times. She was followed by Elizabeth A. Cooper of Simpson Thacher & Bartlett LLP with 12 lead counsel deals.

Borden and Leigh of Cooley, Debbie P. Yee of Latham & Watkins LLP, Lande A. Spottswood of Vinson & Elkins LLP and Taurie M. Zeitzer of Paul Weiss Rifkind Wharton & Garrison LLP were all named lead counsel nine times.

In a bright spot, Afsharipour found that the percentage of deal teams with at least one female partner has trended up over the years, from 19% in 2014 to 30% in 2020.

"What I hope the firms take away from this report is being intentional about who is receiving credit and who is in a leadership position," Afsharipour told Law360 by phone Wednesday.

This isn't just up to law firms, she added. "I want the investment banks to think about which lawyers they are recommending on M&A deals," she said. "I want general counsel to think about their deal teams, and I want the C-suite officers to think about who their advisers are."

--Editing by Jill Coffey.