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Can In-House Counsel Be Trusted With High-Stakes Litigation? Macy's Thinks So

Kristen Rasmussen , Corporate Counsel

November 8, 2016

Brian Parsons has handled some big litigation assignments since joining the law department of Macy's Inc. in 2010, including appellate oral arguments and a deposition of a class representative in a nationwide class action.

It's the kind of work often done by seasoned law firm partners, Parsons acknowledges. But, then again, the St. Louis-based in-house litigation team at Macy's pretty much is "a boutique law firm that services only one client," Parsons says.

[Brian-Parsons-Square-201611081357.jpg]

"We handle all the areas of law and causes of action that a large national retailer would handle," says Parsons, senior counsel. "We're experts at Macy's. We know our policies. We know the people."

Parsons is one of 11 in-house litigators in Macy's legal department, which has about 50 lawyers in total. The department handles 90 to 95 percent of the litigation Macy's faces nationwide, says Betty Thorne Tierney, Macy's group vice president and associate general counsel for litigation. While the litigation team partners with local counsel on every case as required by the jurisdiction, a Macy's litigator generally is lead counsel, she says.

Macy's litigators work on a lot of employment cases, Tierney says. But they also regularly handle consumer credit cases, litigation under Title III of the Americans with Disabilities Act, advertising matters, and a variety of class action cases, she adds. These lawyers also defend the company in arbitrations initiated by employees, Tierney says. If you include bench trials before arbitrators, Tierney has had three trials so far this year, she says.

[Betty-Tierney-Square-201611081353.jpg]

The litigators handle a case from start to finish, Tierney says. In fact, Parsons recently was in Baltimore for a settlement conference in a real estate dispute involving a reciprocal easement

agreement on a mall—a case he began litigating one month after he started at Macy's more than six years ago. He also has handled in recent months a motion to consolidate a pending pricing class action in California and a deposition in Boston in an age discrimination case.

Macy's in-house litigation team dates back to 2005, when the company acquired The May Department Stores Co., Tierney says. Perhaps ahead of its time, May had this model in place since at least 1992, when Tierney joined, and Macy's executive leadership, recognizing its cost-efficiency, opted to keep the in-house litigation team in place, she adds.

Most of the members are recruited from local law firms, and a couple, like Parsons, participated in the litigation department's internship program while in law school, Tierney says. After interning at Macy's during his final year of law school, Parsons did insurance defense and employment litigation for four years before returning to Macy's, which he described as his "dream job."

"We don't have the same requirements in terms of developing business and keeping track of time, so we can devote more time to the actual practice of law and litigating," Parsons says of his time at Macy's versus his time in private practice. "I frankly am getting more litigation experience than I could get at most firms, especially with my years out."

[Bob-Graff-Square-201611081357.jpg]

Bob Graff, a partner and recruiter in the in-house practice group at legal search consultants Major, Lindsey & Africa, says it's not highly unusual for corporate legal departments to have some in-house litigators handling employment cases. But other litigation matters generally are sent to outside counsel because litigation is "not a predictable enough flow of business," he adds.

Macy's in-house litigation team is "a little bit unusual, but if they're keeping them busy and saving money, 'Why not?'" Graff says, adding that the retail industry, which serves customers on-site and is employee-intensive, generally produces a higher level of litigation than other industries.

Tierney says Macy's brings in outside counsel for cases requiring expertise such as patent cases or those litigated under the Employee Retirement Income Security Act or the Racketeer Influenced and Corrupt Organizations Act. The company employed outside counsel in its high-profile battle against J.C. Penney Co. over exclusive rights to sell Martha Stewart home merchandise—a decision that was made by Tierney's boss, she says.

But, for the most part, "we try to keep it in-house," Tierney says.

"We really know our business and know our clients," she says. "If you have outside counsel, even people we've used a very long time, they have to get up to speed on a case, but that is something we don't have to do. We're intimately aware of the company and its policies."

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