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Focus on People Drives Outten's Employment Law Practice

Wayne Outten likes to solve problems, and as the managing partner of the nation's largest employee-side employment law firm, that's what he tries to focus on as he represents clients.

His firm Outten & Golden has 50 lawyers in three cities. "The lawyers here represent people, not businesses, because that's what they want to do," Outten, who works from the firm's main office in New York, told Bloomberg BNA in telephone interviews conducted Oct. 29-30. The firm's motto is "doing good while doing well."

Outten is chair of the American Bar Association's Section of Labor and Employment Law, and co-chairs his firm's practice groups on executives and professionals and whistle-blower retaliation. He frequently represents senior executives and high-level professionals in negotiating employment, compensation and severance agreements.

He also counsels employees who encounter workplace problems such as an abusive boss or a retaliatory reduction in work responsibilities.

"People come to me with problems relative to their employment," Outten said. "I apply my experience and insights and knowledge of the law to help come up with solutions."

Other lawyers at his firm handle class actions, which have become "a very substantial portion of our practice," according to Outten. "Those cases are all pure contingency cases," he said, which means "if we pursue [a class action] case and lose, we get nothing."

The firm also represents some low-wage workers. "We do a lot of pro bono every year," Outten said.

Seeking 'Socially Useful' Career. Indeed, he said it was his concern for helping people that inspired him to become a lawyer. While attending college "in the late '60s, during the civil rights movement and the anti-war movement," Outten said, "I started recognizing the people who seemed to be making a difference in the world seemed to be preachers and lawyers, and I knew I didn't want to be a preacher."

"I thought it would be neat to make a living in some way that would be socially useful," Outten said. So after graduating with a business degree from Drexel University in 1970, he enrolled at New York University Law School, graduating in 1974.

Outten said his representation of employees led to "frequent conflicts of interest" with the business clients represented by his firm—Lankenau, Kovner & Bickford. Therefore, he and an associate, Anne Golden, started

their own law firm in 1998. They didn't go far physically, though, because for the first four years, they rented office space in Lankenau's suite. Outten calls Outten & Golden one of his "proudest achievements." Golden retired from the firm in June.

"The whole field [of employment law] has changed dramatically over the past 35 years; it's almost unrecognizable," Outten said. "It can be humbling," he added. "You can never really master it all."

Morgan Stanley Sex Bias Case Settled for \$12M. One of Outten's most famous cases was a sex discrimination suit against Morgan Stanley. Outten represented Allison Schieffelin, a principal in Morgan Stanley's institutional equity division who alleged she was denied a promotion and opportunities for professional advancement while less-qualified men were promoted ahead of her.

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The case settled in 2004 just as the trial was starting, and Schieffelin recovered \$12 million. The Equal Employment Opportunity Commission also was involved and got Morgan Stanley to set up a \$40 million claims fund for other female employees who alleged discrimination (133 DLR AA-1, 7/13/04).

"It was an impactful case in the area of gender discrimination on Wall Street," Outten said, which "continues to be a major concern."

Outten cited a 1995 case as one of his "most satisfying" even though it "didn't generate a huge recovery." In that case, Outten represented a janitor who alleged retaliation and threats from officials of his union, Service Employees International Union Local 32BJ, after he questioned the compensation of some of the union's officers. The janitor won \$100,000 for his pain and suffering, and changes were made in the union leadership (*Guzman ex rel. Service Employees Local 32B-32J v. Bevona*, 1995 BL 765, 150 LRRM 2759 (S.D.N.Y. 1995)).

Chairing ABA Section. Outten became the chair of the ABA's Section of Labor and Employment Law in August. He said the section has about 17,000 lawyer members and 6,000 law student members.

Section members include employer-side, employee-side and union-side lawyers, as well as government lawyers, judges and mediators. With all those "competing interests," Outten said, the section uses a "consensus principle," which means it refrains from taking policy positions unless there's a consensus. "And there rarely is," he said.

Instead, the section focuses on providing continuing legal education and hosting conferences with "balanced" panels composed of members from the various segments. "You'll typically find the panel will have an employer lawyer and a union lawyer and an employee lawyer," he said.

"My being involved in the ABA section has helped me in many ways," Outten said. "It's helped make me a better lawyer" through the "countless hours of continuing legal education," he said. He added that his leadership positions have burnished his management skills. Outten said he also met a lot of his closest friends through the section's networking opportunities.

Besides starting his own firm, Outten had a hand in starting several other entities.

In 1985, he co-founded the National Employment Lawyers Association, "a bar association of lawyers that represent employees." He said NELA has about 2,500

members nationwide as well as another thousand or so lawyers in local affiliates.

Establishing Other Employment Law Organizations. In 1995, Outten was part of a group of 16 lawyers who established the College of Labor and Employment Lawyers, a professional association that honors leading labor and employment lawyers. Its members now number more than 1,000 and include lawyers who represent employers, as well as those who represent unions and individual employees, government officials, arbitrators and scholars.

More than 20 years ago, Outten also helped to co-found Workplace Fairness, a charitable educational organization of which he is president. Workplace Fairness has a website, <http://www.workplacefairness.org/>, that functions as a clearinghouse for information about workplace rights.

Outten grew up in Worcester County, Md. As a teenager, he worked in his father's furniture and appliance store, which his siblings now run.

He brought the tradition of the family business to Outten & Golden. His wife, a former actuary, serves as a senior adviser to the firm, and his daughter, who has an MBA, works remotely from her Massachusetts home as a firm administrator.

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