

The Firms That Handled The Most COVID Cases In 2021

By Jack Karp

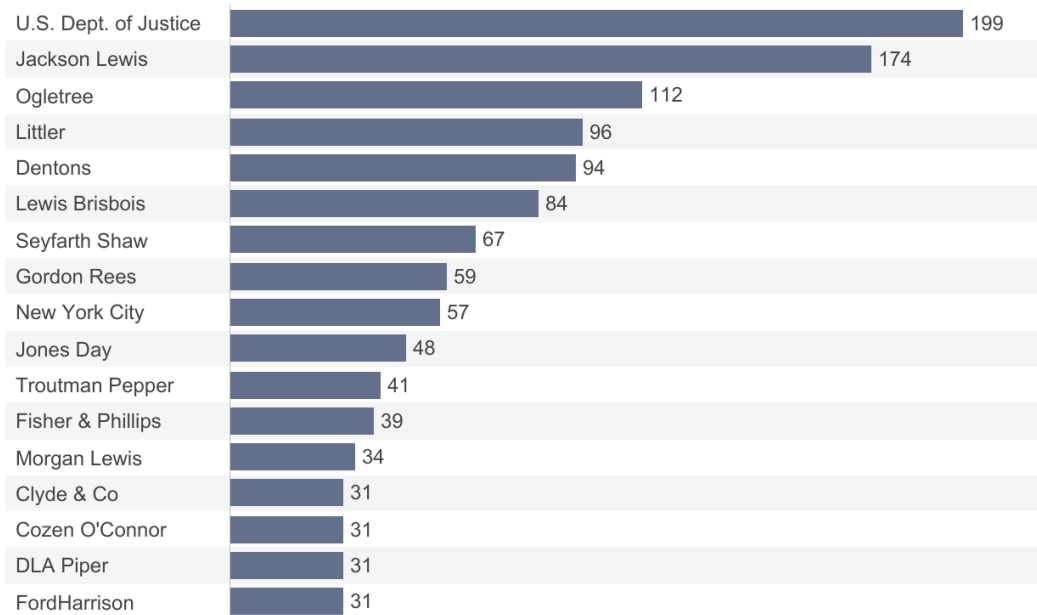
Law360 (February 24, 2022, 1:57 PM EST) -- A small number of law firms took the lead last year in filing and defending some of the thousands of lawsuits stemming from the COVID-19 pandemic that are working their way through federal court, according to Lex Machina.

The report by Lex Machina tracks the firms that in 2021 handled the most lawsuits in which the claims were either caused or exacerbated by the pandemic.

The defense-side firms handling the most COVID-19-related litigation took on a varied set of disputes over business interruption insurance coverage, employer vaccine mandates, overtime pay and school tuition refunds.

Busiest Defense Counsel in COVID Suits

After the U.S. Department of Justice, Jackson Lewis was the most active defense counsel in 2021 for COVID-related cases.



Source: Lex Machina

Many of the suits filed by the most active plaintiff-side firms involved businesses' failures to make their websites accessible to the visually disabled, who were forced to shop and work from home during the pandemic. Other firms filed suits challenging the firing of employees over issues related to COVID-19.

"It has been a really unique challenge to apply existing law to a brand new circumstance that no one's ever seen before," said Ashley P. Cuttino, office managing shareholder at Ogletree Deakins Nash Smoak & Stewart PC, which made Lex Machina's list of most active defense firms. "It's been an incredibly novel time."

Here, Law360 looks at some of the firms that found themselves most often in federal court because of COVID-19 in 2021.

Defense Firms

The defense-side law firms that have jumped into the most COVID-19-related lawsuits in federal court handled a diverse set of pandemic-related cases last year.

Jackson Lewis PC tops the list, representing defendants in 174 of these cases in 51 different federal court districts, according to Lex Machina.

The firm succeeded in getting an Illinois federal judge to toss a proposed class action against Loyola University from students seeking to recover tuition after COVID-19-related school closures, though the Seventh Circuit seemed skeptical of that decision during oral arguments in December.

The firm is also representing Nova Southeastern University and Barry University in similar class actions in Florida federal court. Barry University settled its case for \$2.4 million in September.

"Although the claims asserted are not particularly unique, litigating the complex factual and legal issues presented by COVID-19 — the basis of this dispute — would have been difficult and time-consuming," U.S. District Judge Jose E. Martinez said in approving that deal.

Jackson Lewis also defended a medical transport company and an ambulance services company in an employment dispute, helping settle that proposed class and collective action from paramedics and emergency medical technicians who made overtime claims stemming from COVID-19 calls.

Client Smithfield Packaged Meats Corp. also made a \$7.75 million deal with more than 30,000 workers who said they were stiffed on overtime pay while working in dangerous pandemic conditions. And the firm helped SoulCycle Inc. to pedal its way to a settlement with a former executive who alleged the fitness company used the pandemic as a pretext to fire her for taking maternity leave.

Ogletree, meanwhile, defended clients in 112 mostly employment-related cases involving the coronavirus in 48 federal court districts last year, according to Lex Machina.

Earlier in the pandemic, most of those cases were wage-and-hour and sick leave disputes, according to Cuttino.

The labor and employment boutique represented Walmart Inc. in California federal court against allegations it failed to pay workers for time spent undergoing temperature checks and Southwest

Airlines Co. against a Maryland federal suit claiming the airline illegally denied employees who were on military leave the same pandemic-related paid leave as other workers.

Cases like these are "incredibly unique," Cuttino said. Existing employment laws were never intended to fit the circumstances of the pandemic, and so those laws and regulations have been "changing at lightning-fast speed," according to her.

But her firm was well-positioned to handle these cases because of how it is organized around smaller offices all over the country, she said.

"We knew changes were coming because we had lawyers in the jurisdictions where the changes were happening," Cuttino added.

Some of the firm's more recent cases – and the ones she finds most interesting – involve defending companies' vaccine mandates against worker challenges, something Cuttino said she expects to see continue.

"That is definitely without question the next wave of litigation that's going to come out of COVID-19," she said.

Federal courts have also seen a wave of insurance disputes over business interruption coverage since the pandemic began, and Dentons has been in the middle of many of them.

Dentons has represented insurers in many of the 94 COVID-19-related cases it has handled, according to partner Keith Moskowitz, co-leader of the firm's global insurance and U.S. insurance litigation sections.

"Our insurance practice has been extremely active in this area," Moskowitz said.

The firm has represented AIG Specialty Insurance Co., Philadelphia Indemnity, Zurich American Insurance Co., American Home Assurance Co., Lexington Insurance Co. and others in pandemic-related cases in 20 different federal court districts.

One of the most interesting of these cases involved Northwell Health System, New York's largest health provider, according to Moskowitz.

Northwell made a claim against Dentons client Lexington Insurance and others for \$1.25 billion in coverage due to pandemic-related losses. But unlike most insured plaintiffs, which claimed they have lost business due to the pandemic, Northwell argued it had been too busy, Moskowitz said.

There were so many COVID-19 cases, the health system was forced to turn away non-COVID-19 patients, but those patients were more profitable and the hospital system lost money as a result, according to Moskowitz.

"It would be akin to a restaurant saying, I used to sell prime rib or expensive steaks and then all of a sudden my mix of customers demanded hamburgers," Moskowitz said.

The firm was successful in getting U.S. District Judge Jed Rakoff to rule against Northwell in July, finding that there was no physical loss or damage to the health system's property, so its insurance coverage did not apply.

The firm hasn't handled only insurance-related cases stemming from the pandemic, however.

It's also representing Walmart in Arizona federal court in a \$5 million suit from workers claiming the retail behemoth was unjustly enriched when it required workers to arrive at their shifts early to undergo mandatory COVID-19 screening but didn't compensate them for the time.

And Dentons convinced a federal judge that Hawaiian Airlines workers can't block the airline, which it represented, from enacting its vaccine requirement.

"To be effective advocates there and help Hawaiian achieve that particular health and safety goal, I think was something we were very happy to be able to be effective advocates in achieving," said Moskowitz.

Little Mendelson PC, which defended clients in 96 pandemic-related federal lawsuits, according to Lex Machina, also dove into a vaccine mandate case, convincing a Los Angeles federal judge to ax a suit challenging the Los Angeles Unified School District's COVID-19 vaccine requirement.

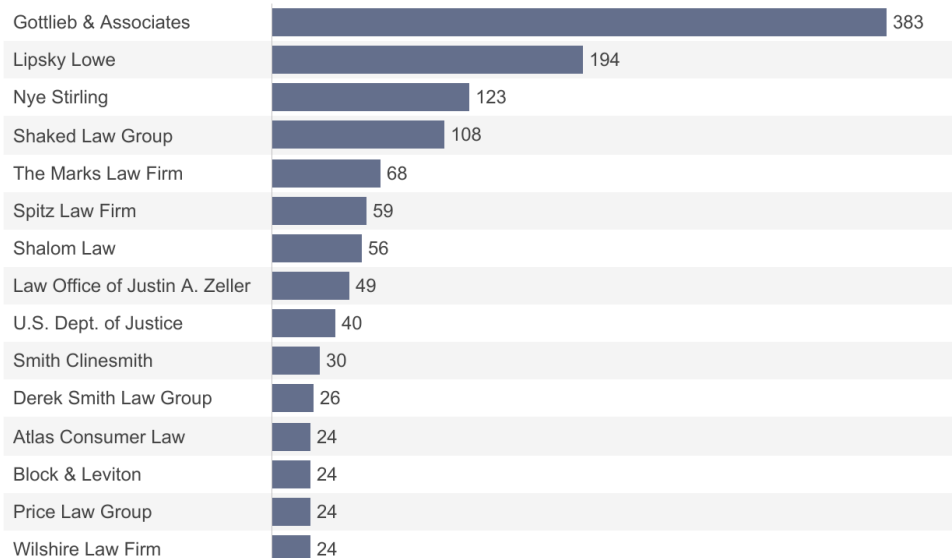
Plaintiffs Firms

The plaintiffs-side law firms responsible for filing the most COVID-19-related lawsuits in federal court have largely focused their efforts on companies' failures to make their websites and other digital interfaces accessible to the visually impaired.

That oversight is especially discriminatory at a time when the pandemic has forced disabled people, who are often more vulnerable to the coronavirus, to shelter at home and rely on the internet to shop, work and receive medical care, according to some of these suits.

Busiest Plaintiffs Counsel in COVID Suits

Gotlieb & Associates took the top spot among plaintiffs counsel filing the most COVID-related suits in 2021.



Source: Lex Machina

New York-based litigation boutique Gottlieb & Associates led the pack in this arena, filing 383 suits, mainly in New York federal court, according to Lex Machina data. Lipsky Lowe LLP, an employment law firm also based in New York, followed with 194 lawsuits in the Empire State's Southern and Eastern districts.

Both firms' proposed class actions are on behalf of blind and visually impaired customers who use screen-reading software to read the contents of websites. The websites of the defendants – mainly online retailers selling everything from jewelry to clothing to furniture and home decor – aren't compatible with those screen-reading programs, according to these complaints.

Lipsky Lowe also sued Care Cube LLC, a health care clinic whose website fails to allow blind customers to book appointments for coronavirus testing, according to that suit.

Most of these suits make claims under the Americans with Disabilities Act, the New York State Human Rights Law and New York City Human Rights Law, and seek injunctions requiring the companies to make their websites usable by blind customers.

"The COVID-19 pandemic has shifted the world into an almost entirely online model," Lipsky Lowe's attorneys say in several complaints, adding, "If the website content is not capable of being rendered into text, the blind or visually impaired user is unable to access the same content available to sighted users."

Not all of these suits are over retailers' websites, however.

Nye Stirling Hale & Miller LLP, which has brought 123 pandemic-related cases, according to Lex Machina, is suing laboratory company Quest Diagnostics over the inaccessibility of its check-in kiosks, according to Benjamin J. Sweet, chair of the firm's disability rights practice group.

The California and Pennsylvania-based firm represents the American Council of the Blind in a nationwide class action in California federal court. That suit alleges the kiosks at Quest's labs aren't usable by the visually disabled because they don't include audio output, tactile keypads or headphone jacks, Sweet said.

The complaint was originally filed before the pandemic began, but U.S. District Judge Dolly M. Gee certified a nationwide class in December, according to Sweet, who said that "the inability of blind customers to utilize the kiosk check-in at Quest has been especially problematic during the COVID-19 pandemic."

For instance, Quest's sighted customers can wait outside the lab and be called in to appointments by text message, a service not available to blind customers, according to Sweet.

"The kiosks are a part of the service that Quest provides, and it must provide auxiliary aids and services to render them accessible to blind patients," Judge Gee said when denying in part Quest's motion for summary judgment in October.

Other firms on Lex Machina's list of those most active in pandemic-related suits have also centered their cases on employment issues.

Many of the 59 suits filed by Ohio-based The Spitz Law Firm, for instance, allege disability discrimination

on behalf of employees who were fired from their jobs during the pandemic, including one who was terminated while quarantining after being tested for COVID-19.

–Additional reporting by Lauraann Wood, Nathan Hale, Max Kutner, Daniela Porat, Lauren Berg, Emily Brill, Daphne Zhang, Hannah Albarazi, Dave Simpson and Alexis Shanes. Editing by Pamela Wilkinson, Jacqueline Bell and John Campbell. Graphics by Jason Mallory.

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