Supplement to the Los Angeles and San Francisco

Daily Journal

JULY 16, 2014

LABOR & EMPLOYMENT

CALIFORNIA'S TOP LABOR AND EMPLOYMENT LAWYERS

EDITORS' NOTE

As the U.S. Supreme Court continued to favor businesses by raising the bar for class actions, California lawyers looked to our state Supreme Court for cues on how it would follow the high court's lead.

2014 gave us some answers.

Three long-awaited rulings in Iskanian, Duran and Ayala are set to illuminate the playing field for employment class action and the enforceability of employment contracts requiring workers to arbitrate their grievances.

In Iskanian, the court ruled that an arbitration clause can prohibit a class action, handing defense lawyers a win they desperately wanted. But the decision also gave a significant victory to workers — it said they could sue on behalf of themselves and other workers as representatives of the state.

In Duran, the court said statistical sampling could be used in class actions – which many employers sought to avoid – but it set a high bar for the use of such sampling.

Finally, the court held in Ayala that in an employee misclassification action, a class should be certified if the employer has the right to exercise control over its independent contractors, regardless of variations in how the employer exercises that right.

Together the rulings create a challenging body of law for our state's labor and employment lawyers, whose accomplishments continue to boost the California Supreme Court as the most influential in the nation.

In reviewing hundreds of nominations from law firms, alternative dispute resolution providers and others, we sought to recognize work that is having a broad impact on the legal community, the nation and society. We honor the best of them.

Malcolm A. Heinicke

MUNGER, TOLLES & OLSON LLP
SAN FRANCISCO

SPECIALTY: complex commercial litigation

This year, Heinicke won a victory for his client by using a novel approach in a trade secrets lawsuit against a former manager.

The manager, Derrick Bowman, had formed his own competing business and successfully bid on one of Guardsmark LLC's largest and most important security services contracts with the city of San Francisco.

On Guardsmark's behalf, Heinicke sued both Bowman and the new company, Teton Security, and won a temporary restraining order. *Guardsmark LLC v. Bowman*, 14-537022 (San Francisco Super. Ct., filed Jan. 28, 2014).

Although Bowman claimed that he never used the company's trade secrets, Heinicke argued that merely acquiring the secrets, while secretly competing, violated the law.

It was a novel approach, he said, adding, "California has very strong laws that competition is allowed."

Bowman was no longer working for the company when he was sued, Heinicke said, "but he was working for the company when the bid was submitted and when the contract was awarded."

The challenge was getting immediate, injunctive relief that would allow Guardsmark to keep the contract.

"This is why it was important to demonstrate that Bowman misappropriated trade secrets," Heinicke said, "because, otherwise, California's pro-competition rules would have prevented such relief and the contract would have been lost."

Ultimately Bowman withdrew his bid from the city.

Guardsmark was awarded the contract for a four-year period, and Bowman was barred from calling on any Guardsmark's customers for a year, and ordered to pay about $25,000 in attorneys fees.

The result is not one that inhibits competition, Heinicke said, adding, "It simply stops unfair competition and thus promotes fair competition."

— PAT BRODERICK