

# Daily Journal

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## Top 75 Labor & Employment Attorneys

California will see important developments in employment law soon, as the state Supreme Court considers three cases that will impact class action waivers and arbitration agreements. Our state's labor and employment lawyers have always led the nation in the development of the issues of the day and the creation of law, and they're some of the most experienced practitioners in the country. To pick the Daily Journal's annual list of top 75 employment litigators, public labor negotiators and corporate and regulatory specialists in California, we reviewed hundreds of nominations from law firms, alternative dispute resolution providers and nonprofits. We sought to recognize work that is having a broad impact on the legal community, the nation and society.

— The Editors

### LABOR & EMPLOYMENT



#### Malcolm A. Heinicke

Munger, Tolles & Olson LLP

San Francisco

**Specialty:** litigation

At issue was whether Wells Fargo and others could require that their employees only use internal systems for trading securities. Former brokerage employees had sued claiming such requirement violated the Forced Patronage statute of the California Labor Code.

Heinicke helped convince a 9th U.S. Circuit Court of Appeals panel to affirm dismissals of four potential class actions by arguing that the 1934 federal Securities Exchange Act trumps the California Forced Patronage statute and that the banks' restrictions have the public good in mind.

"What ties it all together is the fact that we were able to explain to the courts — trial and 9th Circuit — that these internal trading restrictions really do serve to prevent customer and market abuses," Heinicke said. "Once that was explained, all of the legal arguments coalesced behind it."

Those 9th Circuit cases were *McDaniel v. Wells Fargo Investments*, 11-17017 (filed Oct. 23, 2011); *Heilemann v. Bank of America*, 11-55943 (filed June 13, 2011); *Hanson*

*v. Morgan Stanley Smith Barney*, 11-55859 (filed May 27, 2011); and *Bloemendaal v. Morgan Stanley Smith Barney*, 11-55958 (filed June 14, 2011).

Heinicke was also recently involved in a case related to the so-called "pink slime" bankruptcy of AFA Foods Inc. After AFA went bankrupt in the midst of the controversy over the addition of lean finely textured beef, or "pink slime," to ground beef, former employees sued one of the Yucaipa Co. LLC's funds that had invested in AFA claiming Yucaipa was liable for Worker Adjustment and Retraining Notification Act violations by AFA. Heinicke helped Yucaipa win a motion to dismiss. *Sanchez v. AFA Foods*, AP12-50710 (U.S. Bankruptcy Court for the District of Delaware, filed May 10, 2012)

"We were able to demonstrate ... that the other side hadn't alleged sufficient facts such as the fund's involvement in day-to-day operations," Heinicke said. "If you make investors liable, they are going to be less liable to invest."

— Andrew McIntyre

**W**ells Fargo & Co., a longtime client of Heinicke's, recently turned to the litigator when it and other brokerage houses were being sued over policies governing how their employees could trade securities.