

Daily Journal

JULY 17, 2013

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



Timothy M. Freudenberger

Carothers DiSante & Freudenberger LLP

Irvine

Specialty: employment class action defense

In February 2012, Freudenberger obtained the reversal of a \$15 million judgment to a class of business banking officers in an overtime misclassification class action, as well as class decertification. *Duran v. U.S. Bank National Association*, 203 Cal. App. 4th 212 (Cal. App. 1st Dist. Feb. 2, 2012).

"The court invalidated the trial court's unprecedented use of statistical sampling and representative testimony to extrapolate liability and restitution from a small sample of absent class members," Freudenberger said.

Doing so violated U.S. Bank's constitutional due process rights to present its defense as to classwide liability, he added, and to challenge the claims of individual class members outside of the sample.

The state Supreme Court has granted review of that decision.

"The issues are extremely important to both sides," Freudenberger said. "More of these cases are going to trial. I have tried three wage and hour class actions in three different counties for three different employers."

Recent U.S. Supreme Court and California appellate court decisions have been coming down mostly on the side of employers on matters involving class certification and standards for liability, he added.

"Employers are tired of paying significant money in settlements if they think there is no liability or very limited liability," Freudenberger said. "More employers are saying, 'We can win at trial or get a better result than the settlement demand we are facing. We are

going to try the case.'"

Key to *Duran* are the issues it raises regarding the type of evidence that should be allowed in wage and hour cases and to what degree it can be used to determine liability, Freudenberger said.

The bottom line in meal and rest cases, he added, should be whether employers have policies in compliance with the law.

For instance, many cases involving employees claiming that they have been pressured not to take meal and rest breaks aren't suitable for class certification, Freudenberger said.

"Unless you see a smoking gun, which you rarely ever see, many of these cases depend on individual experience," he added. "Some will say, 'I was provided my breaks,' others might say, 'I felt that I was required to miss them.' That's not the type of systematic classwide policy or practice that is appropriate for class certification."

Among his other significant matters, Freudenberger prevailed on a motion to compel arbitration in a case involving wage and hour violations and unfair business practices under the state labor code, as well as a challenge to the exempt status of restaurant managers. *Amaya v. Jack in the Box*, BC436670 (L.A. Super. Ct., filed April 20, 2010).

He also successfully led a team in defeating class certification in another wage and hour case involving the managerial exemption under the labor code. *Goldberg v. MetroPCS California LLC*, BC413850 (L.A. Super. Ct., filed May 14, 2009)."

— Pat Broderick