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LABOR & EMPLOYMENT

CALIFORNIA'S TOP 75 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.

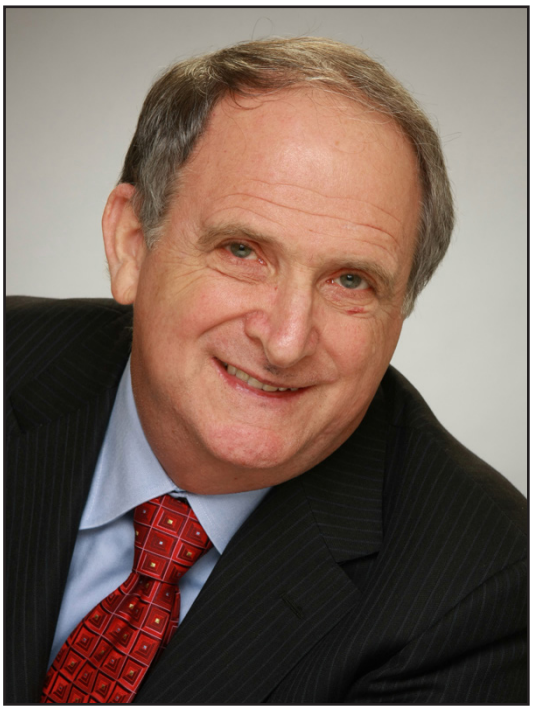
In Iskanian, the court ruled that an arbitration clause can prohibit a class action, handing defense lawyers a win they desperately wanted. But the decision also gave a significant victory to workers — it said they could sue on behalf of themselves and other workers as representatives of the state.

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.



Howard M. Knee

BLANK ROME LLP
LOS ANGELES

SPECIALTY: employment defense

Knee is handling a case that could lend clarity to a particularly thorny legal question.

At issue are trailer guards who contend that they are entitled to be paid for the time they spend sleeping while on the premises.

They were scheduled for 16-hour shifts on weekdays and 24-hour shifts on weekends, including sleep time.

"It's a very meaty wage and hour case," Knee said. "Federal and state law are substantially similar with respect to when on-call sleep time constitutes compensable hours worked, so federal rules should inform interpretation of state law."

The trial court granted summary judgment in favor of the plaintiffs and held that the trailer guards were entitled to be paid for all sleep-time hours worked on weekdays and weekends.

In a published decision, an appellate court held that the guards were not entitled to be paid for sleep time on weekends when they were scheduled for 24-hour shifts. *Mendiola, et al., v. CPS Securities Solutions Inc., et al.*, S212704 (Cal.App. 4th, July 3, 2013).

However, the court held that the guards were entitled to be paid for sleep time on weekdays when they were scheduled for 16-hour shifts.

Both sides petitioned the state Supreme Court for review and both petitions were granted.

In another matter, Knee currently is working with Blank Rome partner Michael Ludwig on behalf of Provident Savings Bank in a California class-action lawsuit.

At issue are allegations that mortgage underwriters were misclassified as exempt employees and therefore not entitled to overtime pay. *McKeen-Chaplin v. Provident Savings Bank*, CV12-03035 (E.D. Cal., filed Dec. 17, 2012).

The case also includes collective claims under the federal Fair Labor Standards Act.

Knee and Ludwig recently obtained an order decertifying the state class for a lack of commonality.

They also are exploring the possibility of moving to decertify the federal opt-in class, Knee said.

— PAT BRODERICK