

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.

Camilo Echavarria

DAVIS WRIGHT TREMAINE LLP
LOS ANGELES

SPECIALTY: labor, benefits litigation



Last year, Echavarria prevailed on behalf of Bank of America in a high-profile case involving allegations of wrongful termination and fraudulent hiring.

The dispute emerged when Bank of America was taking over Countrywide Financial Corp. at the peak of the mortgage crisis in 2008.

After the transition, a senior executive named Michael Winston was among those discharged.

Claiming that he had been retaliated against and fraudulently induced to work at Countrywide, he sued both Countrywide and Bank of America.

Winston contended that, two years earlier, he had filed a report to the California Division of Occupational Safety and Health about health and safety issues in the building where he worked.

Later that year, Winston said that he generated more rancor when he refused to lie in a report to Moody's Investors Services Inc. related to Countrywide's corporate succession plan.

But Winston's dismissal wasn't based on any personal vendetta, Echavarria said.

"Prior to Bank of America acquiring Countrywide, significant layoffs in excess of 10,000 employees occurred through-

out Countrywide," he added. "Additional layoffs took place once Bank of America acquired Countrywide."

Moreover, Bank of America couldn't have retaliated against Winston, because the company never knew about his complaints, Echavarria said.

After a monthlong trial, the jury found for the defense on three fraud claims, but found for Winston on the fourth claim of wrongful termination.

The jury awarded Winston \$3.8 million in lost and future wages, but nothing for emotional distress and punitive damages.

Noting the anti-bank sentiment that was prevalent at the time, Echavarria said that he decided to go for a complete reversal of the jury award, rather than take his chances at a new trial. *Winston v. Countrywide Financial Corporation et al.*, B232823 (Cal. App. 2nd, Feb. 19, 2013).

Echavarria argued before the appellate court and prevailed. The state Supreme Court then denied plaintiff's petition for review.

— PAT BRODERICK