

# 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.

### Edward J Wynne

WYNNE LAW FIRM  
GREENBRAE

**SPECIALTY:** employment class actions



Wynne described the recent outcome of his case before the state Supreme Court as losing the battle but not the war.

In *Duran v. U.S. Bank*, the high court declined to prevent workers generally from using statistical evidence of employer wrongdoing as part of an argument for class certification. But the court also said the plaintiffs in the case at hand would have to start from scratch to win class certification.

"Yes, it was unfortunate that we were not able to hold onto the judgment but that didn't surprise us," he said, referring to the \$15 million award the class won at trial.

But by affirming the plaintiffs' ability to use statistical evidence, the court avoided an outcome that from Wynne's perspective would have been catastrophic. The bank had argued such

evidence got in the way of their due process rights.

"They argued that they had a due process right to assert a defense against each plaintiff individually," he said. "Such a notion would have eviscerated class actions."

Wynne is confident his case will do well on the second try. Before, the trial court was operating without a precedent on statistical evidence.

"We had no guidepost to go on, but now we do," Wynne said. "And not only does this case have them, but all other cases do."

Wynne said employment class actions remain strong despite limitations brought about by the growth of arbitration agreements, class action waivers and tougher requirements for class certification from the U.S. Supreme Court.

That's in part because more and more people have learned they might have a claim against their employers, he said.

"The public's education has moved up closer to meet the law."

— LAURA HAUTALA