

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.

Felix Shafir

HORVITZ & LEVY LLP
ENCINO

SPECIALTY: appellate law



In the past year, Shafir's appellate practice allowed him to weigh in on many arbitration-related issues as a friend of the court and as an assisting lawyer to the counsel of record for businesses including Wal-Mart Stores Inc. and Neiman Marcus Group Ltd.

As an appellate specialist, he sees his practice as a way to provide perspective to state Courts of Appeal and the state Supreme Court.

Shafir wrote a friend-of-the-court brief for the California New Car Dealers Association for the state high court in a major lawsuit.

The case decided whether employers could include waivers of class proceedings in their arbitration agreements with workers. Shafir had written that the court should not compare the benefits or defects of individual arbitration to those of a class action in court.

"I think that's reflected in the court's rejection" of a past precedent that had made that comparison, he said.

From his vantage point, the comparison was a bad method for deciding whether an arbitration agreement was legal, and could have led to further challenges in the U.S. Supreme Court,

which strongly favors arbitration agreements. *Iskanian v. CLS Transportation Los Angeles LLC*, 2014 DJDAR 8037 (Cal. Jun. 23, 2014).

"Amicus briefs have a broader view of how the law will play out," he said. "I think it may have had an influence."

But despite his input, Shafir doesn't think the state Supreme Court avoided all conflicts with federal law in its ruling on class action waivers.

"I still have my eye very much on *Iskanian*," he said, noting that the court carved out an exception from arbitration agreements for claims brought under the state's Private Attorney General Act.

He suspects the matter will be petitioned to the U.S. Supreme Court.

"That's an issue that's still very much in play and it will be interesting to see what the U.S. Supreme Court does."

— LAURA HAUTALA