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2006 Top Defense Verdicts

In Wage Case, Attorneys Credit Attack On 'Pseudoscience' for Victory

Making a major international corporation look sympathetic to a jury can be tough going in the best of times.

But what about when jurors — who hail from San Francisco, a bastion of workers' rights and other liberal values — are hearing evidence from dozens of witnesses that the firm is shafting lower-level employees in matters of wages and overtime?

"It's a crapshoot," said Gilmore Diekmann of Seyfarth Shaw's San Francisco office, who last year scored California's first defense verdict in a wage-and-hour class action before a jury. *Walsh v. IKON Office Solutions*, CGC04-429428 (San Francisco Super. Ct. 2006).

"This is the kind of case where you have to keep both fingers crossed," Diekmann said, "because these are wage issues a jury is sympathetic to."

But the verdict, which saved his clients \$50 million, was more than mere luck. Diekmann and Seyfarth attorneys Catherine Dacre, Francis Ortman III and Eric Hill had to attack seven class claims from the plaintiffs.

The key, Diekmann said, was picking apart the "pseudoscience" presented by the other side in the form of surveys and expert witnesses.

The first major victory for Seyfarth lawyers came when they persuaded Superior Court Judge David Ballati to decertify one portion of the case - a claim that IKON had misclassified the employment status of and underpaid certain sales employees — as a class action.

That turn of events, which Diekmann said was worth \$35 million to his clients, is under appeal.

Diekmann said he was able to show that the employees in question had such diverse duties and approaches to their jobs that they did not qualify as a class, Diekmann said.

The defense also got an all-encompassing Labor Code violation claim thrown out and later successfully fought a \$15 million claim that IKON failed to reimburse employees properly for out-of-pocket business expenses.

"On cross-examination, witnesses who



GILMORE DIEKMANN

had said they'd had to spend X amount of dollars would say they didn't actually have to spend it," Diekmann said.

Seyfarth attorneys settled three of the plaintiffs' smaller claims for \$1.1 million but got \$135,000 back in reversions, Diekmann said.

— TIM HAY

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