

## Seyfarth Shaw Issues New Report Reviewing EEOC-Initiated Litigation in 2011, Forecasts Increased Enforcement for 2012

*Past year saw record in EEOC-led investigations; Seyfarth report analyzes 79 EEOC cases from 2011 and concludes employers “will see even more high-impact litigation” in 2012; authors highlight “five most intriguing EEOC cases” of the year*

CHICAGO (February 2, 2012) – On the heels of last week’s news of record job discrimination filings with the U.S. Equal Employment Opportunity Commission (EEOC) in 2011, leading employment law firm Seyfarth Shaw LLP has issued a new special report: *EEOC-Initiated Litigation: Case Law Developments In 2011 And Trends To Watch For In 2012*. The report takes a close look at the recent legal landscape surrounding cases pursued by the EEOC in the past year, as well as trends in the EEOC’s litigation strategy which will be relevant in the year ahead.

The 95-page report, co-authored by Seyfarth attorneys Gerald L. Maatman Jr. and Christopher J. DeGroff, discusses the key trends in EEOC litigation for 2011 and what to expect in 2012. The report, which also analyzes the 79 major decisions involving the EEOC of the past year, can be downloaded [here](#).

Seyfarth’s report notes that the EEOC is more committed than ever to its Systemic Initiative launched in 2006. The authors note that the agency’s systemic program - which emphasizes the investigation and litigation of discrimination claims affecting large groups of alleged victims - continues to grow. In 2011, for the second year in a row, the EEOC filed a record number of systemic investigations, with the filing of 261 lawsuits.

Noting 2011’s mix of case wins and losses for employers that amounted to a “rollercoaster year for employers,” Maatman and DeGroff detail the EEOC’s investigation tactics and subpoenas. Their report also examines the federal courts’ increasing intolerance of some these tactics as observed in the mixed results in discovery, summary judgment, and remedies decisions.

“We see judges questioning the EEOC’s interpretation of the statutes it is charged with enforcing, rejecting the EEOC’s demands for an all-purpose pass on procedural rules, and outright hostility for an agency taking a ‘shoot first, aim later’ view of high stakes and costly litigation when employers are already besieged by a struggling economy,” the authors write.

Maatman and DeGroff also report that they anticipate that employers “will see even more high-impact litigation” in 2012. They point to the agency’s own fiscal-year report for 2011 that predicted that the quantity of systemic lawsuits and their representation on the total docket is expected to steadily increase. The authors also note that, in the agency’s released draft last month of its plan outlining its key strategic objectives from 2012 through 2016, the EEOC proposed a measure to achieve a minimum quota of systemic cases on the agency’s litigation docket each year -- a percentage the EEOC has not yet set.

“[E]mployers can be confident that the EEOC will ensure that the number of systemic cases it files will swell in 2012 and beyond,” Maatman and DeGroff write.

From the dozens of cases highlighted in their report, the authors have also selected what they believe to be the five most intriguing EEOC decisions in federal courts from the past year. They note in Seyfarth Shaw's Workplace Class Action Blog that since 2006, the EEOC's public strategy has been to further its agenda through prosecution of large-scale cases that will attract media attention, "with the hope that this brand of high-stakes litigation will channel employers' behavior." Maatman and DeGroff observe that, to that end, 2011 saw a mixture of judicial rulings in EEOC cases that range from "refreshingly employer-friendly decisions to those that sent chills through the employer community."

Their post counting down their top five picks can be viewed [here](#).

Maatman is co-chair of Seyfarth Shaw's Complex Discrimination Litigation practice, and a partner in the firm's Chicago and New York offices. He is currently lead defense counsel in three of the five biggest EEOC pattern or practice lawsuits presently pending in the United States. Maatman also led a number of winning class action defense cases in 2011, including a historic turn in a lawsuit brought by the EEOC in which he won the right to depose EEOC officials about the agency's own personnel practices.

DeGroff is co-chair of Seyfarth's Complex Discrimination Litigation practice, and a partner in the firm's Chicago office. His practice is focused on employment litigation, with a particular emphasis on EEOC pattern or practice lawsuits and class actions. He has extensive experience litigating against the EEOC, both at the early charge stage and in large-scale EEOC pattern or practice litigation, and his trial experience includes a rare pattern and practice trial fought against the EEOC that resulted in a full defense verdict.

Seyfarth Shaw has over 750 attorneys located in 10 offices throughout the United States, including: Atlanta, Boston, Chicago, Houston, Los Angeles, New York, Sacramento, San Francisco and Washington, D.C., as well as internationally in London. Seyfarth Shaw provides a broad range of legal services in the areas of labor and employment, employee benefits, litigation, corporate and real estate. The firm's clients include over 300 of the *Fortune* 500 companies, and our practice reflects virtually every industry and segment of the economy. For more information, please visit [www.seyfarth.com](http://www.seyfarth.com).

