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TOP VERDICTS OF 2018

The largest and most significant verdicts and appellate reversals in California in 2018

TOP APPELLATE REVERSALS

O'Connor et al. v. Uber Technologies Inc.

case
INFO

Class decertification

9th U.S. Circuit Court of Appeals

Judge Richard R. Clifton

Appellant's Lawyers: Theodore J. Boutrous Jr., Theane D. Evangelis, Joshua S. Lipshutz, Samuel D. Eckman, Dhananjay S. Manthripragada, Peter C. Squeri, Gibson, Dunn & Crutcher LLP

Appellee's Lawyers: Shannon Liss-Riordan, Adelaide H. Pagano, Lichten & Liss-Riordan PC



SAMUEL D. ECKMAN, THEODORE J. BOUTROUS JR., AND THEANE D. EVANGELIS

In one of the most closely-watched gig economy cases in recent memory, the 9th U.S. Circuit Court of Appeals decertified a huge class of current and former Uber Technologies Inc. drivers who alleged they were misclassified as independent contractors.

The court's momentous September decision noted that the class, made up of hundreds of thousands of members, included drivers who entered into agreements to arbitrate their claims and to waive their right to participate in a class action regarding those claims.

The 9th Circuit also upheld the enforceability of Uber's arbitration agreements, reversing a district court judge's denial of the ride-sharing behemoth's motions to compel arbitration. *O'Connor et al. v. Uber Technologies Inc.*, 2018 DJDAR 9663 (9th Circuit, filed June 3, 2014).

"The 9th Circuit's ruling held definitively, once and for all, that a class action can't be maintained under circumstances where a company has a fair and enforceable arbitration agreement and where everyone has agreed to resolve their disputes that way," said Gibson, Dunn & Crutcher LLP partner Theane D. Evangelis, who was part of her firm's team that represented Uber.

The Gibson Dunn contingent was led by fellow Los Angeles-based partner Theodore J.

Boutrous Jr., who handled oral argument. The team also included partner Joshua S. Lipshutz, associate Samuel D. Eckman, associate Dhananjay S. Manthripragada and associate Peter C. Squeri.

The firm has hailed O'Connor as instrumental to preserving the gig-economy model that relies on independent contractors.

In addition, Lipshutz said the 9th Circuit's ruling will make it easier for defendants to defeat class certification motions, which should help curtail costly discovery and litigation on class issues.

"The significance of the decision is hard to overstate because it means as a defendant we have the ability to seek decertification of a class very early in the litigation when we know the absent class members are subject to an arbitration agreement and class action waiver," said Lipshutz, who works from the firm's San Francisco and Washington, D.C. offices.

He and Evangelis stressed that one of the keys to securing a terrific result for Uber was pinpointing significant issues that could be appealed to the 9th Circuit before trial, such as class certification.

"Part of our strategy from the beginning was to get these issues in front of the 9th Circuit as early and as often as possible," Lipshutz said.

"Our success with the strategy underscores the importance of identifying appellate issues early on in a case, framing them in the right way, and teeing them up for the 9th Circuit," Evangelis added.

Shannon Liss-Riordan, a partner at Lichten & Liss-Riordan P.C. in Boston, was lead counsel for the class of plaintiffs. She acknowledged that the 9th Circuit's ruling makes it much more difficult for employees to band together in a class to challenge an employer's alleged violations of law.

"After this ruling, employees who are bound by an arbitration clause are more likely to have to pursue their claims in individual arbitration in order to seek remedies," Liss-Riordan wrote in an email.

"In light of this and similar decisions, we have been bringing mass arbitrations on behalf of numerous workers against a number of companies, and we wonder if any of these companies are rethinking their desire to force workers into individual arbitrations," she added.

— Lyle Moran