

Daily Journal

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Top Labor & Employment Lawyers 2017

Catherine A. Conway

FIRM:

Gibson, Dunn & Crutcher LLP

CITY:

Los Angeles

SPECIALTY:

Class actions, wage and hour litigation

Conway co-chairs Gibson Dunn's labor and employment practice group. Her practice focuses on complex litigation including class actions with an emphasis on wage and hour trials.

Clients include Comcast Cable Communications Management LLC, Korn Ferry International, Michaels Stores Inc. and Motorcar Parts of America Inc.

"But clients don't hire me to litigate a case to trial," she said. "That costs more. They hire me to keep cases away from a jury." Over a 25-year career she has become expert at summary judgment motions, dismissal motions, class action decertifications, arbitration clause enforcements and settlements.

When plaintiffs launched a potential class action asserting that Comcast failed to properly calculate and pay commissions to commissioned employees, Conway first removed the case from San Benito County Superior Court to the Northern District, where federal rules tend to ease defenses. The company's possible exposure was in the tens of millions of dollars. In September 2016, she moved on Comcast's behalf to compel individual arbitration of the plaintiffs' claims under the cable giant's unique alternative dispute resolution,

which requires employees to attempt to resolve claims in-house first, then proceed to mediation and eventually arbitration if the employee is dissatisfied with the results at any stage. If arbitration takes place, Comcast will reimburse the employee for up to \$1,500 for attorney fees and costs.

"The plaintiffs raised the usual argument that the process was unfair, but Comcast's employment contract contains an opt-out clause, so it was compliant with the law," Conway said. In this case, the lead plaintiff had been given the opportunity, but chose not to opt out. Comcast's program also contains an explicit class action waiver.

In April, U.S. District Judge Edward J. Davila of San Jose granted Conway's motion and ordered the plaintiff, Tom Garcia, to individually arbitrate his claims, holding that Comcast's program is not procedurally, substantively or otherwise unconscionable, that it encompassed the plaintiff's claims and that the class action waiver is enforceable because Garcia had been offered the opt-out choice. *Garcia v. Comcast Cable Communications Management LLC*, 5:16-cv-02975 (N.D. Cal., filed June 2, 2016).

"Usually, plaintiffs do not view the



plain language of employment contracts the same way we do," Conway said. "It is not the first time we have had that happen. Judge Davila's ruling took the wind out of the plaintiff's sails and the case has been dormant since. Comcast has a very strong legal department that drafted the employment contract. My job was to enforce it. The clients are very pleased when I get no courtroom action.

— John Roemer