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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Q&A With Mayer Brown's John Nadolenco

Law360, New York (September 23, 2010) -- John Nadolenco is a partner in Mayer Brown's Los Angeles office, where he is the head of litigation. He is the firmwide co-group leader of the consumer litigation and class action group. Nadolenco has represented retailers, financial institutions, biotechnology and telecommunications companies.

Q: What is the most challenging case you've worked on, and why?

A: Savaglio v. Wal-Mart Stores Inc. was the most challenging case I've worked on. It was one of the earliest major class actions in California focused on meal-period, rest-period and off-the-clock issues. We were up against capable plaintiffs' counsel (The Furth Firm LLP) and were litigating numerous issues of first impression. For example, we spent months litigating the scope of an employer's obligation to "provide" meal and rest periods under California law.

We brought several motions for summary adjudication — involving novel legal issues — that helped narrow the claims in the case. And ultimately, Wal-Mart tried the claims brought by a class alleging meal-period violations. It was one of those rare instances where the parties — and I think our trial judge (Judge Ronald Sabraw) — realized we were breaking new ground on a number of issues. In fact, parties all over the state continue to litigate many of the same issues.

The trial itself also contained several novel elements. For instance, Judge Sabraw allowed both sides five minutes of argument after each witness completed their testimony. And he instructed the jury at the outset and end of the lengthy, four-month trial.

Q: What accomplishment as an attorney are you most proud of?

A: Defeating certification based on a relatively novel legal theory. A few years back, we successfully persuaded several federal judges that they could — and should — refuse to certify cases where the potential damages award could annihilate companies out of existence, and where the plaintiffs suffered little or no actual harm.

Other circuits had refused to consider the impact of annihilating damages at the certification stage, but we continued to press our due process and superiority concerns. It was quite gratifying when the courts started accepting our arguments.

I was also particularly proud of the work we did for Blackwater Worldwide (now Xe Services LLC) in a case involving the city of San Diego. Just days before Blackwater was supposed to start training U.S.

Navy sailors in San Diego — and in the midst of primary elections — the city announced that it would not issue Blackwater an occupancy permit.

On fairly short order, we obtained a TRO and preliminary injunction enjoining city officials from preventing Blackwater from occupying and using its facility.

The court found that the city violated its own municipal code and Blackwater's constitutional due process rights. The case drew widespread attention in the primary and general elections in San Diego and garnered additional attention due to stiff opposition by activists opposed to Blackwater. Ultimately, the parties settled the dispute on appeal for a payment of $150,000 in attorneys fees from the city to Blackwater.

Q: What aspects of law in your practice area are in need of reform, and why?

A: The practice needs better ways to deal with “gotcha litigation” — meaning frivolous cases and technical violations that result in little or no injury, but that are pursued aggressively and force companies to incur significant fees in defending the claims. Stated differently, we need more ways to dispose of cases that, when you tell nonlawyer friends about them, they can’t believe the system doesn’t already have a way to quickly get rid of those cases.

Courts and companies simply need effective tools to deal with those types of cases, many of which are lawyer-driven. Fixes worth consideration include fee-shifting statutes and allowing trial courts to consider the impact of annihilating damages at the certification stage.

Q: Where do you see the next wave of cases in your practice area coming from?

A: I expect that the Dodd-Frank Wall Street Reform and Consumer Protection Act will generate significant consumer and whistleblower litigation.

I expect the new consumer protection agency will actively regulate consumer financial products. Plaintiffs’ class action lawyers also are sure to comb through the act, and future regulatory provisions, looking for violations, even if just technical ones. For instance, I expect a new round of cases challenging fees charged by banks and credit card companies — just when the bulk of those cases seemed to have run their course.

The act also provides significant incentives for whistleblowers — and that almost certainly will lead to additional high-stakes litigation against financial institutions.

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A: Lee Dresie at Greenberg Glusker Fields Claman & Machtinger LLP in Los Angeles. Lee and I litigated against each other when I was a junior lawyer and he was, shall we say, more seasoned. I was impressed how Lee always treated me with courtesy and respect, while always zealously representing his client. It taught me that opposing counsel doesn’t have to be your enemy. Lee and I are still friends and play basketball together every week.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A: Technology has made it so much easier to follow trends in class actions. Every week, there are numerous cases, articles, blogs and conferences on class issues. I’d encourage anyone interested in the

area to dive in with both feet and learn the area, as well as how the judges in their jurisdiction typically handle and view class cases. This kind of diligence will help develop winning arguments.