



Portfolio Media, Inc. | 648 Broadway, Suite 200 | New York, NY 10012 | www.law360.com
Phone: +1 212 537 6331 | Fax: +1 212 537 6371 | customerservice@portfoliomedia.com

Q&A With Mayer Brown's Robert Davis

Law360, New York (June 09, 2009) -- Robert P. Davis is a partner in the New York and Washington, D.C., offices of Mayer Brown LLP, and head of the firm's U.S. employment and ERISA litigation groups.

Davis' substantive areas of concentration include: ERISA litigation and investigation defense; FLSA and wage-and-hour class and collective action litigation defense; OSHA inspections and litigation defense; and electronic discovery in complex civil cases and investigations. He handles trial and appellate ERISA litigation and represents plans, fiduciaries, plan sponsors and service providers in ERISA investigations and litigation.

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

A: Like most lawyers, I always believe that my current cases are the most challenging. But to pick a completed one from over the years, it would be an early ERISA "stock drop" case (*Landgraaf v. Columbia/HCA*).

This was one of the first stock drop cases to go to trial, and there was very little direct precedent to guide us — or the court — as we wrestled with the trial issues of litigating a legal presumption as to prudence, class status, representative proof and damages in the ERISA context. We won a defense judgment after a lengthy trial, and the Sixth Circuit affirmed.

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

A: When I became the Solicitor of Labor for the United States Department of Labor, significant changes in federal employment laws were driving the caseload up, but that very large office had to comply with federal budget reductions.

With the immense help of a team of the most senior career lawyers in the Office of the

Solicitor, we succeeded in realigning the legal program to focus on the best cases to protect America's workers — for example, work place fatalities cases, child labor violations and protecting retirement benefits for low-wage workers — consistent with the fundamental purposes of the Department of Labor.

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

A: The class action issues in my cases are at least as important as the underlying merits. Appellate review of class certification under Fed. R. Civ. P. 23(f) has helped define the relevant standards, and the Class Action Fairness Act was a positive step.

But, class action practice varies considerably in the federal and state courts. The extraordinary risks of a very large class case, regardless of the underlying merits, unfairly, in my view, deter many employers from defending their conduct on the merits.

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

A: The economic dislocations over the past year alone are already producing record volumes of cases. And, because more midlevel and senior employees are affected, relatively novel contract and reputational claims are being asserted.

The ERISA area will also continue to grow due to the declines in retirement asset values and a trend toward less deference to administrative decisions on benefits.

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

A: Elizabeth Dole — for whom I worked twice in her cabinet positions — was one of only 24 women out of her class of 550 at Harvard Law School in the early 1960s.

She has chosen public service as her career, rather than what we traditionally view as "law practice." Her effectiveness as a leader and in public advocacy is made even stronger by her legal training. She is a lawyer from whom I have learned much.

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

A: Do everything possible to learn how to listen carefully (particularly to clients, witnesses and judges), think critically and write persuasively. The "substance" of employment law is not particularly difficult. After all, even I learned it.

Don't be afraid to ask your colleagues for advice on matters that are new to you, because at least at some level, all of us enjoy being mentors.