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Albert Giang

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Giang is a former appellate lawyer who moved to K&S from Boies Schiller Flexner LLP last year. His work blends class action defense, regulatory investigations and advocacy work and public policy counseling for technology disruptors, especially those facing litigation or government enforcement over their worker classification models.

He said his long involvement with constitutional and administrative law adds valuable perspective as it overlaps with questions of how to apply old case law to modern tech issues.

"As the plaintiff bar gets increasingly creative, I enjoy getting calls from sophisticated clients looking for answers in novel legal situations," Giang said.

He built on his success last year—when he won dismissal of a proposed consumer class action over robocalls for client Postmates Inc.—by taking on a new employment matter for the logistics and food delivery service now owned by Uber Technologies Inc. The new case, among the first arising from the Covid-19 pandemic, asserted claims under the California Labor Code for alleged unpaid wages and failure to provide workers with necessary personal protective equipment. McGhee v. Postmates Inc., CGC-20-584341 (S.F. Super. Ct., filed May 22, 2020).

The plaintiff framed her allegations as a public health matter that qualified for public injunctive relief under the state Supreme Court's McGill v. Citibank opinion, a ploy that if successful would have voided the arbitration clause in workers' contracts. The plaintiffs also contended that Postmates couriers qualified as interstate transportation workers exempt from the Federal Arbitration Act.

The idea was to take advantage of rapidly-developing exemptions that can force defendant companies to litigate in court rather than in arbitration, Giang said. “For timing and for the sake of a salacious claim, this plaintiff tried to put public pressure on my client with her PPE allegations,” Giang added.

“But at heart, we saw that this was a misclassification case. She said ‘I didn’t get PPE—and, by the way, I was misclassified.’ The complaint hooked into Covid as a catchy issue, but it goes after employment claims that predated Covid. We tried to cut through that and explain to the court that this was not a public health suit.”

Giang persuaded the court to compel individual arbitration, and he obtained important rulings that Postmates couriers were engaged in local, not interstate, transactions, and that the plaintiffs did not qualify for public injunctive relief simply by invoking public health concerns.

“There was a real design strategy by the plaintiffs here,” Giang said. On the interstate commerce claim, he cut through with a simple contrary argument, pointing out that Postmates facilitates local deliveries by couriers, not long supply chains from elsewhere. “Put differently,” he concluded in one pleading, “even if you could theoretically order live poultry from out-of-state manufacturers, it does not transform your chicken cacciatore from a local restaurant into an interstate transaction.”

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Cheryl Sabnis

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King & Spalding LLP

The pandemic changed the employment law landscape, Sabnis says. "It's a brave new world out there for both sides of the V."

"Plaintiffs and defendants are dealing with the ways that covid can create liability or potential liability," she said. "And there are new and novel theories, and new and novel uses of existing law."

As an example, Sabnis is defending a healthcare facility she can't identify against a lawsuit by several workers and their union claiming the defendant did not do all it should have to protect employees from coronavirus infection and illness. One plaintiff even blames the facility for her mother's death from COVID-19, she said.

"We're seeing a development in employment law in a space that nobody's really talked about before. It's pandemic law, really," she said.

Employers must abide by health and safety requirements, including the ever-shifting federal, state and local regulations and orders. But the question is whether an employer is liable for creating a public nuisance for not doing so.

Like many management-side employment attorneys, Sabnis has been spending much of her time counseling clients on new rules and regulations. She also advises them on the ramifications of working from home and returning to the office.

With employees at home, concerns include data security, engagement and productivity, and meal and rest breaks. Those who return to the office will likely want more freedom to work at home temporarily for unusual situations, such as a sick child. “It’s going to be harder for an employer to say, ‘No, we’re paying you to work full time,’” she said.

“The concept of work from home seems so simple, but the ramifications for businesses and employers and practitioners like myself are legion.”

Sabnis also had several important litigation wins recently. In one, a senior female dockworker had a dispute with her union, which declined to let her work. She lost her position as a “steady foreman” with Sabnis’ client, which the woman then sued for discrimination.

“It was very important to set the precedent that there shouldn’t be any liability for our client for following the rules that were agreed to with the union” in its collective bargaining agreement, she said. “It was one of those cases that you have to win. … And we did win.” Sabnis obtained summary judgment in mid-January. Kobren v. Total Terminals International LLC, 2:19-cv-09189 (C.D. Cal., filed Oct 24, 2019).

In recent years, Sabnis has made a number of presentations to legal and employer groups on the #MeToo movement as well as consulted with clients on sex harassment concerns. Thanks to the pandemic, that work slowed down.

“For example, the rash of calls I usually get after holiday parties didn’t happen this year,” she said.