

Q&A With Akin Gump's Gregory Knopp

Law360, New York (March 29, 2013, 11:07 AM ET) -- Gregory Knopp is a member of the labor and employment practice at Akin Gump Strauss Hauer & Feld LLP, primarily focusing on class and collective actions and other complex employment disputes. He represents clients in a multitude of industries, including financial services and other professional services, retail, technology and health care.

Q: What is the most challenging case you have worked on and what made it challenging?

A: The most challenging case I worked on was a class action challenging our client's wage and hour practice in nearly 2,000 retail stores in California. The court certified a class of roughly 100,000 current and former employees and set the case for trial. On the eve of trial, the representative plaintiff dismissed his statutory claims, which would have entitled our client to a jury trial. The plaintiff chose, instead, to proceed with his claims for equitable relief only. The case proceeded to a bench trial, which lasted roughly one month.

Unfortunately for our client, the court's pretrial rulings foreshadowed defeat at the trial court level. As a result, we conducted the month-long trial with little hope of near-term success but with the objective of creating the best possible evidentiary record for appellate review. The trial was extremely intense and contentious, especially in light of the pretrial rulings. As expected, the trial court ruled in favor of the plaintiff, awarding a substantial monetary judgment in favor of the class. However, we remained cautiously optimistic that the trial court record would support strong appellate arguments. Fortunately, our client was vindicated as we secured a total victory on appeal.

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

A: I think many litigators would be well-served by acting more civilly towards their adversaries. I think it is possible to aggressively serve your client's interests in a professional and respectful manner. In fact, when litigation becomes too personal to the lawyers, the clients' interests are no longer paramount. I always try to remind myself of which issues are worth fighting about in order to achieve the client's ultimate goal.

Approaching litigation this way can help eliminate minor and unproductive disputes as well as acrimony among the parties. It also can help foster respect and credibility with your adversary. A little trust with the other side can go a long way in attempting to achieve your client's goals.

Q: What is an important issue or case relevant to your practice area and why?

A: A significant issue relevant to my practice area is the enforceability of arbitration agreements that preclude class and collective actions. This issue is significant because it impacts the degree to which employers may be forced to defend against substantial class litigation. The law in this area is evolving quickly. The Supreme Court has recently issued several decisions that bear on this issue and will continue to address it in the near future.

Likewise, numerous state and federal appellate courts are addressing this question in employment and similar cases. This issue is quite complex as it involves the interplay between state and federal employment statutes (e.g., wage laws), the Federal Arbitration Act and the National Labor Relations Act, as well as a host of significant policy considerations.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: Joe Schmitt of Nilan Johnson Lewis in Minneapolis is a very impressive employment litigator. He is extremely smart, analytical and practical. Joe puts the client's interests first. He understands his client's objectives and is adept at finding creative solutions.

Q: What is a mistake you made early in your career and what did you learn from it?

A: Two mistakes come to mind. First, especially when a lawsuit is not very active, it can be easy to fall in the trap of becoming passive and even reactionary. Over the years, I have learned that a successful defense requires exhaustive planning and forethought and consistent communication with the client about the client's objectives and the most appropriate strategies for achieving them.

I frequently talk to my junior colleagues about planning two and three steps ahead and regularly updating clients about case developments, deadlines and strategies. In my experience, diligence in planning and communication is essential not only to avoid missteps but also to help position the client for the best possible outcome.

Second, I think it is crucial to have a "thick skin" when dealing with difficult adversaries. Litigation is inherently contentious, and junior lawyers can sometimes be bullied or take tactics personally. With experience, I learned to aggressively represent clients while always remaining professional and respectful of my adversaries, even when this approach is not reciprocated.

I try to extend courtesies whenever possible and to always think carefully about what is worth fighting about. Learning to deal with adversaries in this way promotes your client's objectives and also makes our difficult profession less stressful and more rewarding.

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