

## Q&A With Sheppard Mullin's Greg Labate

*Law360, New York (August 4, 2009)* -- Greg S. Labate is co-chair of Sheppard Mullin Richter & Hampton LLP's labor and employment practice group in the Orange County office. Labate provides general advice to employers relating to labor and employment issues, and he has extensive experience in defending employers against claims of discrimination, harassment, retaliation, wrongful termination, breach of contract, defamation, invasion of privacy, workplace violence, overtime and other wage-and-hour issues, class actions and related matters.

An experienced trial attorney, he defends employers in all courts and government agencies, and specializes in wage-and-hour class actions.

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

A: In 2008, I defended a large automobile manufacturer against a lawsuit for sexual harassment, gender discrimination, and related claims by a former employee and her husband. On its face, the case seemed to be a plaintiff lawyer's dream: an attractive female employee passed over for promotion at a foreign-owned company in a male-dominated industry. After almost two years of hard-fought litigation, we battled through a four-week jury trial before Judge Peter Polos in the Orange County Superior Court.

Late in the litigation, we uncovered evidence that the former employee and her husband had committed fraud in connection with her educational background. They had forged a college transcript and created a P.O. box in the college's name to sell the con.

The plaintiffs and their counsel had no idea that we had this incredibly damaging evidence of fraud. When we hit her with it at trial in front of a jury at the end of her cross-examination, it was a bombshell. She never recovered, and we defeated all of the claims against the company.

With this victory, the company sent a strong message that it would fight these frivolous cases all the way through trial if necessary when the company had done nothing wrong.

This was a tremendous victory for my client, and a great trial experience. It was a particular pleasure litigating before Judge Polos and his staff.

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

A: Our practice group has vast expertise in defending these "bet the company" wage and hour class actions, where often times millions of dollars of potential liability are at stake based on overtime, meal and rest periods, itemized wage statements and related claims.

While I was representing one of my restaurant clients in a federal court wage-and-hour class action, the court ruled in our favor on a key issue concerning meal and rest period penalties under California law. The plaintiffs sought multiple penalties for multiple violations during a single workday. However, I was able to convince the court to rule that employees are only entitled to recover one penalty per workday, no matter how many alleged violations occurred on that one workday. The court agreed to publish this important decision, as it made new law on this key issue.

To date, the ruling in *Corder v. Houston Restaurants* is the only published decision wherein the court limited the number of meal and rest period penalties in the workday. This decision has been cited in numerous subsequent cases, and has saved employers of California millions of dollars in potential penalties. It was a very gratifying result.

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

A: In the last decade, there has been an explosion of wage-and-hour class action lawsuits filed against California employers in both state and federal court. Oftentimes, these class actions include demands for millions of dollars based on technical violations of complicated labor laws. The most insidious of these laws is the Private Attorney General Act or PAGA, which affixes new penalties for even the most minor technical violations of the Labor Code, basically adding penalties upon penalties.

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

A: Based on current data, it is unlikely that the tsunami of wage-and-hour class actions will subside any time soon. We believe that the next wave of class action lawsuits will likely cover other areas of employment law, such as employee benefits under ERISA, employee privacy (i.e., drug testing, background checks), discrimination (i.e., gender, age, disability), and other related areas.

It appears that class action lawsuits are here to stay for the foreseeable future in all areas of labor and employment law.

We are also seeing an increase in cases that combine issues concerning employment law and intellectual property issues, such as non-competition agreements, trade secret violations, employee raiding, and related claims.

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

A: While studying at Dartmouth, I was good friends with one of my fraternity brothers, David Koeninger. While we were both interested in law, our lives took different paths. I moved west to attend UCLA Law School, while David went to Michigan Law School. While I went to work for a big firm after law school, David chose to forgo the fat paycheck for a career in public interest law in Ohio.

David continues to work tirelessly to seek justice for the disadvantaged in society, and is a strong advocate for the homeless and those in poverty with the group Advocates For Basic Legal Equality ([www.ablelaw.org](http://www.ablelaw.org)). I admire David's strength of character and sacrifice, as well as his excellent legal skills.

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

A: I would recommend that the young lawyer find a few specific areas of interest in labor and employment, and do whatever it takes to be the "go-to" attorney at the firm in those areas.

For example, as a young labor lawyer, through happenstance, I became the firm's expert on issues of workplace violence. Other attorneys, both inside and outside my department, would turn to me when their clients had to deal with a disgruntled ex-employee making threats of violence. There is nothing better to help you bond with a client than getting a restraining order that protects the client and the client's family from a volatile and dangerous threat, and they are forever grateful.

Similarly, young lawyers should identify an area that interests them and become the firm's expert. With the ever-changing world of labor and employment law, there is always some new and exciting areas that need someone to explore with a passion.