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Q&A With Katten's Steven Eckhaus

Law360, New York (July 23, 2009) -- Steven Eckhaus is head of the executive employment practice at Katten Muchin Rosenman LLP and a partner in the firm's financial services practice. A litigator, negotiator and advisor with over 30 years of experience, he concentrates his practice on executive compensation, employment law, investment management, corporate and securities law, real estate, dispute resolution and counseling.

Eckhaus has advised and negotiated employment agreements for many of the nation's leading financial services executives; represented management teams in private equity transactions; advised compensation committees; and counseled executives and employers on noncompetition, confidentiality and trade secret agreements, as well as on the design of compensation plans.

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

A: The most challenging case I have been a part of was *Morelli v. Cedel*. Ida Morelli was fired from the U.S. branch office of Cedel, an international metals broker with hundreds of employees worldwide but only five employees in the U.S.

In spite of nearly unchallenged evidence that she was fired because of her age, I faced an unbroken line of authority that the Age Discrimination in Employment Act required at least 20 employees in the U.S. in order for there to be subject matter jurisdiction. Researching the precedents, I found an inconsistency in the first case in the line of authority and was convinced that the rule the courts had adopted was erroneous.

I took the case expecting to lose in the district court but hoping to win on appeal. I drew Judge Michael Mukasey, one of the most respected district court judges, who wrote a scathing decision, dismissing the complaint because Cedel had too few U.S. employees for ADEA jurisdiction.

On appeal to the Second Circuit, I argued that the “small business” exception to the ADEA was never intended to shield giant multinationals doing business in the U.S. from their obligation to comply with U.S. laws prohibiting discrimination, and that as a matter of public policy, legislative history and plain reading of the statute, the line of authority relied upon by the district court was flawed.

The Second Circuit agreed and this principle has since been expanded to Title VII both as to jurisdiction and to include worldwide employees, to calculate damages.

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

A: Shortly after winning Morelli in the Second Circuit, I again appeared before Judge Mukasey, this time in Trezza v The Hartford. Trezza alleged that she was denied promotion to managing attorney of the insurer’s captive law firm because she was a mother.

There had not been a decision favoring a mother in a discrimination case in 25 years (Phillips v. Martin Marietta). Analyzing the dismissed cases, I found a flaw in the manner in which they were pleaded. It also did not hurt that the Second Circuit had reversed Judge Mukasey just weeks earlier.

My oral argument in district court included the statement, “You are not going to make me argue that you were wrong again by holding that an employer can deny promotions to women with children while promoting men with children.” This time no appeal was necessary.

At around the same time, a Harvard law professor, Joan Williams, was promoting the concept that mothers and caregivers should have legal protection from job discrimination and the Trezza case gave her the first legal peg to rely upon. The resulting body of law, law review and academic authority resulted in the EEOC adopting regulations, treating discrimination against caregivers as violating Title VII.

Joan Williams is now a distinguished professor at Hasting Law School, where she runs the Center for WorkLife Law, funded by the Alfred P. Sloan Foundation, and I am on the advisory board.

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

A: The laws regulating compensation. Too much emphasis is placed on limiting bonuses paid to Wall Street executives. We have seen that the market can claw back bonuses more effectively and ruthlessly than any statute. What is really needed are laws protecting the compensation paid to employees generally.

For example: (1) deferred compensation should not be included in the general assets of the company; (2) employees should not be required to keep their company stock for more than three years; (3) give the right to resign for good reason; (4) unvested

compensation should vest and be delivered on a termination without cause or for good reason; (5) adopt the California laws prohibiting noncompete agreements under most circumstances; and (6) require employers to pay legal fees and costs if they lose an employment or wage case.

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

A: 1. Employers are refusing to pay money legitimately owed to their former employees, taking cynical advantage of public outrage over executive pay.

2. Antitrust challenges to Garden Leave and Notice policies.

3. Increased use of declaratory relief to invalidate post-employment restrictions.

4. Challenges to governmental interference with contracts.

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

A: Eva Posman is an exceptional attorney who has successfully balanced family and career.

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

A: 1. Be a good listener to your clients.

2. Lawyers talk too much.

3. Write sparingly. Think Hemingway.

4. March your law and facts together. Think Felix Frankfurter.

5. Sit on a jury. You will never ask a pointless question again.

6. We are in the truth business.

7. Read the advance sheets.

8. If you have analyzed a line of authority to the bone and are convinced that the authority is wrong, then have the courage to act on your conviction.

9. Self appraisal every day.

10. Preparation, preparation, preparation.

11. Pick up your own phone. Never have your secretary initiate a phone call.

12. Return phone calls promptly.
13. Answer your client's questions.
14. Don't act like the smartest person in the room, even if you are.
15. Evolve.
16. Treat everyone with respect.
17. Older lawyers can teach you a lot. Law is one of the few fields where experience is a plus.
18. Don't hide your light under a bushel basket.