

## Q&A With Dechert's Thomas Johnson

*Law360, New York (March 25, 2013, 1:03 PM ET)* -- Thomas K. Johnson II, who is based in Dechert LLP's Philadelphia office, counsels and represents employers in individual and class action employment discrimination suits, trade secrets and noncompete disputes.

Johnson has also represented litigants in other types of complex commercial and fiduciary litigation, including Employee Retirement Income Security Act, estate and trust matters, breach of contract, the Racketeer Influenced and Corrupt Organizations Act and breach of fiduciary duty suits.

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

A: Labor and employment cases present a unique mix of legal and emotional issues for both parties. As most people realize, the workplace is a complicated environment in which almost anything can happen. Setting aside the unusual facts and legal challenges, it is the emotional investment of the parties in the proceedings that makes these cases especially challenging.

Often, the plaintiff and the management representative have worked closely together, and both feel strongly that they have been wronged by the other. (I cannot count the number of times that a manager has asked if he or she can bring a defamation claim against a plaintiff.) It makes for an especially combustible combination, and you never know exactly how it will play out.

Several cases come to mind that might win the race for most challenging. Among them was a matter involving seven individuals who brought a putative class action discrimination lawsuit. The case lasted for years, involving a trip to the judicial panel on multidistrict litigation and the appellate court along the way. It was placed in civil suspense for a long time (making the case even more difficult when it came back to life) and involved many witnesses (often with strong feelings about the matter) and numerous legal issues.

Eventually, we filed and won summary judgment on all seven claims, but I will never forget the amount of work that it took to get there. I also remember the gift that I received in appreciation for the result: a copy of the Brothers Grimm story, "Seven at One Blow."

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

A: The use and regulation of social media and technology in the workplace. By its nature, technology is always changing, meaning that the law is inevitably trying to play catchup in this area, and I am regularly getting calls about it. For instance, at the moment, there is a patchwork of laws and decisions that vary from place to place, addressing issues such as the privacy of electronic communications in the workplace and the use of social media in hiring.

In addition, the National Labor Relations Board has issued several recent decisions suggesting that employer attempts to regulate or respond to the use of social media by employees through fairly standard policies constitute unfair labor practices. These decisions have caused some people to call for reform.

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

A: At the heart of employment law is the question of whose acts can create exposure for the employer. It seems like it should be a simple issue, but simple is often not easy. The U.S. Supreme Court has considered this issue quite a bit recently.

For instance, in *Staub v. Proctor Hospital*, the court in 2011 recognized the “cat’s paw” theory of discrimination, and the court’s opinion has a lengthy and interesting discussion of agency and its key role in determining whether an employee’s acts can expose the employer to liability. This term, the court is going to address a related issue about who is a supervisor in *Vance v. Ball State University*. Employers, employees and their lawyers will be watching the decision carefully.

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

A: It is hard to pick just one. One attorney who comes to mind is Lisa Banks at Katz Marshall & Banks in Washington, D.C. She is an effective and measured advocate with a good understanding of developing issues in whistleblower laws.

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

A: I recall a mistake that I made early on in an especially contentious case. The plaintiff had filed a motion and the court had set a hearing date. The partner in charge said that I could handle the argument, and I was thrilled. I prepared, and we did a mock examination in which the partner played the role of the judge.

The first question was, “what do you want?” I quickly went through my arguments in response to the plaintiff’s motion. The partner stopped me and asked the question again. I wondered what I had missed. The partner took the time to explain to me that I was so focused on the details of our response that I did not see the big issue. The right answer to the question, of course, was, “I want the case dismissed.”

I learned two lessons from that experience: Simple answers are often the best, and don’t lose sight of what you and your client actually want, and be prepared to ask for it.

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