Michael D. Singer

As co-lead counsel for the plaintiffs in the landmark Brinker Restaurant Corp. case, Singer has been in the forefront of one of the most closely watched labor and employment disputes in the history of California.

On April 12, the state Supreme Court held that employers must ensure that they provide meal periods within five hours of the start of an employee's shift but need not ensure the breaks are taken. *Brinker Restaurant Corp. v. Superior Court* (2012), S166350.

The decision also held that in appropriate circumstances meal and rest period claims may be pursued as class actions, Singer added.

As with all closely watched rulings, once a decision is handed down, people want answers.

Recalling continuing education classes he's addressed since the decision, Singer said, "I lectured to a hundred folks, half of whom were human resources personnel, who were demanding to know what they're supposed to do in order to follow that standard."

He's also recorded a 30-minute podcast on the plaintiff's view of Brinker.

While the smoke continues to clear in the aftermath of the case, Singer has been busy resolving another labor-and-employment matter that has strung out for eight years now.

At issue was a meal-and-rest-period case filed on behalf of a diabetic employee, who had been prohibited from taking meal breaks within five hours, a time interval necessary to maintain his blood sugar levels.

In 2005, the trial court granted the employer's motion to compel individual arbitration and enforce class-action prohibitions.

Two years later, the state Supreme Court issued an opinion establishing the standards for class-action waivers. *Gentry v. Superior Court of Los Angeles County*, S141502 (Cal. Aug. 30, 2007).

While the ruling presumably tipped the scales in Singer's favor, the trial court denied reconsideration and again sent the matter to arbitration.

But Singer appealed, and the lower court was ordered to reconsider its ruling, which subsequently led to settlement discussions and a confidential eight-figure agreement that will be final in July.

Singer's challenge, as he sees it, was "to be able to resurrect a case that had been left for dead three times."

"It took tenacity," he said.

- PAT BRODERICK

Daily Journal

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Specialties: class actions, wage and hour issues

On April 12, 2012, the state Supreme Court held that employers must ensure that they provide meal periods within five hours of the start of an employee's shift, but need not ensure that the breaks are taken.

But some subsequent court rulings have erroneously adopted a lower standard for employer compliance, Singer said. The Supreme Court stayed a number of cases while Brinker was pending," he said.

"When these cases went back, the courts of appeal readopted their earlier language to affirm their original rulings," Singer said. "In doing so, they neglected to set forth the complete and accurate Brinker standard."

Keeping those three cases published, Singer added, would have meant confusion to courts and practitioners.

"Companies would have seized on that language to argue against class actions being certified, which is often the only way employees can bring these claims effectively and bring employers into compliance," Singer said.

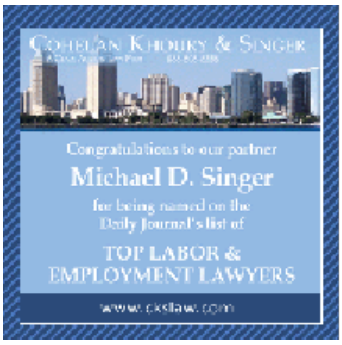
In another significant matter, Singer was lead counsel in reaching a settlement in a case of unpaid overtime that was litigated for more than eight years on behalf of about 500 dialysis nurses. Many of them received more than $100,000, he said. *Gallen v. Gambro Healthcare Inc.*, 04CC00571 (Orange County Super. Ct., filed May 3, 2004).

Evaluating the state's labor and employment landscape overall, Singer said that he has noticed some progress being made in the workplace.

Back in the day, he said, "My philosophy was that I'll be out of a job when employers in the state come into compliance with California wage-and-hour laws. I'm not out of a job, but it feels that they are making some progress." The managing partner at Cohelan Khoury & Singer in San Diego, Singer also devotes his time to working pro bono for the California Employment Lawyers Association.

As wage-and-hour amicus liaison for CELA, Singer reviews and contributes to amicus efforts in the appellate courts and state Supreme Court.

Among them, Singer served as amicus liaison for CELA on behalf of employees on a closely watched case pending in the state Supreme Court involving former banking officers who had been classified as exempt and therefore not eligible for overtime pay. *Duran v. U.S. Bank National Association*, 203 Cal. App. 4th 212 (Cal. App. 1st Dist., Feb. 6, 2012, mod. March 6, 2012).



Singer was among those attorneys who managed to convince the state Supreme Court to depublish three appellate decisions that misstated a standard for employer compliance established in the landmark Brinker Restaurant case.

He serves as co-lead counsel for the plaintiffs in what is considered to be one of the most closely watched labor and employment disputes in the history of California. Singer also argued in the 4th District Court of Appeals on remand from the Supreme Court. *Brinker Restaurant Corp. v. Superior Court (2012)*, S166350.