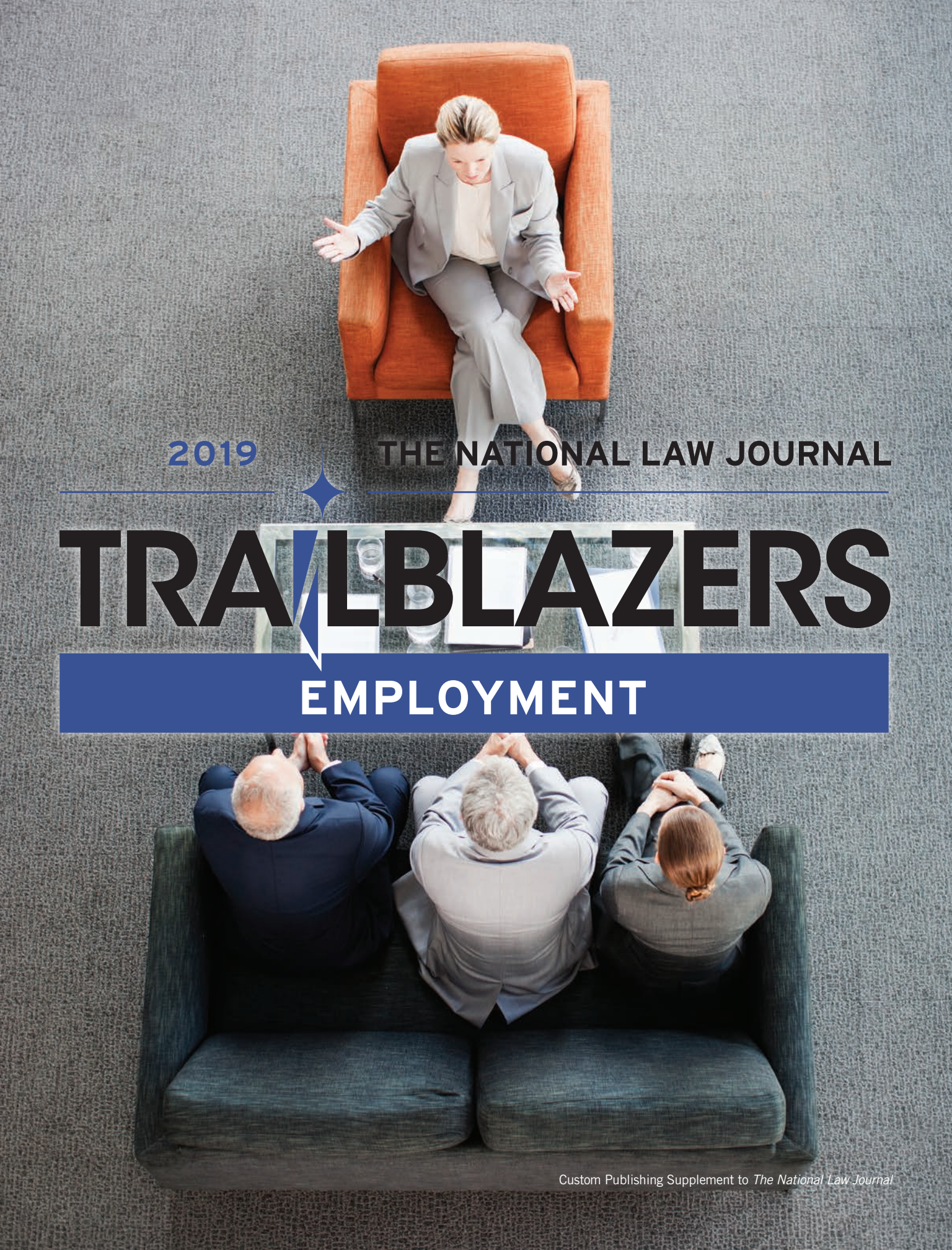

2019

THE NATIONAL LAW JOURNAL

TRAILBLAZERS

EMPLOYMENT

Custom Publishing Supplement to *The National Law Journal*

Dear Readers,

Welcome to the inaugural list of Employment Law Trailblazers and the fifth annual list of Intellectual Property Trailblazers. The Trailblazers series is a special supplement developed by the business arm of *The National Law Journal*. We are proud to spotlight a handful of individuals from each practice area that are truly agents of change.

Employment law attorneys have been busy this past year with the emergence of the #MeToo era. While some of our Employment Law Trailblazers have been right in the middle of these sexual harassment cases, others have been fighting for fairness through gender/race discrimination suits, wrongful termination, and more.

Our list of Intellectual Property Trailblazers is one of the more diverse lists we put out. You'll read profiles on IP attorneys that expand across a number of areas, specializing in anything from emergency rebranding to high stakes copyright to the intellectual property of emerging technologies.

We hope you enjoy reading the profiles on the pages to follow, as each of our honorees has an intriguing story to tell.

Congratulations again to this year's honorees.

All the best,

Richard Caruso
Vice President & General Manager, Legal Media

Amanda Amert

Jenner & Block LLP

PIONEER SPIRIT Amanda Amert wasn't sure she knew what ERISA stood for when first entering the space. Coming off an Eighth Circuit clerkship, she was asked by one of her partners to help on an Eighth Circuit appeal on an ERISA matter. "And once you do a thing, you become sort of the expert. My practice grew organically from there."

TRAILS BLAZED Amert represented Northwestern University in a victory by convincing a federal judge to throw out a proposed class action that accused the university of mismanaging workers' 403(b) retirement savings. "About 12-15 years ago, a group of plaintiffs' lawyers started bringing class-action lawsuits against companies that had 401(k) plans, claiming the companies had a fiduciary duty to protect those funds and they were not keeping the fees down." Those cases expanded with Amert finding new rounds of cases that were extending to target large universities, including Northwestern. "We were one of only two or three of the 20 that won a dismissal. We convinced the federal judge that it was not a facts-based case and didn't need to go through discovery or summary judgment." She also led the team that defended Aon and Alight Financial Advisors in a class action regarding 401(k) plan participants. "It involved a different approach by plaintiffs to expand breach of fiduciary in a different way. Instead of targeting one company's plan, they went after a company like Aon that serves many plans and combined them into one class. We were successful in getting that dismissed."

FUTURE EXPLORATIONS Amert sees further efforts to push ERISA class action into new frontiers. "Both cases we are talking about are instances where smart, creative plaintiffs' lawyers recast theories to change the playing field. There is an entrepreneurial plaintiffs' bar in this space, and we will see more creativity from them in the future."

Melissa Azallion

Burr & Forman LLP

PIONEER SPIRIT During law school, Melissa Azallion took an internship with the Ohio attorney general's office working on civil rights issues. After graduation, she worked on a university HR team in the area of immigration. In the early 2000s, she started working with school districts and immigration in South Carolina. "They need immigration services because of a shortage of teachers. And I continue do work with higher education as well."

TRAILS BLAZED Early 2017 saw an overhaul of immigration regulations with Azallion discovering an opportunity to benefit public school districts struggling to find qualified teachers for special education and language programs. "There were a limited number of H-1B visas, and so schools could not use that strategy. But we realized with the overhaul that if school districts met certain requirements, they could make the argument that the H-1B cap allotment wouldn't apply." Azallion implemented a strategic model allowing qualified foreign teachers to claim exemption to the cap because of their relationship with colleges and universities. Her efforts helped to get teachers in shortage areas. She also performed detailed reviews for clients to make sure they were in full compliance with immigration laws. "We helped put policies in place so they would be compliant when the government came knocking."

FUTURE EXPLORATIONS On the employment side, Azallion believes we will continue to see both judicial and legislative developments in wage and hour laws and an increase in #MeToo and harassment cases. "Employers will still be the focus. So, we are doing a lot of training for them." She believes employers can also expect a continued focus on immigration. "They should be vigilant. And for those that file for visas and green cards, they should expect a lot of scrutiny."

Thomas J. Barton

Drinker Biddle & Reath LLP

PIONEER SPIRIT When Thomas Barton started practicing law in 1987, significant numbers of wage and hour class actions had yet to be seen. As they became more prevalent toward the end of the '80s, he recognized it as an area where clients would need help. "I also work with retail companies, which have a lot of employees, and it is an industry that frequently deals in these class actions."

TRAILS BLAZED Focusing his practice on class-action and individual employment discrimination, wrongful discharge, wage and hour and noncompetitive/trade secret litigation, Barton has been lead trial counsel on numerous wrongful termination cases at both the state and federal level. "Right now, as a result of the decertification of a case in the Eastern District of New York, we have wage and hour actions in 20 different federal jurisdictions in the country." He emphasizes not to give up on provisional certification in seeking actual certification. "You can win it, and we have with *Ramirez v. Anthropologie*." In defeating class certification, Barton maintains the importance of depositions—particularly for the named plaintiffs—and in showing the differences in the class. "Consider a case where the claim is that managers are not supervisory and therefore due overtime. But looking at jobs and descriptions shows they don't all do the same thing, such as in *McEachern v. Urban Outfitters*. There are a lot of opportunities on the class certification side, but you have to work at it."

FUTURE EXPLORATIONS The recent Supreme Court decision on Epic Systems reaffirmed the class-action waiver in arbitration agreements. "The plaintiffs' bar will collaborate with each other and file multiple arbitrations on behalf of employees with a mass of individual cases which are expensive to defend." He also sees more "misclassification of independent contractor" cases and pay equity class actions particularly on behalf of women in the financial and professional service industries.

Ed Chapin

Sanford Heisler Sharp, LLP

PIONEER SPIRIT Ed Chapin views himself as a trial lawyer who handles employment cases. In the late 1980s, he had a whistleblower retaliation termination case referred to him that he enjoyed so much he has continued working in that space. Ten years ago, he joined forces with David Sanford and still pursues those cases.

TRAILS BLAZED Chapin believes ERISA is a high-case area with many abuses that need to be addressed. "Where someone has done somebody wrong is what piques my interest." In ERISA class-action defenses for GE and Home Depot, he deployed strategies involving filing suits based on a company's inability to manage the assets of the retirement plan as prudently and judiciously as they should. In *Burns v. San Diego State University*, Chapin focused on retaliation instead of his client's claim under Title IX that female athletes were denied university resources comparable to those provided for male athletes. "We were able to show that they retaliated, and she was awarded a total of $5.3 million." He has also represented women attorneys at big law firms in gender discrimination cases where they were paid less with fewer opportunities to be promoted and advance in their careers.

FUTURE EXPLORATIONS Chapin sees the continuing battle in courts on class actions with the U.S. Supreme Court as well as state and federal appellate courts tightening up on class certification rules. "We have to work harder, smarter and be creative to deal with that." He also notices increasing cases in arbitration agreements and class-action waivers. "They are being litigated vigorously. But whatever obstacle they throw at us, it's our challenge to figure out how to overcome it. Adaptation, flexibility and creativity—those are the touchstones for the years to come."

Kelly M. Dermody

Lieff Cabraser Heimann & Bernstein, LLP

PIONEER SPIRIT Kelly Dermody attended law school to focus on racial justice and afterward received a job offer to return to the NAACP Legal Defense Fund where she had worked her first summer. "But I couldn't get funded. So, I ended up at my backup plan of working for a plaintiffs' class-action firm—my current firm. I was off to the races, and that was more than 25 years ago."

TRAILS BLAZED Specializing in class and collective actions on behalf of plaintiffs in employment and consumer cases, Dermody's first big case was a discrimination class action against Home Depot helping women win better job opportunities. After four years, she settled the case on the eve of trial for $87 million and a comprehensive injunctive release. "That moved the needle for Home Depot's employment with promotion pools looking like the employee base. And it stopped the channeling of women into the role of cashier rather than the floor." In another case, involving Abercrombie & Fitch in the early 2000s, she challenged the policy of placing only employees who mirrored the brand's Caucasian models in the front of the stores. "Latinos and Asians would be put in the back where they wouldn't be seen. We had another $50 million settlement and, again, a whole bunch of forward-looking relief—with goals and timetables for hiring employees of color to look more like the target audience. The change far eclipsed the money."

FUTURE EXPLORATIONS Dermody believes the prominence of Equal Pay cases will continue. "There's a big problem because pay is so secretive that you can't self-enforce." She also believes that #MeToo cases and gig economy-related employment issues will keep growing. "These are big social questions. Companies are incentivized to cut corners, and employees are abused. This is especially at issue here in California with Silicon Valley."

Joan B. Tucker Fife

Winston & Strawn LLP

PIONEER SPIRIT Joan Fife was a math major in college before becoming an employment discrimination lawyer. When she saw her first wage and hour case in 1999, she recognized its parallels in solving complicated mathematical problems. "There's an analytical framework at each stage and a way to quantify the risk of the exposure. As a math major, I really enjoyed the analytical numbers-driven approach as opposed to a single plaintiff case, which is much more nuanced."

TRAILS BLAZED With her background in quantitative mathematics, Fife's experience analyzing exposure in a case in its early stages was different from most lawyers. "I was one of the first to apply a quantitative approach at the conditional certification stage—which allows the client at the very beginning to decide what its position is and stick with it." Many companies do not attempt to defeat conditional certification because of most courts' tendencies in certifying wage and hour class actions. "A lot of defense lawyers concede here, but I think it makes sense to fight." In the mid-2000s, Fife obtained a denial of certification in a nationwide class action involving individuals in the financial services industry who alleged they worked off the clock. "My approach was to decide your argument, say it early and often and don't concede the point if at the end of the day you need to win."

FUTURE EXPLORATIONS Fife believes the courts in California indicate what is down the pipeline for the rest of the nation. "California judges are more careful of their opinions, and there is a tremendous level of expertise in the judiciary. That's part of why I moved here." She sees judges across the country becoming more engaged and careful about class-action cases. "The practice will continue to grow, and it's important for employers to make sure their practices are lawful."

Michele Haydel Gehrke

Reed Smith LLP

PIONEER SPIRIT Michele Haydel Gehrke's initial interest in employment law stemmed from taking public policy courses as an undergraduate at UCLA. She found the intersection of law, public policy and social justice fascinating, especially around gender discrimination. "And when I went to law school, I continued down that path and still enjoy that area of the law today."

TRAILS BLAZED Gehrke specializes in the Railway Labor Act, a niche area of national labor regulations specific to airline and other transportation employees. In *Smith v. United Airlines*, she was the lead attorney and won a dismissal at district court level on a motion to dismiss before the Ninth Circuit of Appeals. She has also served as lead counsel on a case involving the overlap of social media speech and the Railway Labor Act. She won that case but also filed suit in federal court in Texas, bringing statutory claims under Title VII and the act. "It's a balance between free speech and the ability to protect employees from harassment." Gehrke has also represented clients in several cases involving the issue of mandatory arbitration agreements. "There is a whole line of cases up to the Supreme Court, and these issues are very much at the forefront right now."

FUTURE EXPLORATIONS As employers watch how the Supreme Court will handle the issues of class-action arbitration where there is no waiver, Gehrke expects additional guidance from the court on this and Section VII and whether it includes sexual orientation discrimination. "There are a lot of old agreements out there that are silent on the subject. It's still an open issue under federal law." She also sees an increasing number of Private Attorneys General Act cases, which allow individual employees to sue for violations of the labor code in the name of the attorney general.

Mark Kemple

SHAREHOLDER

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PIONEER SPIRIT As a general litigator and trial lawyer, Mark Kemple had tried numerous kinds of cases, ranging from riparian rights to antitrust laws. Throughout, he has been drawn to procedural maneuvering and now focuses on collective actions and, specifically, employment class actions. "With a dense, lengthy and complicated labor code and courts taking surprising positions, employment class actions in California are highly competitive, particularly for defense." As a defense practitioner, "you have to bring your A-game," says Kemple. "The goal posts keep moving, and you have to think creatively." In advancing his clients' interests, he compares the process to playing 3D chess, "where one needs to be deft and constantly thinking outside the box."

TRAILS BLAZED Kemple has forged arguments to make it easier to remove such cases to federal court. He successfully argued to the Ninth Circuit in *Roth v. CHA Hollywood Medical Center* that a defendant may remove to federal court whenever it discovers that a case is removable, without need for a "removal window" to be opened by the plaintiff. "Decades of judicial interpretation had suggested there were only two opportunities to remove: within the first 30 days after an action is filed—including the time needed to secure counsel—or within 30 days after plaintiff provided a 'paper' admitting everything needed for removal, which they would never do willingly." Having inherited a case that had not been removed, Kemple argued that a defendant could remove at any time based on its own investigation, so long as the plaintiff had not yet provided and such "paper." The Ninth Circuit agreed that the defendant could remove, including up to the state court trial date. The Second Circuit followed suit, and other circuits may soon follow. "This is a powerful card, available under both Class Action Fairness Act removal and traditional diversity removal."

Kemple also has successfully argued on behalf of his clients, including to the Ninth Circuit in *King v. Great American*, that a plaintiff's burden to defeat jurisdiction using CAFA's "local controversy" exception—which measures whether two thirds of the class are citizens of the forum state—is a high one. "The question is how do you determine citizenship? Is, as a plaintiff had argued, the fact that two thirds of the employees once worked in the state and were employed in the state—those two facts alone—enough to establish citizenship?" The Ninth Circuit found they were not. Kemple argued that more individualized facts need be shown, and "if those two facts alone were enough [to show citizenship], one could never remove an employment class action, as all class members certainly once lived and worked in the state." Kemple adds, "Congress intentionally made this an exacting standard and high burden for plaintiffs; it didn't want these cases heading back to the states."

Kemple also continues to work on Private Attorneys General Act actions, which under state procedural law can be pursued as nonclass but representative actions. Apart from successfully developing methods to remove PAGA-only actions to federal courts, Kemple has successfully argued that they must then be pursued in the federal court as class actions, as Article III of the Constitution provides that federal courts can adjudicate only the rights of "aggrieved employees" who are parties before the court. Therefore, under the Erie doctrine, they must be brought to the court through Rule 23 class procedures. Though Kemple acknowledges that "the courts are split on this," and that "the Ninth Circuit has not yet clearly decided the issue," he hopes soon to obtain a ruling from the Ninth Circuit adopting this reasoning.

FUTURE EXPLORATIONS With the U.S. Supreme Court holding in Epic Systems that arbitration agreements with class-action waivers are enforceable, Kemple foresees an expansion of PAGA-only actions. "At least in state court, plaintiffs can still bring a claim for a large group of people—even if there is no class. So, the future may hold many more PAGA claims and many more decisions on all kinds of issues that relate to PAGA—including removal."

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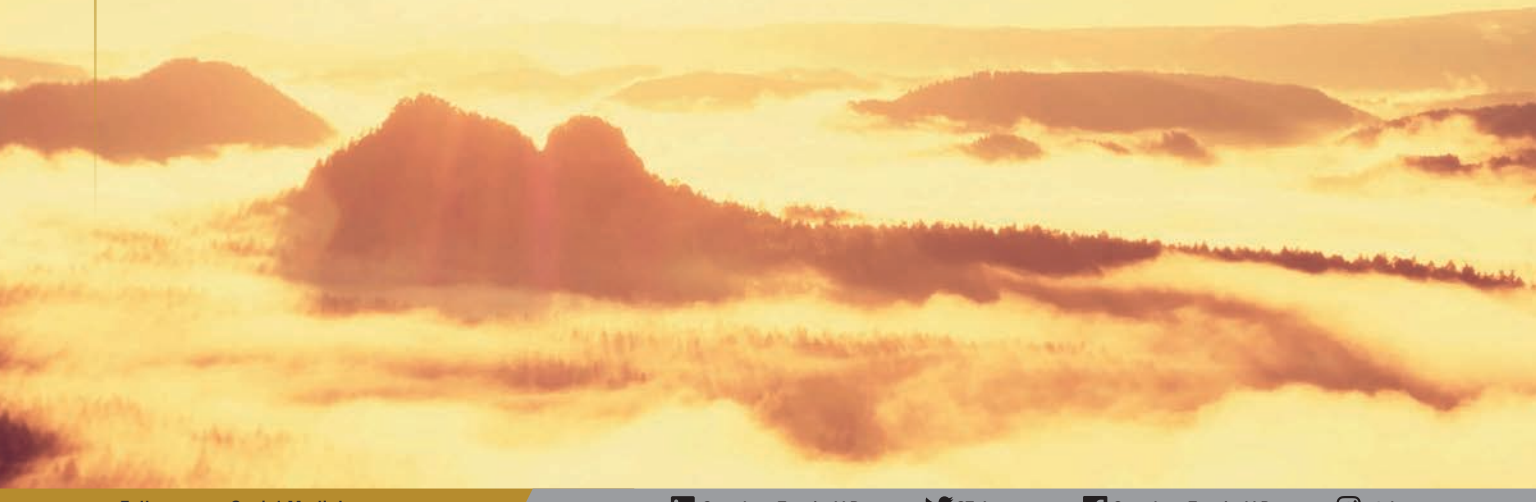
We congratulate our own **Mark Kemple** on his recognition as a *National Law Journal* 2019 Employment Law Trailblazer.

Mark, your leadership, commitment to clients as a trusted advisor, and passion for finding highly creative solutions that result in changes in the interpretation of employment law and procedure have earned you the respect of the greater legal community. We are proud to have you as a colleague.



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Greenberg Traurig's Labor & Employment team is regularly called upon to handle complex, bet-the-company cases and large high-stakes cases. The team represents companies in multiple industries by designing and implementing workforce strategies aimed at combatting and minimizing litigation risk and regularly represents management in class, collective and single plaintiff litigation. When trial is necessary, we offer creative strategies and our experience as trial lawyers to try cases to verdict.

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Keisha-Ann G. Gray

Proskauer Rose LLP

PIONEER SPIRIT Hailing from a family of attorneys, including a barrister mother trained in England, Keisha-Ann Gray started in litigation before clerking in the District Court of Puerto Rico. Many of her cases involved employment discrimination, and she discovered that her true love was being in front of a jury. After working in the U.S. Attorney's Office in the Eastern District of New York, she returned to the private sector to focus on employment litigation.

TRAILS BLAZED Gray served on the trial team representing Emigrant Bank against allegations of racial discrimination and predatory lending and did the opening and closing statements and cross-examined four of the eight plaintiffs. "That was a huge matter that the firm was tasked with handling, and my opening was quoted in the New York Times. That trial was groundbreaking as one of the few federal civil matters where the judge presiding and the trial attorneys who did opening and closing statements were all African-American." Gray also served on the trial team that represented Rockefeller University in a federal jury trial for a discrimination suit. "From what I've learned, it was one of the few times that the three counsel speaking on behalf of a large organization in a federal jury trial were all women."

FUTURE EXPLORATIONS Gray believes the past year has shown the real utility of diversity and inclusion, not just in a business sense but at the core of organizations. She sees an increase in the number of allegations, lawsuits and public comments about issues that highlight the lack of diversity and inclusion for employees. "As a result, more attorneys will be needed on the management side who have the necessary sensitivities, experiences, and real-world understanding of current and often nuanced social issues, to educate management about how to best avoid risk areas that could lead to claims and potential liability."

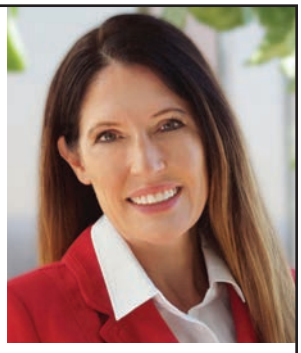
Michael W. Johnston

King & Spalding LLP

PIONEER SPIRIT After attending the U.S. Air Force Academy and going on active duty, Michael W. Johnston served as a JAG officer prosecuting cases involving espionage, murder and sexual assault. When the Air Force built a trial team to defend claims of discrimination and harassment by civilian employees, he volunteered despite his lack of knowledge in the area. "They sent me back to school to get an LL.M. in labor and employment law, and I spent the next three and a half years on that trial team."

TRAILS BLAZED Johnston successfully represented Bass Pro Shops Outdoor World in a federal lawsuit filed by the Equal Employment Opportunity Commission in Texas alleging employment discrimination based on race. In challenging the analytical framework, Johnston compelled the EEOC to withdraw the allegation. "We argued that the EEOC is subject to the manageability requirements of any type of litigation. Because the EEOC never has to show how they can try a case that big, we put them in a difficult situation." In another case against the EEOC, an Emory University professor brought a suit alleging he was refused tenure for discriminatory and retaliatory reasons under Title VII and in breach of an employment contract under state law. Johnston obtained summary judgment on all claims. His work in both cases has continued to have implications for institutions in making tenure decisions.

FUTURE EXPLORATIONS Johnston predicts further litigation related to gender harassment that will expand into other groups. "The current focus is on sexual harassment, but it should and will carry over into race, age and other protected categories." Johnston also sees increased use of technology in trial law.



Jill Kirila

Squire Patton Boggs

PIONEER SPIRIT Clerking for Squire Patton Boggs during law school, Jill Kirila had the opportunity to work in a variety of practice areas. While she enjoyed working in litigation as well as corporate law, she struggled to decide between advocacy and transactional law. With employment law, she found she could do both.

TRAILS BLAZED As a leader of her practice group, Kirila is always looking to streamline processes and create new products and value for clients. "It's expensive to go to an attorney that has to create from scratch. Alternative fee arrangements are at the core of what we do." Working in multiple jurisdictions, states, cities and even townships with their own laws, she and her team develop and constantly refine their AFAs and have created a 50-state handbook template. "We offer that on a flat fee basis tailored to the number of states the company operates in and a flat fee for updating annually. It's a one-stop shop." She doesn't have lawyers in every jurisdiction, finding that model both ineffective and not financially prudent in today's virtual environment. "We staff leanly in core markets but have a network that allows us to provide service nationally." And long before the #MeToo movement, Kirila focused on high-level harassment and workplace misconduct investigations and offered proactive training for C-suite and other executives.

FUTURE EXPLORATIONS When Kirila conducts #MeToo trainings, she is often asked if the movement is starting to wane. "The answer is no. It hasn't even peaked yet." She believes the implications from #MeToo will continue to resonate in 2019 with increased mandatory harassment training by state law. Kirila also sees an increase in state and local employment-based legislation. "So, I'm trying to find a way to preempt and uncover one standard they can follow, rather than the patchwork of local legislation."

Adam P. KohSweeney

O'Melveny & Myers LLP

PIONEER SPIRIT Adam KohSweeney had a United Food and Commercial Workers Union job throughout high school and college. "I was interested in the interplay between union and management. Back then, it seemed that the union wasn't doing everything completely right, but I couldn't really understand why at the time. It made sense for me to go to law school to pursue this area of interest."

TRAILS BLAZED KohSweeney focuses on the airline industry and also represents clients in the hotel industry. "There is a burgeoning area around plaintiffs' lawyers and local and state governments trying to enforce local employment laws for flight crews. I worked on two of the leading ones in California: *Ward v. United Airlines*, which involved pilots, and *Vidrio v. United Airlines*, which involved flight attendants. We prevailed in both because state employment laws should not apply when workers spend less than half their time on the ground in California. Ultimately, the Ninth Circuit has certified a couple of questions of state law to the California Supreme Court, which haven't been argued yet." He also prevailed on summary judgment in a third case for United concerning whether mechanics were being provided meal periods in compliance with California law.

FUTURE EXPLORATIONS This area will continue to grow and get more complicated. "There is a lot of give and take. If you look at arbitration cases, there was a long list of Supreme Court cases up until *Epic Systems Corp. v. Lewis*, but now all the arguments against arbitration have finally been shot down. Still, it took a long time. There is every incentive now for private plaintiffs to pursue claims, and we will see more back and forth. So it will be exciting for years to come."

Adam Levin

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PIONEER SPIRIT When Adam Levin joined Mitchell Silberberg & Knupp, he was seconded to a major motion picture studio for a few years. He then made partner and was assigned to the same studio again and then to a different studio. "That allowed me to gain a better understanding of the labor and employment issues that studios confront on a daily basis." Over his two decades in the industry, he has worked as counsel in high-profile employment discrimination cases for major entertainment industry defendants including Warner Bros., Fox and Paramount. Levin continues to champion a legal defense based on First Amendment principles for media companies in discrimination and wrongful termination cases.

TRAILS BLAZED Levin's anti-SLAPP defense work has been a reflection of his broader efforts defending entertainment and media companies against discrimination and wrongful termination cases. He believes that without robust protection of constitutionally protected free speech, the news and media organizations he represents would be in trouble. He has successfully made judges understand that when applied in the entertainment industry, there must be a balance between civil rights laws and First Amendment protections. In 2005, Levin won a unanimous California Supreme Court decision in *Lyle v. Warner Bros.*, where a writer's assistant on "Friends" claimed that the sexual discussion among the writers during their sessions for the show—although not directed at her—created a hostile work environment. Levin and his team argued that when applied in the entertainment industry, anti-discrimination laws need to coexist with the creative process and that the First Amendment protected those writing processes. "The Supreme Court did not decide the First Amendment issue, but there is a concurring opinion which underscores its importance." Levin crafted the defense knowing that anti-SLAPP laws offer advantages in litigation for defendants wishing to dispose of cases while minimizing legal expenses as well as disruption to their businesses. His defense also had the added possibility of recovering attorney fees and an automatic stay of discovery.

Levin and his team had been fighting to extend First Amendment protection to staffing decisions, and *Claybrooks v. ABC* was the first time the First Amendment was applied in this way. In that case ,he defeated a challenge to the participant selection process on "The Bachelor" by persuading the court that decisions about who will be cast are protected by the First Amendment and cannot be challenged under civil rights law. "That was a stepping-stone to other similar defenses we have put together against claims by on-air talent and others whose jobs are linked to the content of a show."

In *Wilson v. CNN*, he defended CNN in terminating a producer after he committed plagiarism and tried to publish the plagiarized work on the CNN website. The plaintiff argued his firing was due to retaliation, age and race discrimination. Levin argued that California's anti-SLAPP law should be applied to strike the complaint, resulting in the court ruling that the First Amendment protected CNN's decision to terminate Wilson. The Court of Appeals has since reversed the victory, but the California Supreme Court has granted Levin's petition for review. "It's currently pending and should be argued sometime in 2019."

FUTURE EXPLORATIONS Levin believes that the courts will ultimately have to strike the right balance between the First Amendment and civil rights laws. "As these cases demonstrate, they come into conflict at times." He believes that when it comes to important staffing decisions made by news and media organizations, the right balance affords appropriate First Amendment protections. "But this is just getting started. Ultimately the conflict between civil rights and the First Amendment will be settled by the United States Supreme Court."

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PIONEER SPIRIT Having attended an advanced high school for math and science, Myrna Maysonet went to college at age 15. She then joined the U.S. Navy and attended law school on the GI Bill. Commissioned as a Navy JAG, she was promoted and became staff judge advocate at the same base where she had been as an enlisted person. "I had an interesting boss, and he taught me a lot about dealing with people, which is the most important thing no matter what job you have." She enjoyed the people and worked on union and personnel issues. "The majority of the time I was a lawyer, I was dealing with personnel issues between civilians and military. So when I got out of the Navy, it was easy to say I wanted to be an employment lawyer, and the transition was smoother."

TRAILS BLAZED Maysonet reaffirms the notion that "necessity is the mother of invention" when it comes to her experiences as a young woman in the Navy. "When I was an enlisted person, there was no legal concept of sexual harassment, and I was the only woman in my shop. I experienced a lot of what you would call sexual harassment and learned early on that you have to speak and stand up for what you believe, even if it causes an issue." Even with harassment laws in place, no one had begun to take them seriously. When her supervisor refused to approve her time off unless she agreed to go out with him, she went to someone higher up. "It did stop, but half the shop wouldn't talk to me. I was a pariah. But that experience has guided me to take steps when things are uncomfortable."

After leaving the Navy, Maysonet joined Greenspoon Marder and became its first female partner. She worked with her firm to provide same-sex benefits more than a decade before that became law. While in a same-sex relationship, she worked within the firm to open the avenues of communication and provided free legal seminars to the LGBT community and others about their rights under employment law. "The fact that I was a lawyer and got health insurance for my partner opened it up for everyone else."

In a case 6-8 years ago involving hotel management and a transgender employee going through the transition process, the client didn't know how to handle the situation. Maysonet suggested they focus on the person as an employee. "If the person contributes, we have to ask what we can do to accommodate this person. We couldn't change the official paperwork, but we could at least change nametags and how we refer to them." In another case involving a transgender employee still in the process of transitioning from a woman to a man, there was a question regarding bathroom use because he would have to walk back to the women's bathroom to dispose of feminine hygiene products. "It was such an easy fix. All they had to do was install a receptacle in the men's bathroom. Having followed a very different route in my own life, I can prevail upon my clients that it's okay to think outside of the box and it's okay to consider people for who they are and not just as numbers."

FUTURE EXPLORATIONS Maysonet believes social media and its ability to shed light on extreme situations have allowed people to question work and leisure balance more. "Employers move faster than laws concerning what's necessary to keep employees happy and in place. If you want to attract the top people, you're going to have to contend with what those needs are." She sees an increasing number of companies taking a more realistic approach to the balance between work and personal life. "When I started, you had to work so many hours and be there on weekends. You had to give up your personal life to be a partner, but that's not the best way. You lose a lot of people that way." Millennials will strive to have more than work in their life with more companies trying to accommodate them while also increasing diversity. "Good things are happening, but you still have to push the envelope."

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Dana A. Kravetz

Michelman & Robinson LLP

PIONEER SPIRIT Dana A. Kravetz developed an interest in labor law after having worked early in his career for sports organizations, including the World Cup organizing committee and the Los Angeles Raiders. Particularly interested in the employer side, his focus has been on the operation of client businesses. "Employment law provides insights to help understand their businesses, and the more we understand the clients, the better."

TRAILS BLAZED Kravetz believes his role as managing director of his firm brings a unique perspective he is able to share with clients. "I'm not just a practitioner. I also run a business, and a lot of what I do for my clients comes from the perspective of owning and operating a business." He has represented clients in the hospitality space on labor and employment issues that include sexual harassment, marijuana in the workplace, joint employer liability, the NLRB under the Trump administration and tip pooling in restaurants. When the living wage ordinance went into effect in LA and raised the minimum, Kravetz helped hotels looking for strategic places to cut costs before others were even thinking about it. "Being aware of how the politics work in LA and how the ordinance affected larger hotels helped to deal with the onslaught of class actions."

FUTURE EXPLORATIONS Believing the court of public opinion often drives the next area of law, Kravetz sees the emergence of pay equity issues as a natural progression of the #MeToo movement. "When you take it out of the context of harassment and a hostile work environment, that leaves issues of pay. It's a clear path for a lot of litigation." He also believes the next wave of employment litigation will be age-based with many in their 70s continuing to stay in the workforce.

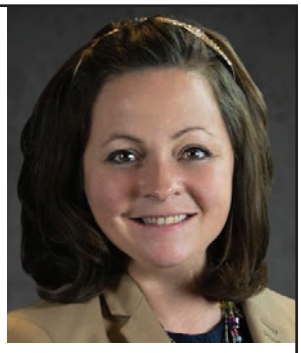
Randi May

Hoguet Newman Regal & Kenney, LLP

PIONEER SPIRIT Randi May decided in law school that she would pursue employment law and joined a big law firm labor and employment group right after graduating. "There was something about it I found to be the most interesting. I like the idea of having expertise in an area that is so relatable. Everyone has a job, and there will come a time when there's an issue as an employer or employee."

TRAILS BLAZED May sees her true value in developing long-term relationships with clients and helping them navigate employment-related issues while avoiding litigation. "I focus on keeping clients out of trouble and out of the headlines. It's probably more valuable to them than a front-page victory." She helps companies and groups of employees that have restrictive covenants, e.g., confidentiality agreements, noncompetes or nonsolicitation of clients and nonservice of clients. If a company is looking to hire high-value employees or clients are looking to start their own shop, May helps them make the departure or transition as smooth as possible while avoiding litigation. "We try to understand the concerns of current or former employers. Being saddled with expensive and anxiety-provoking litigation right out of the gate when getting started is not a good business model."

FUTURE EXPLORATIONS May sees an increase in restrictive covenant activity at the judicial level, particularly among businesses trying to enforce them. "They are often overbroad and will start to relax." She also believes recent events regarding sexual harassment and discrimination will have employers and employees being more proactive. "We will see a real generational divide in the way these issues are dealt with. The younger generation is much more in tune with equality, diversity and women's rights and has higher expectations in the workplace."



Christina Thomas Mazaheri

Morgan & Morgan

PIONEER SPIRIT Before attending law school, Christina Thomas Mazaheri worked for more than a decade in the service industry, including various odd jobs through college. An internship with South Carolina Legal Services further inspired her to become an immigration attorney. "I spoke Spanish and started helping some farmworkers, and that led to some wage and hour cases. When I graduated, it was at the height of the recession, but I was able to land a job with a boutique employment firm in Florida."

TRAILS BLAZED While employees were able to punch out in the past, many companies now require them to be continuously connected—directly in contrast to a workforce that is more demanding of flexible work arrangements. "There's really no such thing as 'off the clock,' and I reflect that in how I litigate my wage and hour collective actions." In a case against Humana, she represented nonexempt employees that were subjected to a "workforce optimization policy" that monitored and tracked them without providing overtime wages. The court ultimately ruled against her arguments on the issue of dissimilarity in job duties but left open the possibility of certifying a class of employees for the same-type violation who shared similar job duties.

FUTURE EXPLORATIONS As a plaintiffs' lawyer, Mazaheri sees her share of ungrateful employees. However, she believes most are working hard to try to please their companies with many finding it difficult to find better jobs. "They are under pressure to produce more for less money. In the past, people would get upset about a paycheck. But now they get upset about the system." With increased access to technology, she sees more opportunities for worker organization outside of unionization. "I see a movement from the workers' end to balance the system a bit more."

Ryan Morgan

Morgan & Morgan

PIONEER SPIRIT Ryan Morgan started with Morgan & Morgan long ago as a runner even before attending law school. He then worked in commercial litigation for a few years but returned to his original employer. "This was back in 2008, and I had a conversation with the managing partner and found my way back here." Now he is co-chair of the employee rights group.

TRAILS BLAZED The rise of class-action waivers and the Supreme Court's ruling on Epic Systems have changed the nature of Morgan & Morgan's wage and hour practice. "Even before the Epic Systems decision, we had probably 10 cases where we had to go through the process of filing mass arbitrations with 50 or more individual situations. At first, I was startled by the numbers. But over time, we realized this is the future. It's what will have to happen for employees to protect their rights." In a minimum wage case for pizza delivery drivers, Morgan represented almost 100 drivers—some with arbitration agreements, some without. With a class case going to federal court, he also had more than 50 single plaintiff arbitrations. "We had to try six of them to a final hearing, and we recovered money in each of them—in five of six, we got 100 percent of what we asked for. That helped push that company toward an all-driver resolution."

FUTURE EXPLORATIONS Morgan believes the mass arbitration model is the future for large employers. "The more who say the same things happened, the more believable it is." He also believes the Supreme Court's recent *New Prime v. Oliveira* decision will bring further arbitration debate. "It's mostly pro-employer, but there are still some gray areas that need to be decided."

Mark Muedeking

DLA Piper

PIONEER SPIRIT As a former tax litigator for the U.S. Department of Justice Tax Division, Mark Muedeking was constantly trying tax cases but found it didn't suit him. He tried some cases in executive compensation, and those did appeal to him. "In litigating complex cases in labor law, tax law, securities law and ERISA, you get to peer into a number of different areas, which I find challenging and interesting."

TRAILS BLAZED Focusing on the development and operation of benefit plans and executive compensation arrangements, Muedeking's practice is comprised of half litigation and half advising on compliance—making him unique in the field. He was the lead trial counsel in the successful defense of New York University in two related class-action suits in which the plaintiffs alleged ERISA violations in connection with the selection and maintenance of retirement plan offerings. He secured a complete trial victory in the first suit following a two-week bench trial and successfully got the second suit dismissed. "It was the first time an employer has gone to trial and come away with a complete victory. It shows that employers don't need to settle—they had been reluctant due to risk, but this shows they can win at trial."

FUTURE EXPLORATIONS Muedeking sees an increase in ERISA-related cases brought against 401(k) sponsors. "Recent decisions have largely been good for employers, but they will get better as we develop standards. It will be harder to get past a motion to dismiss by just saying other funds performed better or had lower fees. But in the meantime, these will be continuing, so I don't see a lot of relief for plan sponsors in the near future."

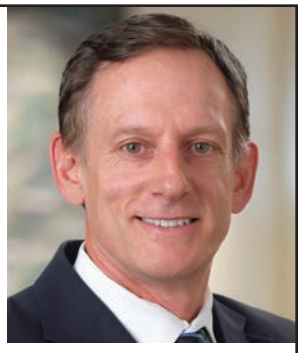
Richard Reice

Michelman & Robinson LLP

PIONEER SPIRIT As a young lawyer, it became clear to Richard Reice that he wanted to practice law but deal with subjects that were relatable. "So, rather than be in a more document or deal-oriented area, I wanted to be more people-oriented. With employment law, you can make a difference in people's lives, and it's integral to the economy and dealt with in real time."

TRAILS BLAZED Prior to the Defend Trade Secrets Act, employers charged with the misappropriation of trade secrets had limited recourse. In *Mission Capital v. Romoka*, Reice represented a financial services firm with a former employee who downloaded more than 50,000 pieces of company information, including contracts and information on deals. "That case hit just after the passage of DTSA, and we were literally the first or second case to seek injunctive relief pursuant to it. There was no case law; all we had was the Senate bill jacket report. Using that and having some awareness of the new law, we put together our complaint." Reice convinced a Southern District of New York judge to order the seizure of the information. "For the first time, we, on the fly, created the mechanisms and processes that are now followed for seeking a seizure order. It was fascinating to see the judges, federal marshals and the court system figure out how do deal with the new law."

FUTURE EXPLORATIONS Reice foresees a transfer of noncompetition and trade secrets actions from state to federal courts. He also predicts a growing uniform body of law around trade secrets so employers can have greater control. "We will see an interesting intersection between employment and IP lawyers as so much IP theft originates with employees. So, we'll see more employment lawyers like me with specialties in trade secrets."



David J. Reis

Arnold & Porter Kaye Scholer LLP

PIONEER SPIRIT Growing up with a union member father, David Reis' interest in employment law started with the views and stories he heard about union management. His interest in labor law deepened while playing college and minor league baseball. "At the time, there was lots of labor work to do. I've since evolved into broader employment issues."

TRAILS BLAZED Reis is a strong proponent of arbitration, having completed more than 50 labor arbitrations in the first 10 years of his practice. In the two class actions *Caitlyn Y. and Jenny C. v. NFL and Oakland Raiders* and *Suzy Sanchez v. NFL Oakland*, he successfully completed arbitration in both wage and hour class actions and was able to get the courts to dismiss while compelling individual arbitration even though there was no class-action waiver. Reis also handled *Houck v. Steptoe & Johnson*, a class-action Equal Pay Act case on behalf of all the female associates, and was successful in getting the court to stay the case based on arbitration agreements. Once the Epic Systems decision came out, the claims were dismissed. "Fifteen years ago, many defense-side employment attorneys didn't embrace arbitration. They didn't like no appeal and not having full discovery, but I've always thought streamlined arbitration is better."

FUTURE EXPLORATIONS Reis believes the arbitration of employment disputes will continue to increase. Equal Pay Act and #MeToo cases will also keep employment attorneys busy for the next several years. "There is some tension in the legislature over whether as a confidential forum arbitration is the best forum to litigate some harassment issues. But I think for both sides they are precisely the kind of cases that would benefit if potential victims knew they wouldn't have to go public."

Nancy G. Ross

Mayer Brown

PIONEER SPIRIT After landing her first job as part of an employment law practice of a large firm, Nancy Ross was approached by a manufacturing company sued by the UAW over retirement medical benefits. ERISA was only 10 years old, but that type of litigation was spiraling because of changes in accounting laws. "More cases started to arise regarding necessary benefit changes. I was one of few with experience testing ERISA in the courts."

TRAILS BLAZED In 2014, Ross successfully argued before the Second Circuit that ERISA preempted a Vermont law requiring her client to turn over sensitive employee medical records. The case ultimately went to the U.S. Supreme Court. "It's one of the leading cases in ERISA preemption and caused many other states to forgo similar statutes, helping to promote ERISA uniformity nationwide." She has also worked with the nation's unions to achieve win-win situations where employers can continue to provide benefits but also sustain jobs. "For example, in the late 2000s Chrysler was leaning towards bankruptcy because it couldn't compete with foreign companies due to benefits obligations. It is essential to our nation's health to preserve the equilibrium between a company's ability to provide retirement benefits and its ability to stay afloat." It's critical to understand that fundamental balance at ERISA's core, promoting privatized benefits from employers. To that end, Ross has fought successfully to curtail "innocent mistakes" in plan administration from burgeoning into costly damages awards.

FUTURE EXPLORATIONS Ross believes employee benefits law continues to demand attention both legislatively and in the courts. She feels we are at a crossroads of what is yet to come, including whether Congress will act to reduce the risk of litigation. "The courts are overrun with lawsuits threatening our nation's dependence on voluntary benefits programs. It's become a runaway train."

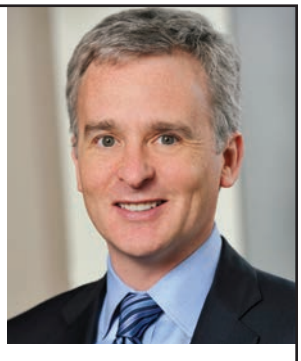
Beth Schroeder

Kendr

PIONEER SPIRIT Beth Schroeder is an employment lawyer who has spent 35 years helping clients avoid expensive litigation. After listening to employees talk about not being able to communicate with their employers, she co-founded Kendr, an app created to give employees better access.

TRAILS BLAZED In creating Kendr, Schroeder was determined to help employees safely contact human resources without fear of reprisal and stem the tide of employment lawsuits. "It's an iPhone or Android app and a great way for employees to contact people who can help, by name or anonymously." The platform is available to businesses, which roll out the service to their employees who can then download the app and set up their accounts on their phone. For employers, there is a dashboard to receive messages from employees as well as the ability to tag, filter and allow internal chats regarding issues directly in the platform. Kendr is multilingual and offers 20 different languages for the messages. "It also works for overseas clients and U.S. clients with overseas workers and can handle anonymous OSHA safety reports. We have nonprofit, government, hospitality, health care and manufacturing clients. It's been interesting to see who has shown interest."

FUTURE EXPLORATIONS Schroeder points out that Kendr is still a new system and ultimately cannot supplant face-to-face training and interactions. "This is just another tool that employers can use, especially when employees are not comfortable with direct interactions." However, she sees increased adoption as younger generations prefer to type rather than talk. Kendr also allows employees to know that the door is always open, which will ultimately allow employers to solve problems and resolve conflicts early. "It's an 'increased communication' tool, not just a reporting tool."



David Schwartz

Skadden, Arps, Slate, Meagher & Flom LLP

PIONEER SPIRIT Having a family friend who was a practicing management-side labor lawyer, David Schwartz tried a management-side firm as a 2L and, much to his surprise, found he liked it. "It's a nice mix of business law, strategic thinking and working with real people with real problems. I stuck with it, and every day is new and interesting. It never ceases to amaze me what trouble people get into at work."

TRAILS BLAZED Schwartz works on transactions, litigation, investigations and representing people working out negotiated settlements. As global head of Skadden's labor and employment group, he advises on a wide spectrum of employment matters and was able to identify the importance of the #MeToo movement in its early stages and develop a representation to put into purchase agreements to deal with issues of sexual harassment and misconduct. "We were the first to use this representation in a transaction, and now I see it coming back to me when I'm on the other side. It's known as a 'Weinstein' or '#MeToo' representation." He has also worked on representation regarding whether employees at target companies violate restrictive covenants when they go to work for a competitor.

FUTURE EXPLORATIONS In the short term, Schwartz sees employees, including senior employees, more open to raising issues and concerns with an increased willingness to help employers see problems early. He also finds employers being more proactive in the area of equal pay issues and getting more attention at the board level. Schwartz also foresees more legislation at the state and local level, particularly more employee-protecting legislation. "It will make it hard for HR professionals and employers to keep up in complying with the law."

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Steve Wheeless

Steptoe & Johnson LLP

PIONEER SPIRIT A graduate of the U.S. Air Force Academy, Steve Wheeless flew F-16s for 10 years before helping to build spy instruments for the NSA for five years while concurrently attending law school. Looking to become a trial lawyer, he worked in Washington, D.C., before joining Steptoe & Johnson. "I interviewed with Larry Katz, who had recently had a U.S. Supreme Court win on a labor issue. I got so excited about winning in the Supreme Court on a labor law issue that I ended up becoming part of his group."

TRAILS BLAZED Wheeless is leading a trial and appellate team in proceedings before the NLRB that will decide what protections could apply to the one-day strikes, or intermittent work stoppages, used by union-backed "work center" organizing campaigns in the U.S. "If those were legal in the U.S., it would be a game changer for unions." While a trial court in California has ruled them as legal, Wheeless is arguing in the appellate courts that they are illegal under U.S. labor laws. He has also led efforts to address tactics by community groups, activists, social groups and unions engaged in disruptive demonstrations and trespassing, resulting in preliminary and permanent injunctions from eight state supreme courts. Wheeless has also argued that labor law does not give nonunion employees the right to have a personal advocate at any disciplinary session. "We won the case. If it had stood, it would have brought the feedback process to a giant halt."

FUTURE EXPLORATIONS Wheeless sees a continuing shift from employer-specific labor organizing and employer-targeted media campaigns identifying problem employers to an industrywide focus on social issues affecting employees. "It will be moving from boots on the ground—where organizers are physically present—to a virtual social media model."

Kenneth J. Yerkes

Barnes & Thornburg LLP

PIONEER SPIRIT When Ken Yerkes attended law school, he had difficulty deciding what type of law he wanted to practice. "I asked people what practice would allow me to both litigate and do proactive counseling. Labor law was identified as a place you could do both."

TRAILS BLAZED Over the last decade, Yerkes has worked with a multibillion-dollar company on changing its identity and bargaining relationships across the U.S. The client had been underperforming and economically challenged with multiple unions in multiple geographic regions. He helped address both operational limitations in their contracts and legacy benefit costs that were unsustainable. "I've been able to gain a better and deeper understanding of the art of collective bargaining. The challenge is to get the deal the client needs and wants while maintaining and managing the relationship with its employees and unions. Anybody can get a deal, but can you get the right deal and preserve the relationships?" During that same time, Yerkes has continued to litigate with multiple bargaining and jurisdictions—some cases taking 10 years to get to trial. "You have to communicate an outcome in words people can understand. I've figured out how to communicate on different planes on a continuous basis."

FUTURE EXPLORATIONS Yerkes believes that what is happening in society as a whole will impact the workplace. He anticipates that peoples' views on how they should be treated will evolve, as will expectations for what information they should be entitled to. "Social media will accelerate the process. Whether in discovery, litigation or traditional labor negotiations, the technology and accessibility that's available now raises the stakes. We're all going to have to get a little better at what we do."