

Litigation Department of the Year — Labor & Employment (Finalist)

Taking the Right Roads to Results

Epstein Becker Green uses risk assessment to guide litigation strategy

As one of the nation's largest labor and employment practices devoted to representing management exclusively, Epstein Becker Green counsels domestic and multinational companies across numerous industries (including health-care and life sciences, hospitality, retail and financial services) in a full range of employment matters stemming from employer-employee disputes and federal, state and local regulation.

The firm defends individual and class-action cases in judicial, administrative and arbitral forums. Recent successes include defense of wrongful discharge, breach of employment contract, misclassification of employees, misappropriation of trade secrets, violations of noncompete agreements, discrimination, retaliation and whistleblower claims.

The firm also embraced alternative dispute resolution before it became widely used, innovating new approaches to avoid or resolve litigation. The firm emphasizes sound risk assessment to avoid a mechanistic, cookie-cutter approach that's sometimes followed from commencement to resolution.

To further control costs, clients are offered fee structures, including fixed-project fees, flat monthly retainers, capped fees, tollgates, success fees, tiered structures, unit-based billing and blended rates.

The firm's strengths in litigation manage-

ment include effective docket management through technology; cost control through leveraging of staff and grouping of cases for disposition; an overall understanding of multidistrict litigation; seasoned attorneys able to litigate anywhere given the firm's national presence; knowledge of a broad range of liability issues, legal theories and expert witness; familiarity with the members of the plaintiffs' bar; and continued efforts to improve and refine case management and cost control.

Firm technology exceeds industry standards. Core desktop technologies include Outlook/Exchange email integrated with a comprehensive document management system, Microsoft Office productivity suite, wireless access via various smart phone platforms, and extensive remote access capabilities.

The firm is equipped to review and produce email and both electronic and scanned documents through Relativity, the firm's pri-

mary litigation support software. The program enables quick, accurate search and review evidentiary information. The firm also uses LiveNote to review text, and audio and video transcripts. Together the programs provide a robust platform for attorneys to work with complex collections of information.

For docketing and calendaring, the firm uses Compulaw, which references court rules to calculate deadlines.

The firm also maintains a secure website (extranet) — which supports collaboration with clients when working on matters and incorporates calendaring and contact management functions — and has extensive data security systems, business continuity and disaster recovery plans in place.

Major Litigators:

- James Flynn (partner, Newark, admitted 1990) — firm general counsel; managing partner of the Newark office; has handled trial and appellate work in the area of intellectual

Epstein Becker Green by the Numbers

	Firm-wide	N.J. Office
Department size	111	20
Department as percentage of firm (head-count)	44%	74%
Department as percentage of firm (revenue)	45%	72%

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PHOTO BY CARMEN NATALE

Left to right, Epstein Becker's Maxine Neuhauser, David Garland, James Flynn, Denise Merna Dadika, Michael Thompson and Sheila Woolson

property, complex commercial matters and employment law; has represented clients in health-care, pharmaceuticals, and financial services industries.

- Carmine Iannaccone (partner, Newark, 1977) — vice chairman of the firm's board of directors; has conducted numerous jury trials in discrimination, wrongful termination and other matters; structures employment agreement provisions governing protection of trade secrets and proprietary technology.

- Patrick Brady (partner, Newark, 1981) — has worked extensively on complex wage and hour and other employment litigation and ERISA, WARN Act and Family Leave Act matters; litigated numerous cases to successful jury verdicts; represented employers in class-action, wrongful-discharge, harassment, labor-relations, collective-bargaining, trade-secret and other suits.

- Maxine Neuhauser (partner, Newark, 1983) — has represented employers in discrimination and other employment matters at the trial and appellate levels before federal and state courts and administrative bodies, especially health-care providers and managed-care organizations; former deputy attorney general

handling regulatory appeals.

- David Garland (partner, Newark, 1985) — chairs the firm's Labor and Employment Steering Committee; has received national recognition for numerous complex jury trials won on behalf of employers in discrimination, wrongful-termination, restrictive covenants, wage-and-hour and other matters; litigates in courts around the country, including California, Connecticut, the District of Columbia, Florida, Illinois, Massachusetts, Minnesota, New Jersey, New York, Pennsylvania, Tennessee, Texas, Virginia and Washington.

- John O'Connor (partner, Newark, 1990) — has represented employers in all aspects of state and federal employment litigation, including allegations of discrimination, harassment, retaliation, wrongful discharge and violations of restrictive covenants; has handled matters in federal and state courts, before civil rights agencies, and arbitrations and mediations.

- Joseph Guarino (partner, Newark, 1996) — regularly litigates in federal and state courts and before administrative agencies and arbitration tribunals on a wide range of employment matters and complex commercial and health-

care issues, including representation hearings before the National Labor Relations Board, restrictive covenant disputes, discrimination claims, and whistleblower, sexual harassment, ADA and wrongful-termination cases.

- Sheila Woolson (partner, Newark, 1995) — focuses her practice on complex litigation matters across a wide array of commercial and employment disputes, including litigation and arbitration matters involving ERISA issues; trained chemist with a pharmaceutical industry background.

- Clara Rho (partner, Newark, 1996) — has defended numerous discrimination actions brought before state and federal courts, the EEOC and state administrative agencies; represents management in all aspects of state and federal employment law, including complex class actions and discrimination, harassment, retaliation, wrongful-discharge, breach-of-contract and whistleblower claims.

- Denise Dadika (partner, Newark, 1999) — has litigated in court and before administrative agencies in harassment, discrimination, retaliation and other suits; counsels employers on day-to-day issues such as hiring, promotion and workplace policies; previ-

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ously a labor-and-employment associate at McElroy, Deutsch, Mulvaney & Carpenter and Tompkins McGuire Wachenfeld & Barry.

- Michael Thompson (partner, Newark, 2000) — has represented employers before state and federal courts in litigation concerning federal and states discrimination laws, retaliation claims and other employment matters; has litigated wage-and-hour collective actions and other class actions and defended whistleblower and False Claims Act cases, particularly in the pharmaceutical industry.

Cases of Note:

- *Schmidt v. Celgene Corp.*, Superior Court Appellate Division — Epstein Becker served as lead counsel for Summit-based biopharmaceutical company Celgene Corporation, which had employed the plaintiff as a national sales manager and was defending claims that he was fired for ensuring drug distributor Caremark's compliance with an FDA requirement about reporting adverse affects connected to a cancer drug. The court on May 9, 2012, held that the plaintiff's Conscientious Employee Protection Act claim was properly dismissed because the one-year statute of limitations had passed. The court held that the doctrines of substantial compliance and equitable tolling did not afford the plaintiff any relief because the plaintiff's choice of venue — he had a breach of contract claim based on the same facts pending in Texas — was the reason for his delay. The plaintiff withdrew his petition for Supreme Court certification in June 2012.

- *Aquilino v. Home Depot U.S.A. Inc.*, U.S. District Court, New Jersey — The firm is defending Home Depot in litigation seeking overtime compensation based upon alleged misclassification of current and former assistant store managers under the Fair Labor Standards Act's executive exemption. The court granted Home Depot's motion to decertify the nationwide class on Feb. 15, 2011, and since that time, approximately 400 of the

1,500 former opt-ins commenced six multi-plaintiff lawsuits in New Jersey and six other federal jurisdictions, consisting of 60-70 plaintiffs per lawsuit. Through various motions, more than 100 plaintiffs have been dismissed, such that there are only 30 plaintiffs remaining in three districts.

- *Andrews v. Home Depot U.S.A. Inc.*, U.S. District Court, New Jersey — Epstein Becker also represents Home Depot in a putative class action where 10 representative plaintiffs allege, on behalf of themselves and approximately 600 warehouse associates, disparate impact and disparate treatment based on foreign birth in compensation, work assignments, promotional opportunities and promotions at all New Jersey Distribution Centers in violation of the federal Civil Rights Act and the state Law Against Discrimination (LAD). The plaintiffs also allege hostile work environment based on foreign birth status. On Jan. 26, 2012, the court granted Home Depot's motion to dismiss the civil rights claim. Five of the 10 plaintiffs have been dismissed from the case. The court also has denied the plaintiffs' motion to file a Rule 23 class certification motion and granted Home Depot's motion to proceed with summary judgment motions for the remaining five plaintiffs.

- *White v. Starbucks Corp.*, Superior Court Appellate Division — Epstein Becker represented Starbucks in a whistleblower suit under the Conscientious Employee Protection Act lodged by a former district manager who claimed she had engaged in protected activity by reporting and addressing issues at individual stores, including merchandise theft, broken thermostats in refrigerated cases, alcohol consumption by subordinate employees, after-hours sex parties, electronic transmittal of a pornographic photograph by an employee, and improper configuration of tables and chairs in violation of the Americans with

Disabilities Act. The court affirmed dismissal in a December 2011 opinion, holding the plaintiff's activities part of her job. On April 9, 2012, the state Supreme Court denied her certification petition, which argued that the Appellate Division changed the law by creating a CEPA exception not intended by the Legislature.

- *Heightened Independence and Progress Inc. v. Port Authority of New York and New Jersey*, U.S. Court of Appeals for the Third Circuit — The court, in a September 2012 precedential decision, vacated an order requiring the Port Authority to modify its Grove Street PATH Station in Jersey City, which lacked elevators and became overcrowded because of another station closure after Sept. 11. Port Authority retained Epstein Becker to defend the asserted violations of the Americans with Disabilities Act and the LAD. Before the Third Circuit, attorneys successfully argued that material questions of fact existed as to the technical feasibility of installing elevators at the station.

- *Cuozzo v. Davis-Standard LLC*, U.S. District Court, New Jersey — The court, at Epstein Becker's urging, granted summary judgment on March 13, 2012, in the plaintiff's discriminatory discharge suit, finding no evidence that he could overcome the company's well-documented legitimate business reasons for eliminating his position in a reduction-in-force. Earlier on, the firm obtained the plaintiff's voluntary dismissal of all claims against an individual defendant.

- *Kaspi v. Home Depot*, Superior Court, Bergen County Law Division — Epstein Becker represented Home Depot in a five-week trial in which a former employee claimed discriminatory and retaliatory discharge based on religion, national origin and disability in violation of the LAD. The jury in March 2011 rendered a defense verdict on all claims and the Appellate Division granted Home Depot's motion to dismiss on April 30, 2012. ■