JAMS

Fred G. Bennett, Esq.

Los Angeles

Business & Commercial, Construction, Energy (including alternative and nuclear), Entertainment, Aviation, Intellectual Property, Satellite and Aerospace, Real Property, Insurance Coverage, Mining, Legal Malpractice

Fred G. Bennett, Esq. joined JAMS with over 35 years of experience as an advocate, arbitrator and mediator of complex international and domestic disputes. Mr. Bennett is recognized for his ability to manage large, multifaceted and technical cases, and he has specialized expertise handling business/commercial, construction, energy and utility, entertainment, insurance, intellectual property, complex technology, mining and real property matters. He has served as arbitrator in over 60 international and domestic arbitrations, employing the rules of almost every major arbitration institution. As both an arbitrator and advocate, Mr. Bennett maintained a global practice, managing complex disputes in multiple countries throughout Europe, Asia, North America, Latin America, and the Middle East.

Prior to joining JAMS, Mr. Bennett was a senior partner with Quinn Emanuel for over 20 years, serving as Chair of the firm's international and U.S. arbitration practice, and as an arbitrator or lead counsel in numerous domestic and international arbitrations. Prior to that, Mr. Bennett was at Gibson Dunn, during which time he also became a senior partner and chair of the firm's worldwide ADR group. He is a fellow of the College of Commercial Arbitrators and the National Academy of Distinguished Neutrals, former board and executive committee member of the American Arbitration Association, a member of the International Chamber of Commerce Commission, and the ICC U.S. National Committee on Arbitration.

Mr. Bennett is regularly listed in the Guide to World's Leading Experts in Commercial Arbitration, The Best Lawyers in America and Who's Who Legal (Arbitration), and has received awards as the best arbitration practitioner in North America (2010, 2013, 2014) by Lexology and the International Law Office's Client Choice Awards. He chaired the task force which created the AAA commercial rules in 2013, and was principal co-editor of a major international arbitration treatise.

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JAMS

Hon. Terence Bruiniers (Ret.)

San Francisco

Business/Commercial, Class Action & Mass Tort, Employment Law, Environmental Law, Personal Injury/Torts, Real Property

Hon. Terence Bruiniers (Ret.) served as a justice on the First District, Division Five, California Court of Appeal, authoring more than 600 opinions in nearly all areas of the law. He also served on the Contra Costa Superior Court, where he implemented one of the first programs in the state for electronic filing of court documents. He later led the design and implementation of the now statewide appellate e-filing system during his tenure on the appellate court. He served as a respected jurist for 20 years.

Justice Bruiniers has amassed experience in practice areas ranging from business/commercial and class actions, to employment, environmental and real property matters. Before his appointment to the bench, Justice Bruiniers practiced law for 18 years at the San Francisco firm of Farrand, Cooper & Bruiniers. He handled business and commercial litigation and maintained a transactional practice representing national and international clients in technology-related matters. As a deputy district attorney in Alameda County for seven years, he prosecuted more than 100 jury trials to verdict, including capital cases.

Justice Bruiniers believes that credibility is a lawyer's most valuable professional asset and it should never be jeopardized. As a neutral, he has earned a reputation for meticulous preparation and thorough familiarity with all matters coming before him. After handling countless complex cases through the years, Justice Bruiniers understands the importance of the successful and timely resolution of conflicts.

Justice Bruiniers serves as a mediator, arbitrator and special master, and handles neutral analysis matters, including mock exercises and appellate review.

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INCREASE IN MASS ARBITRATION IS IMPACTING THE WAY FIRMS APPROACH THEIR RISK AND COST MANAGEMENT STRATEGIES

BY GLENN JEFFERS
Daily Journal Staff Writer

The day before launching its initial public offering last May, Uber Technologies Inc. announced it would settle a majority of 60,000 arbitration cases alleging the rideshare company had misclassified drivers in several states as independent contractors rather than employees.

The estimated cost was $146 million to $170 million, according to news reports.

Amazingly, more than 12,500 of those arbitration cases came from a single law firm, Larson O'Brien LLP in Los Angeles. Working with Chicago-based Keller Lenkner LLC, the firm organized, filed and managed 12,500-plus individual arbitration cases in federal court. Abadilla v. Uber Technologies, Inc., 18-CV07343 (N.D. Cal., filed Dec. 5, 2018).

For months, the parties argued over the glut of claims and Uber's refusal to pay its share of the initial $1,500 fee each case required to begin arbitration. Larson O'Brien had a motion to compel arbitration with U.S. District Judge Edward M. Chen of San Francisco when the settlement was announced.

But what amazes Glenn A. Danas, a partner at Robins Kaplan LLP in Los Angeles specializing in class action and employment law, is that Uber still has thousands of individual claims left to arbitrate.

"Uber paid $146 million to settle one group of the mass arbitration filings and didn't even get complete closure on the litigation because they're dealing with just individual claims," Danas said. "At some point, companies are going to figure out that this is a losing proposition."

Indeed, mass or swarm filings of individual arbitrations against a single company or employer have become a popular tactic of plaintiff-side lawyers. Frustrated with class action waivers baked into arbitration agreements and stymied by the limitations of filing a claim under the Private Attorneys General Act of 2004 (PAGA), mass filings provide plaintiffs' lawyers the means to bring relief to their clients and enforce state labor laws.

"It was, for me, the only realistic possibility given that my clients had all signed arbitration agreements with class action and collective action waivers," said Lauren Teukolsky, owner and founder of Teukolsky Law APC in Pasadena, which focuses on employment and civil rights matters.

Teukolsky filed 57 individual arbitrations alleging wage and hour violations against a large national company in 2015 after she was unable to get a class

certification, she said. After four of her clients won awards in arbitration, the company settled the other cases for an undisclosed amount.

"There were so many employees in that particular workplace and so many upset about the wage theft that was taking place," Teukolsky said. "They were interested in doing something and they had no other alternative to vindicate their individual workplace rights. So, [filing multiple arbitrations] was a tactic born of necessity."

Others have followed suit. Workers filed similar arbitration claims against rideshare company Lyft Inc. and fast-food chain Chipotle Mexican Grill Inc. This past May, casual sport-bar franchise Buffalo Wild Wings settled with 391 workers who filed individual arbitration cases alleging wage and hour violations. Robbins v. Blazin Wings Inc., 15-CV06340 (W.D. N.Y., filed Dec. 18, 2015).

Most recently, a pair of complaints in the Northern District of California sought to compel gig-economy food delivery service Doordash Inc. to pay its initial fees to the American Arbitration Association so arbitration could begin on more than 6,200 individual claims. Last month, U.S. District Judge William H. Alsup of San Francisco ordered the second of the two lawsuits — Boyd v. DoorDash Inc. —reassigned to his court so he could hear arguments for both motions. Abernathy v. DoorDash Inc., 19-CV07545 (N.D. Cal., filed Nov. 15, 2019). Boyd v. DoorDash Inc., 19-CV07646 (N.D. Cal., filed Nov. 20, 2019).

According to recent news reports, Alsup admonished DoorDash counsel for not adhering to the contract they drafted and not paying initial fees to the neutral provider, which could be as much as $7.6 million. In both cases, the drivers allege misclassification as independent contractors rather than employees.

"Your defense law firm and all the defense law firms have tried for 30 years to keep employment cases out of court," Alsup told Gibson, Dunn & Crutcher LLP partner James P. Fogelman in court, according to news reports. "Suddenly, it's not in your interest anymore, and now you're wiggling around to find some way to squirm out of the agreement. I'm a lot older than you, and there's a lot of poetic justice here."

But many legal experts find the process cumbersome at best and unsustainable at worst, a tactic rife with logistical challenges that puts unnecessary strain on plaintiffs' attorneys and defense counsel when other, more manageable options are available.

"Mass arbitrations are a ridiculous alternative to some orderly form of aggregate litigation such as class action," said Charlotte Garden, co-associate dean for research and faculty development and associate professor at the Seattle University School of Law. "It's inefficient for individuals. It's inefficient for companies."

It's also inefficient for alternative dispute resolution providers who occasionally bring in additional case management staff to handle the glut of incoming filings, said an executive in the industry who asked not to be identified. The number of mass filings against companies increased significantly within the last year and a half, the executive said.

"It's really been in the last 12 to 18 months where we've seen a pattern where a plaintiffs' lawyer decides to file multiple individual arbitrations against a particular company," the executive said. "If we need to add additional case management resources, we would certainly do that."

Despite the headaches, experts agree mass arbitrations aren't going anywhere. They're the product of novel legal problem-solving that comes after a number of decisions rendered employment class actions nearly inert and left plaintiffs with little recourse.

"Given the state of the law now, mass arbitrations are one of the few avenues that plaintiffs' lawyers have to help hold companies feet to the fire when they violate the law," Garden said.

Before, if large numbers of employees or consumers felt aggrieved by a company, attorneys would file class actions with the hope of winning certification and gaining a stronger position to dictate settlements, Danas said.

Then came the first step toward dismantling class actions: The U.S. Supreme Court's reversing the 9th Cir-

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"GIVEN THE STATE OF THE LAW NOW, MASS ARBITRATION ARE ONE OF THE FEW AVENUES THAT PLAINTIFFS' LAWYERS HAVE TO HELP HOLD COMPANIES FEET TO THE FIRE WHEN THEY VIOLATE THE LAW"

Charlotte Garden,
Seattle University School of Law

JUDICATE WEST

William J. Caplan, Esq.

Santa Ana

Business/Contractual, Construction Defect & Breach of Contract, Employment, Intellectual Property, Personal Injury, Professional Negligence, all types of Real Estate

A full-time mediator since 2001, Bill joined Judicate West in 2018. Almost 30 years ago, his litigation practice at Rutan & Tucker focused on business, real estate, and construction cases. He started mediating as a settlement officer for the Orange County Superior Court in 1990, and for the Los Angeles Superior Court in 2001. As a result of decades of mediation experience for the courts as well as privately, he has resolved all types of personal injury, intellectual property, and employment matters among a wide variety of other disputes. Bill also taught mediation as an adjunct professor at Chapman Law School.

With a passion for helping people in mediation, Bill believes that, beyond performing a valuable professional service, helping people settle a dispute makes the parties' lives better by ending risky, expensive and emotionally taxing litigation, sometimes before it starts.

He spends hours preparing, including pre-mediation phone calls with the lawyers and has worked to develop a toolset for mediation. Bill uses the tools that work best to settle a particular case. According to Bill, "In many disputes, understanding the key facts and legal principles may be at the center of achieving resolution, a creative realignment of the settlement pieces may be the key in another, and in a third, showing empathy and gaining the trust of the parties might be the central focus."

Recently, an attorney summarized Bill's mediation abilities: "You did the critical job of articulating the important issues and expressing points favoring a settlement in a case that was fraught with emotion. I wholeheartedly believe that without your participation, the parties would not have had the ability to reach a settlement. Thank you most of all for staying so late… a positive experience and outcome for everyone."

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JAMS

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Hon. Wynne Carvill (Ret.) is a full time neutral at JAMS. He joined JAMS with a rich legal background and experience in a wide range of practice areas, including antitrust, business/commercial, class action, employment, family law and construction. During his 16 years on the Alameda Superior Court, he settled numerous cases. He also spent two of those years serving as a full-time settlement judge, handling an average of 10 settlement conferences per week. During his tenure, Judge Carvill served in one of Alameda County's two complex litigation departments for four years, managing class actions, Private Attorney General Act (PAGA) cases, antitrust, construction, environmental cases and major commercial disputes. During his last two years on the court, Judge Carvill was the Presiding Judge for the Alameda Superior Court. Before his appointment to the bench in 2003, Judge Carvill was a civil litigator for more than 25 years and served as his firm's general counsel for 12 years.

Adept at moving complex disagreements toward resolution in an efficient manner, Judge Carvill enjoys engaging attorneys in discourse to understand fully the issues and arguments at hand. Described as humble and analytical, he is praised by attorneys for his professionalism and the high value he places on integrity and candor. He immerses himself in each matter that comes before him and he believes every matter has an opportunity for parties to reach resolution.

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cuit's decision in Circuit City v. Adams, holding the Federal Arbitration Act applied to individual arbitration agreements. Circuit City Stores, Inc. v. Adams, 532 US 105 (2001).

That was a mistake, said Garden, considering the federal law enacted in 1926 was meant to resolve conflicts between businesses in a quick, inexpensive manner.

"To take a statute that blessed the idea of arbitration between two entities that had relatively equal power and a substantial dispute to resolve in arbitration and apply it to a large company that has relatively low dollar disputes with a lot of individuals, that's not the best reading of the history of the FAA," she said. "Those are claims that cry out for aggregation, and individual arbitration agreements prevent that equity aggregation from happening."

Next was the Class Action Fairness Act of 2005 (CAFA), which moved class actions filed on the state level to federal court. And while companies still had to face class actions and certification motions, many rulings worked their way through the appeals process to the Supreme Court.

In 2010, the Supreme Court court made several decisions that would limit — if not cripple — the use of class actions. First, the court ruled in Stolt-Nielsen v. Animalfeeds International Corp. that arbitrators cannot compel class arbitration for parties who have not agreed to authorize it.

"In other words, if [the agreement] did not contain a [class action] waiver but also did not necessarily address class arbitration in a positive way, that class arbitration was presumably going to be precluded," Danas said. Stolt-Nielsen S.A. v. AnimalFeeds International Corp., 559 U.S. 662 (2010).

But Stolt-Nielsen paled in comparison to what came next. In AT&T Mobility v. Concepcion, the Supreme Court ruled 5-4 any state law impeding the enforcement of an arbitration agreement is preempted by the Federal Arbitration Act, reversing the 9th U.S. Circuit Court of Appeals decision holding class action waivers in agreements were unenforceable. AT&T Mobility v. Concepcion, 563 U.S. 333 (2011).

"It was really a rebuke of class actions in general rather than a decision on arbitration," Danas said. "I and a lot of other attorneys at the time viewed it as the U.S. Supreme Court's tremendous antipathy towards class actions."

With those two precedents set, employers began adding class action waivers to arbitration agreements and making them a precondition of employment, Danas said, though employees found some relief in 2014's Iskanian v. CLS Transportation, a case he argued as a member of the plaintiff's team.

There, the California Supreme Court ruled claims filed under PAGA could not be forced into arbitration, but held that class action waivers were still enforceable, rejecting plaintiff's argument they were a concerted activity for workers and protected under the National Labor Relations Act. Iskanian v. CLS Transportation Los Angeles, LLC, 59 Cal. 4th 348 (2014).

Finally, the Supreme Court's decision in Epic Systems v. Lewis sided with the state high court's opinion on concerted activities, reaffirming class action waivers were enforceable. Epic Systems Corp. v. Lewis, 138 S. Ct. 1712 (2018).

"It was kind of shooting down option No. 2," Danas said of Epic Systems. "If option No. 1 was fighting arbitration agreements on grounds other than the class action waiver, option No. 2 was to argue the federal labor laws provided an end run to the Concepcion and Stolt-Nielsen decisions."

That left option No. 3, Danas said. "Mass arbitrations."

For plaintiffs' attorneys, mass arbitration filings offer several advantages. For starters, lawyers have a relationship with each individual who filed a claim, said Teukolsky, the Pasadena employment and civil rights attorney.

"There's an attorney-client relationship and that means there's no chance the employer is going to approach any of the employees and try to pick them off," she said.

Teukolsky cited Chindarah v. Pick Up Stix Inc., a 2009 decision holding employers can settle with members of a class action without violating labor laws. Chindarah v. Pick Up Stix, 171 Cal. App. 4th 796 (2009).

"You might have two named plaintiffs and thought you had a class of 100 employees, but then you find out the defendant has picked off 80 or 85 of the employees, so you don't really have a class anymore," Teukolsky said. "That can't happen when you actually represent all of the individual employees."

Another advantage? Quicker payouts, said Teukolsky. Because the courts aren't involved in the arbitration, workers

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ADR SERVICES, INC.

John McGuinn, Esq.

San Francisco

Employment Discrimination, Wage & Hour Claims, Wrongful Termination, Personal Injury, Maritime Law

John McGuinn, Esq. is an accomplished trial lawyer with 54 years of experience handling a wide range of civil matters, with particular emphasis in the fields of employment law and personal injury, including maritime law. In addition to evaluating and settling or otherwise disposing of hundreds of cases prior to trial, he has tried to verdict over 50 jury trials in the areas of catastrophic injury, wrongful death, insurance bad faith, employment discrimination, and wrongful termination.

A graduate of U.C. Berkeley's Boalt Hall School of Law, Mr. McGuinn has been recognized by Super Lawyers as one of the top trial lawyers in the state and by Best Lawyers in America continuously throughout its publication as one of the country's outstanding trial attorneys in the area of employment law. He has been a member of the American Board of Trial Advocates (ABOTA) since 1983, served as President of its San Francisco chapter in 1998, and was President of CAL-ABOTA in 2001. He is a Fellow in the International Society of Barristers, a Fellow of the American College of Trial Lawyers, and a Fellow in the American College of Labor and Employment Lawyers.

Mr. McGuinn has also devoted significant time to developing his skills in alternative dispute resolution. He attended the Straus Institute for Dispute Resolution and has acted as a mediator in numerous disputes since 1991, particularly in the areas of personal injury, wrongful death, and virtually every aspect of employment law.

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JAMS

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Family Law, Civil, Construction, Employment, Personal Injury, Professional Liability, Real Property

Hon. Franz E. Miller (Ret.) joined JAMS after 16 years of service on the Orange County Superior Court. His tenure at the court was equally divided between the Family Law Panel and the Civil Law Panel, where he was supervising judge during the last two years of that assignment.

Judge Miller handled thousands of matters, tried more than 500 contested cases and settled many cases that were destined for trial. He served as settlement officer on highly contested matters. The superior court's settlement program afforded him the ability to focus on case dynamics and to resolve cases that might otherwise have moved on to lengthy, expensive trials.

Judge Miller came to the bench with vast and varied legal experience, including more than 13 years of litigation involving more than 30 jury trials and 13 years as a senior staff attorney at the Court of Appeal. He taught in local law schools as an adjunct professor for over 20 years.

During his legal career, Judge Miller was very active in the Orange County legal community, serving as president of the Orange County Bar Association in 1997, and in his local community, where he was a planning commissioner.

Judge Miller brings to JAMS his desire to resolve matters in the most efficient, cost-effective manner.

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MASS ARBRITRATION CONTINUED

don't have to wait for awards if the company settles. "It's much more streamlined," she said. "You can just enter into a settlement agreement and get it done privately between the parties. Everyone signs it and it's done."

Teukolsky has also noticed in both her filings and in others that neutrals will arbitrate just a few bellwether cases so both plaintiff and defense counsel can see how the claims are evaluated.

"We could sort of see which way the wind was blowing," Teukolsky said. "And that aided us in getting a settlement for everybody."

Arbitrations are also less procedural than class actions, Teukolsky added. With her claims, she didn't have to file an extensive trial plan with the judge or deal with the statistical sampling needed in a class action. She had only to file her individual claims, an easier task than wading through a state court docket.

"With the way the courts are backed up right now, if you have a discovery dispute in Los Angeles Superior Court, you can expect to wait two to three months before getting a hearing date on your motion to compel," she said. "Whereas in an arbitration, if I had a discovery issue, I could just email my arbitrator and we would get a conference call set up within a few days."

Finally, mass filings can provide leverage for plaintiffs' lawyers, Teukolsky said, though that depends on the size of the arbitration group and the size of the company. Again, while fees vary, companies that operate across the country use national ADR providers like AAA and JAMS to process their arbitrations. JAMS charges $1,500 to initiate arbitration while AAA charges $1,900.

Though plaintiffs have to pay part of that fee, their share usually tops out at $400. Plaintiffs' attorneys usually work with clients to cover part or all of the charges, knowing they'll recover the costs when they collect their fee, Teukolsky said.

While it's costly in the early stages, it can be worth it to launch the cases and compel arbitration, Teukolsky said. She pointed to a recent complaint filed in the Northern District requesting that a federal judge compel Postmates Inc. to pay nearly $11 million in fees to begin arbitration with more than 5,000 couriers alleging misclassification. Adams v. Postmates Inc., 19-cv-03042 (N.D. Cal., filed Jun. 3, 2019).

A federal court granted the motion, according to court documents. Postmates is appealing in the 9th Circuit.

"It creates a lot of leverage for the plaintiff if the defendant truly is required to pay all of those arbitration fees up front, especially in a large case like Postmates," Teukolsky said. "It's going to be a big fight."

Adding to this is Senate Bill 707, which was passed by the Legislature last September and went into effect Jan 1. SB 707 imposes sanctions against parties that force arbitration but do not pay the accompanying fees within 30 days. If companies fail to pay, they could face penalties, be compelled into arbitration or found to be in breach of the arbitration agreement, allowing workers to file a lawsuit.

"There may not be enough mass arbitrations to prompt a mass rethinking by employers right now, but this law might help move the needle," Garden said.

But Teukolsky also warned of several challenges that come with filing multiple arbitrations, the biggest one being finding clients interested in filing a claim. In most class actions, attorneys will use a Belaire-West notice to gather employees' contact information and allow those who don't want to join to opt out. Arbitrations don't allow for such a mechanism, meaning plaintiffs' attorneys have to use other methods to find clients, including word of mouth and advertisements, Teukolsky said.

"The onus is on the plaintiffs' lawyer to figure out a way to let the employees know that this is even a possibility that they can pursue," she said.

Another way to find clients? File a PAGA claim. Sure, PAGA has its faults, from only allowing claimants to go back a year to claim violations to relinquishing 75% of any penalties awarded to the state of California. But PAGA allows for broad discovery, including a Belaire-West notice, the state Supreme Court held in Williams v. Superior Court 3 Cal. 5th 531. (2017).

"Similar discovery rules apply in PAGA actions as in class actions," Teukolsky said.

But once attorneys find potential clients, convincing them to sign up could be difficult, said Garden. She cited a

2015 study from Jeff Sovern, a law professor at St. John's University in New York, which surveyed 668 participants who were asked to read a seven-page credit card contract that included an arbitration agreement.

The study found only 43% of participants realized that the contract included an arbitration agreement. While 14% knew the contract compelled them to arbitrate, only 9% knew that meant they could not sue in court.

"Many people have had individual arbitration clauses forced upon them when they sign up for a cell phone or applied for a job who won't even know that they couldn't go to court and use a class action mechanism," Garden said. "So just telling people, 'Here's an individual agreement that you agreed to unknowingly' would be a challenge."

Most cumbersome of all is communicating to each client, Teukolsky said. Professional rules of conduct mandate attorneys keep clients informed of major developments in their cases, return phone calls in a timely fashion and advocate in the client's best interest.

But in a case like Postmates or Uber, with thousands of plaintiffs, administrating that kind of work can be nightmarish, Teukolsky said.

"There are lots of obligations when you have an attorney-client relationship with 5,000 clients," she said. "It becomes much more difficult and time intensive."

And conflicts of interest could bubble up if a settlement is reached. Not every claim is the same, Teukolsky said. Unlike class actions, mass arbitrations require each client to sign off on an aggregate settlement proposal. Attorneys are obligated to disclose the total amount of the settlement to plaintiffs and the amount the others will receive prior to getting those individual approvals.

Inevitably, Teukolsky noted, there will be holdouts.

"That creates a conflict of interest because you, the attorney, represent 98 plaintiffs who want to accept the settlement and two plaintiffs who don't because their interests are diametrically opposed," she said.

Teukolsky suggested developing a settlement formula early on in the filing process that includes a point system for related metrics. For example, in a wage and hour matter, the formula should account for criteria like number of hours worked, number of shifts worked and pay rate.

Whatever the formula, attorneys should make sure they get buy-in from all plaintiffs before the claims are filed, Teukolsky said. Attorneys could even build that buy-in into the retainer agreement.

"Even if you don't know what the numbers are going to be, you have buy-in on how we're going to split it up," she said.

While mass filings can be a powerful, if sometimes unwieldy, tool for plaintiffs' attorneys, companies are by no means defenseless, said Damien P. DeLaney, a partner in Akerman LLP's Los Angeles labor and litigation practices. Often companies facing claims from hundreds or thousands of workers are large enterprises with the resources to defend their arbitration agreements.

"Companies think it's important to defend their policies, and they make the sound decision to do that if they've got the resources," DeLaney said.

And despite the mass filing spikes in recent years, DeLaney said he still sees more plaintiffs' attorneys opt for PAGA claims than get bogged down managing thousands of plaintiffs.

"For every time I have a class action and I reach out to opposing counsel and pull a class waiver on them, the response is almost always, 'OK, I'll just turn it into a PAGA case and we'll litigate the PAGA claim," DeLaney said. "Very rarely is it, "OK, well I'm going to go sign up 300 people."

But when it is, DeLaney sees opportunity for both the firm and his team to prosper. DeLaney was part of a defense against 600 individual filings in 2014. Not only are mass filings "a big piece of business" for a firm, they can be a great training tool for senior associates, which he was at the time.

"You can get associates who want to do it because it's trial experience," DeLaney said. "If you have people who are capable, you can give it to one person, have them run with it and try it at the end. From a firm perspective, that could be a real benefit."

Just as with the plaintiffs' attorneys, mass filings require a lot of defense firm resources, DeLaney said. A core team of 15 to 20 attorneys is necessary to create a matter management sys-

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JAMS

Hon. Linda L. Miller (Ret.)

Orange County

Family Law, Business & Commercial, Employment Law, Higher Education & Title IX, Personal Injury/Torts, Real Property

Hon. Linda L. Miller (Ret.) joined JAMS after more than 30 years as a judge in Orange County, California. She spent 16 years handling a family law direct calendar and served for two years on a Superior Court appellate panel. In addition to family law, Judge Miller handled business and commercial disputes, torts, collection matters and real property title and possession cases. As an assigned judge in the Civil Departments of the Riverside County Superior Court, she conducted in excess of 1,200 settlement conferences, with a very high rate of resolution.

Judge Miller has a wealth of experience with complex financial matters related to family law. Her family law experience, in both trials and resolution, ranges from business and realty valuation, reimbursements, custody disputes, income findings for support, to fees and domestic abuse. Judge Miller established the first Children's Chambers in Orange County, where children can be safely cared for while parents tend to court business. It subsequently became a model for courts all over the state.

Judge Miller has a well-earned reputation among colleagues and attorneys for her credibility, consistency, preparation and ability to quickly grasp complex issues and resolve even the most tumultuous disputes. As a mediator, Judge Miller uses persistence and perseverance to creatively help the parties craft their own solutions. As an arbitrator, her strong analytical and case management skills allow the process to flow seamlessly.

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JUDICATE WEST

Hon. Joanne B. O'Donnell, Ret.

Los Angeles

Business/Contractual, Employment, Environmental/CEQA, Personal Injury, Professional Negligence

Judge O'Donnell brings more than 36 years of experience in civil litigation both as a judge and as a litigator. She retired from the Los Angeles County Superior Court after 20 years of service in various branches and departments, including the Law and Motion division and presiding over almost every type of civil dispute. Prior to her bench appointment, Judge O'Donnell litigated employment, torts, contracts and ERISA cases as a member of top international law firms.

For decades, she has been passionate about the reconciliation processes and received training sponsored by the Los Angeles Diocese of the Episcopal Church to resolve church-related matters. She has substantial experience with Korean American cultural issues as a result of presiding over church-related litigation and her own church involvement.

She says, "As a judge, I took great satisfaction in helping civil litigants resolve their differences and move on with their lives. I look forward to using my trial experience and my commitment to justice and peacebuilding to help litigants reach satisfactory resolutions in the private sector."

Her extensive trial judge experience serves her well in her private judging practice. She focuses on arbitration and private judging assignments, such as serving as a special master and discovery referee in all types of personal injury, business and employment matters.

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MASS ARBITRATION CONTINUED

tem that tracks information — including discovery requests, depositions and dispositive motions — and shares work across the team.

"You want to create those efficiencies for your attorneys so they can focus," he said.

There's also the possibly of coming across neutrals who have arbitrated several of the cases, DeLaney said. Regardless of how they've come down on past claims, the last thing defense counsel wants are grounds for plaintiffs' attorneys to appeal the arbitrator's decision.

"You should track in your matter management what the arbitrators are doing and how they're engaging with the issues," he said. "You should have a good idea of who you want to work with as the process goes forward."

Most importantly, the defense team needs to keep in constant contact with the company, DeLaney said. Mass filings are a constantly evolving situation and employers need up-to-date information so they can make informed decisions.

"The client is going to be looking at your bills, looking at the results in the individual cases as they go to hearing and awards are determined and doing that risk assessment on an ongoing basis," DeLaney said. "You need to do that in partnership with your client."

Also sharing the duty of managing these types of filings are ADR providers who must adjudicate these matters. For the most part, the executive at a national neutral provider who asked her name be withheld said her company hasn't felt any adverse effects to its infrastructure as mass filings become more commonplace.

Typically, she said, her provider receives filings in batches of 10 or 20 at a time, sometimes 100. If the number gets higher, the executive will set up a conference call with both parties to determine next step.

"We want to get a better understanding of what we're facing," the executive said "How many are coming in? What kind of cases are we dealing with? Are there agreements among the parties about who's paying the filing fees? We just try to get the lay of the land so we administer the cases in an efficient way going forward."

While she couldn't speak to other providers, the executive said her group hasn't had any issues with companies refusing to pay their initial fees. And if a company tried to avoid payment, the group has measures in addition to SB 707 it could implement.

This includes sending a letter to plaintiffs' counsel detailing the provider's multiple attempts to collect the fee, and because the employer hasn't responded, they cannot move forward with arbitration.

"That would be the vehicle [claimants] could use to go to court to either invalidate the arbitration agreement or get the court to force the company to comply and to pay so that the arbitration could move forward," the executive said. "We've always monitored those cases and then tried to provide some sort of remedy to the claimant if there's a nonresponsive company."

The executive also said occasionally the provider has shifted resources when it received a new batch of filings, thanks in part to having multiple locations across North America. The provider has been able to reinforce the case management staff when necessary and prepare claims for arbitration once counsel for both sides agree on the basic parameters.

To safeguard against repeat sessions with the same neutral, the provider monitors work flow so it can swap arbitrators in and out seamlessly.

"We've always tried to be flexible and nimble in our case administration," the executive said. "We're making sure we meet both sides' desire for due process and fairness. Right now, it's manageable, and if this is a trend going forward, we'll adapt and respond accordingly."

Garden hopes that trend ends soon. Now that mass filings have proven that individual arbitration agreements cannot stop plaintiffs' attorneys from bringing some kind of collective action, she'd to see employers move back to more traditional means of resolving disputes.

"Companies have these individual arbitration agreements because they hope that nobody will take them up on individual arbitration," Garden said. "But I think companies have realized it would be much better for them if they had an aggregated form of dealing with these disputes with their workforces."

JAMS

Hon. Lynn O'Malley Taylor (Ret.)

San Francisco

Business/Commercial, Construction, Employment Law, Estates/Probate/Trusts, Family Law, Personal Injury/Tort

Hon. Lynn O'Malley Taylor (Ret.) joins JAMS as a full-time neutral, bringing over 35 years' experience as a trial court judge. In 1982, Judge Taylor was the first woman elected to the court in Marin County. She has served three times as presiding judge. During her tenure as supervising civil law judge in Marin County, Judge Taylor worked with colleagues to eliminate the court's backlog by identifying and focusing on settlement of aged cases and managing remaining cases on realistic time schedules. She encouraged mediation and required settlement conferences for cases that did not settle in mediation. She settled hundreds of cases in partnership with mediation trained attorneys and experts.

Judge Taylor has served in counties across Northern California and for the last seven years in the SF Superior Court as part of the Judicial Council's Assigned Judges Program, where she settled numerous cases specifically assigned to her and at the request of other judges. Judge Taylor has heard and settled multiple cases involving employment discrimination and sexual harassment, wage/hour, employment/independent contractor issues, insurance coverage, indemnity, bad faith, judicial review of administrative determinations, toxic torts, CEQA, inverse condemnation, medical/dental/engineering/legal/accountant malpractice, personal injury, product defect, and property disputes involving easements and covenants, conditions and restrictions. She is trained as a Title IX external adjudicator for colleges in sexual assault and harassment cases.

Treating all with dignity and kindness, Judge Taylor has well-deserved respect from the lawyers and litigants who have appeared before her. She approaches each matter that comes before her with optimism and persistence. Having served as faculty at the California Judicial College and in trial skills workshops at Stanford University Law School and USF Law School, she continues to serve as faculty for the CJER Civil Law Institute, most recently with a course on Advanced Settlement Conferences.

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JUDICATE WEST

Bradley S. Thomas, Esq.

Sacramento

Business/Contractual, Employment, Insurance Coverage & Bad Faith, Personal Injury, Products Liability, Professional Negligence

Following a 40-year career as a civil litigation trial lawyer, Brad Thomas joined Judicate West as a mediator in 2018. He participated in hundreds of mediations throughout California as a practicing attorney and has handled a wide array of cases, including personal injury (automobile accidents, defective products and dangerous conditions of property), employment (wrongful termination, harassment, discrimination, wage/hour), insurance coverage/bad faith and business disputes. As a practicing lawyer, Brad tried more than 100 jury trials throughout Northern California to as far south as Bakersfield.

Brad was invited to join the initial appellate mediation panel for the Third District Court of Appeals and served as a Settlement Officer in the Sacramento County Superior Court. His years of service on these panels, combined with his extensive mediation training and rich litigation experience, sparked a passion and skill for resolving disputes. Today, as a mediator available statewide, Brad strives to be both facilitative and evaluative according to the needs and expectations of those participating in the mediation process. Clients find Brad's gentle, kind demeanor and his deep experience as the perfect blend of skills to help guide matters to resolution.

A long-time active member of ABOTA, Brad has served as President of the Sacramento Valley Chapter and on the board of directors for CalABOTA. He has been honored as recipient of both the Chapter's Trial Lawyer of the Year award and its Professionalism and Civility award.

Brad has substantial training in mediation, including Pepperdine Law School's Strauss Institute and various trainings and seminars presented on behalf of the Third District Court of Appeal.

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