January 28, 2008

As Seen in Wisconsin Law Journal

Bernard J. "Bud" Bobber

1991 act sparked Bobber's entry into employment litigation

When speaking to attorneys about how they ended up in a particular field of law, you hear a wide variety of reasons, from lifetime commitment to some issue, to following the path of least resistance.

It is unusual, however, for a specialty to be the product of a single piece of legislation. But were it not for the landmark Civil Rights Act of 1991, the career of Bernard J. "Bud" Bobber would have been very different.

After graduating from Northwestern Law School in 1987, Bobber practiced general commercial litigation for four years — two with Winston & Strawn in Chicago, and two in Milwaukee at Foley & Lardner LLP.

As Wisconsin's largest corporate law firm, Foley & Lardner practiced a great deal of labor law, but it was the traditional union-versus-management type of labor law that had dominated the field since the enactment of the National Labor Relations Act in the 1930s.

The 1991 legislation changed all that. Employees were no longer limited to remedies of back pay and reinstatement. They could seek compensatory damages and punitive damages. In addition, any "adverse employment action," not just termination or failure to hire, was grounds for suit.

As litigation exploded, Foley needed to change its focus, and needed litigators to do that. When Foley began seeking a lateral hire to take on employment litigation, Bobber volunteered to take on the role. Employment litigation has been his specialty ever since.

Bobber does traditional National Labor Relations Board arbitration hearings as well, something he finds a welcome contrast from traditional civil litigation.

"It's a great well-kept secret how fun they are," he says. "There is no discovery. The hearing usually only takes one day. It is the opposite of court litigation that drags on with motions and discovery. You get in; you put your witnesses on; and you get out."

While the 1991 act may have been the impetus for Bobber getting into the field, several changes since have kept the field a growing area of practice.

The biggest change he has noted is the growing wave of class-action claims related to wage and hour disputes that didn't exist in the 1990s; in addition, in August 2004, the Department of Labor changed its employment classifications regarding overtime exemptions for the first time in over 35 years, fueling even more class actions.

Bobber notes, "Rare is the large employer who is doing everything perfect on wage/hour compliance. Also, a large employer will have many employees in a particular classification, and the law allows for shifting of attorney fees, so the suits are very amenable to class status."

In what would have been the largest class action ever certified in Wisconsin, Bobber, representing the employer, successfully avoided certification, convincing the court of appeals that the class would have been unmanageable. *In re Wal Mart Employee Litigation*, 2006 WI App 36, 290 Wis.2d 225, 711 N.W.2d 694.

Looking to the future, Bobber foresees potential growth in ERISA litigation. "I think we will see a wave of it, with the baby boomers retiring, and with health care costs going up. We will see a lot of litigation, as companies struggle with health and retirement benefits, and employees in a pinch challenge the changes that companies make."

— David Ziemer

BERNARD J. "BUD" BOBBER

Firm: Foley & Lardner LLP; **Education:** Northwestern University School of Law, 1987; **Family:** Wife Joyce, three children; **Affiliations:** American Bar Association (litigation and labor and employment sections); State Bar of Wisconsin; Milwaukee Bar Association; United Way Campaigns; Girl Scouts of Milwaukee Area