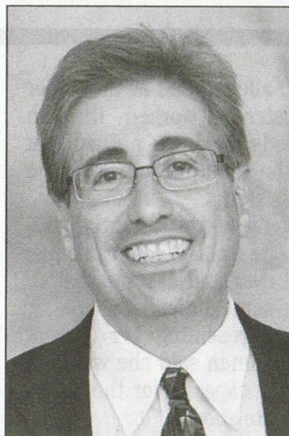

V. James DeSimone

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Specialty: Civil rights, employment

Among his recent achievements, DeSimone said he's perhaps the most proud of prevailing in a case that bolstered protection for asylum applicants.

He obtained a published 9th U.S. Circuit Court of Appeals decision in a case that held that a federal immigration officer acted within the scope of his employment when he solicited bribes from and sexually molested asylum applicants. *Lu v. Powell,* 621 F. 3d 944 (9th Cir., 2010).

"It's gratifying that this had a national impact for those who practice law on behalf of immigrants in this country," he said.

Among his other significant cases over the past 18 months, DeSimone was lead counsel in a published federal court decision holding that a supervisor's disability discrimination constituted extreme and outrageous conduct sufficient to maintain a claim of intentional infliction of emotional distress. *Wason v. American International Group Inc.*, 2010 WL 1881067 (S.D. Cal.).

Observing emerging trends, DeSimone said that he has noticed what he called "a new wrinkle" in employment law.

"When companies fail to reasonably accommodate an employee and that employee suffers a significant injury involving failure to accommodate, that injury can be compensated under the Fair Employment and Housing Act, rather than the Workers' Compensation Exclusivity Doctrine," he said.

The theory is that if the company had complied with FEHA to accommodate in the first instance, the injury would never have occurred, DeSimone said.

"Your remedies are so much greater under the Fair Employment and Housing Act to recover damages on behalf of the client," he said. "Workers comp is very regimented on how much the compensation is, and attorney fees are limited, and emotional distress is limited. Under the Fair Employment, there are no such limitations. If we prevail by a jury, we are awarded attorney fees."

DeSimone also was co-lead counsel in *Waters v. AT&T,* in which he obtained a $17 million settlement on behalf of AT&T information technology workers in a wage-and-hour case.

He was lead appellate lawyer in a precedent-setting case involving the admissibility of evidence of discriminatory acts against other employees. *Johnson v. United Cerebral Palsy,* 173 Cal.App.4th 740 (2009).

The 2nd District Court of Appeal issued a published decision reversing the trial court's grant of summary judgment in a pregnancy discrimination and wrongful termination case, and also instructed the trial court to admit evidence of other employees who were fired after each informed the employer that she was pregnant.

Testimony that the employer concocted false accusations regarding pregnant employees to justify firing them was ruled to be admissible.

"I am gratified that we were able to make changes in the law that are beneficial to employees," DeSimone said.

— Pat Broderick