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Litigation

Stris Argues ERISA and Other Cases Before High Court

PETER STRIS

BY GAYLE CINQUEGRANI

Most lawyers don't get anywhere near the Supreme Court, but at age 40, Peter Stris is becoming a regular.

''I was pretty fortunate,'' said Stris, a founding partner of Stris & Maher in Los Angeles. ''The stars aligned,'' he said. He spoke to Bloomberg BNA Nov. 6, while in Washington to argue an ERISA case before the Supreme Court three days later.

Stris usually represents employees or classes of employees before the Supreme Court. ''For our labor and employment practice, for our ERISA practice, our orientation is more worker rights, so you wouldn't see us being involved in a precedent-setting case that would dramatically cut back on workers' rights,'' he said.

Stris said the firm won't get involved in cases it doesn't support. ''It's important to be excited about what you're doing,'' he said.

Nevertheless, Stris & Maher isn't ''reflexively'' on the plaintiffs' side, and there are many areas where it represents corporate interests, he said. In fact, it probably represents an even number of plaintiffs and defendants in business cases. But a lot of people probably don't realize that because of the firm's high-profile Supreme Court cases, he said.

The firm generally handles three types of cases—Employee Retirement Income Security Act litigation, complex intellectual property cases, and high-profile business disputes. It was ERISA's complexity that drew the firm to start practicing in this area, Stris said.

The ERISA case Stris argued Nov. 9 concerns whether plans can sue injured participants to recover the cost of health benefits from their personal injury settlements (*Montanile v. Bd. of Trs. of Nat'l Elevator Industry Health Benefit Plan*, U.S., No. 14-723, *argued* 11/9/15; (216 DLR AA-1, 11/9/15)(((. Six federal appeals courts allow plans to bring such lawsuits, while two circuits block them if the participant has already spent the money in question.

***Montanile*: 'Sleeper' Case Could Pack Wallop.** A ruling in favor of the health plan could have a dramatic effect on retirees receiving pensions or people on disability because it would allow plans to claw back benefits they mistakenly overpaid to participants over many years.

Stris, who represents health plan participant Robert Montanile, told the Supreme Court that plans should act promptly to enforce their right to reimbursement because a disability or pension plan that waits years before attempting to collect a mistaken overpayment could create a heavy burden for an unwitting participant.

Montanile is ''a sleeper case'' because it has ''sweeping implications'' even though it concerns a ''hypertechnical'' issue, Stris told Bloomberg BNA. ''As a matter of policy, it would be very dangerous to allow plans, just because they wrote it into the contract, to go after the general assets of participants,'' he said, adding that ''the rule that's announced will apply in countless areas.''

Stris's next appearance before the justices—his sixth overall—will be Dec. 1, when he'll argue a securities case involving federal-question jurisdiction (*Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Manning*, U.S., No. 14-1132, *argument scheduled* 12/1/15)(.

Stris is involved in a third case pending before the high court this term, but he won't be presenting the argument (*Gobeille v. Liberty Mut. Ins. Co.*, U.S., No. 14-181, *argument scheduled* 12/2/15). The case, scheduled to be heard Dec. 2, concerns whether ERISA preempts the Vermont Health Care Uniform Reporting and Evaluation System, which requires self-insured health plans to submit claims data to a statewide unified health-care database. Stris is co-counsel to Vermont, which contends the database is useful in shaping health-care

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policy and evaluating existing health-care programs (124 DLR AA-1, 6/29/15). ''We think there's a broad consensus'' that ERISA doesn't preempt Vermont's system, Stris said.

''As a matter of policy, it would be very dangerous to allow plans, just because they wrote it into the contract, to go after the general assets of participants,'' according to Peter Stris.

Stris didn't set out to become a litigator. ''I wanted to be a composer,'' he said. He's been playing piano since he was five, and also plays the viola and the violin. He majored in music at the University of Pennsylvania and was the principal violist for the college's symphony orchestra. He says he changed his mind about a career in music when he ''saw how talented everyone else [at Penn] was.''

College Debate Led to Law School. Many of his friends from college debate teams were heading to law school, so ''I applied to a few [law] schools just to keep my options open,'' he admitted. ''I think I was like a lot of people ... who went to law school by default,'' he said, adding that he's very happy with his professional path.

In fact, Stris met his future law firm partner, Brendan Maher, through college debate. Maher did his undergraduate work at Stanford University but met Stris on the debate circuit, and they were classmates at Harvard Law School. Many of the firm's lawyers have a ''long history as colleagues and friends,'' and that's an important aspect of its culture, Stris said. ''Everyone in the firm has made a conscious choice to practice in our small and unique environment,'' he said.

Stris & Maher is, indeed, small. Its 12 lawyers form what Stris repeatedly described as ''a boutique firm.'' He noted that most of their ''adversaries'' are much larger firms.

Stris & Maher began in 2007 as a consulting firm that worked for other law firms with large cases. ''We didn't have the infrastructure'' to function as a regular law firm then, he said. Stris busied himself with consulting, running a start-up business, and practicing law part time before Stris & Maher assumed its current form about two years ago.

Stris said his biggest career accomplishment so far has been ''building this particular team over the past two years'' at his law firm. ''I feel very privileged to practice with each of them,'' he said. Stris and his partners don't have a strategy for increasing their firm's size as its visibility expands. Instead, they'll let it grow ''organically,'' he said.

When preparing for a Supreme Court argument, ''The more moots you can do, the better,'' Stris said. ''You try and apply the 70-30 rule. You try to ascertain the areas that are going to come up and spend 70 percent of your time [on those].''

A boutique firm, which typically specializes in a niche area of law practice, must be ''very thoughtful'' about the kinds of cases it takes on because ''there aren't other parts of the firm to absorb'' the costs or provide revenue, Stris said. ''Most Supreme Court cases are a loss leader,'' he said, because the ''enormous'' competition to handle them drives down the price. ''We have to be very disciplined about the shape that our Supreme Court practice takes,'' he said.

Preparing for a Supreme Court Argument. ''I was probably much more scared than the average person,'' Stris said of his first time arguing before the Supreme Court. He still takes the challenge ''very seriously,'' but finds it ''much less terrifying'' than new things he faces in his practice, such as appearing in an unfamiliar state court. ''I have the luxury of preparing more for Supreme Court cases than for other cases,'' he said, which helps him deal with the pressure.

When preparing for a Supreme Court argument, Stris said he generally tries to schedule ''traditional moots'' as early in the process as possible. He's worked with the Supreme Court program at Georgetown University's Law Center and the Supreme Court Assistance Project at Public Citizen as well as with his own colleagues. ''The more moots you can do, the better,'' he said. ''You try and apply the 70-30 rule. You try to ascertain the areas that are going to come up and spend 70 percent of your time [on those].''

His preparations seem to be succeeding. In 2008, he won a major 401(k) pension case, *LaRue v. DeWolff Boberg & Associates, Inc.*, 552 U.S. 248 (2008) (34 DLR AA-3, 2/21/08). In that case, a unanimous Supreme Court ruled that a participant in a defined contribution pension plan has a remedy under ERISA Section 502(a)(2) for losses to plan assets in an individual account due to a breach of fiduciary duty. Stris represented James LaRue, who alleged his 401(k) account lost $150,000 because his employer failed to follow his investment directions.

Concentrating on his legal career hasn't crowded out his ''broad love of music,'' Stris said. He enjoys watching ''The Voice'' on television with his 6-year-old son whenever possible.

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