

## Ed Sullivan

### Relevant Employment Law Experience

#### *Significant Achievements*

- Won a trial in the U.S. District Court of the Western District of Texas in which the Plaintiff sought over seven figures. *Dr. Graham D. Shea, DDS v. Management and Training Corp.*, Case No. 1:18-cv-00830-SH (Judge Susan Hightower) (2022).
- Won a nationally significant overtime case 12 judges to six before an *en banc* U.S. Court of Appeals for the Fifth Circuit. *Hewitt v. Helix Energy Solutions Group, Inc.*, 15 F.4th 289 (5th Cir. 2021).
- Upon reconsideration by the panel, won a 2-1 decision from the U.S. Court of Appeals for the Fifth Circuit on behalf of Tool Pusher seeking overtime based on the fact that the company paid him on a day rate. *Hewitt v. Helix Energy Solutions Group, Inc.*, 983 F.3d 789 (5th Cir. 2020) (opinion withdrawn for *en banc* consideration).
- Won a panel decision 3-0 from the U.S. Court of Appeals for the Fifth Circuit. *Hewitt v. Helix Energy Solutions Group, Inc.*, 956 F.3d 341 (5th Cir. 2020) (opinion withdrawn for panel reconsideration).
- Successful defense bench trial verdict in a case in which the Plaintiff sought \$1 million. *Hyman v. KD Resources, LLC*, Cause No. 2012-32430; In the 129th Judicial District Court of Harris County (Judge Michael Gomez).
- Employee permanently dropped federal race and retaliation claims without any money paid by our client for those claims. (S.D. Tex.) (2019) (Judge Nancy Atlas).
- In a claim in which we represented an employer before the National Labor Relations Board, the claimant withdrew her complaint after our response without any money paid by our client.
- Won a complete victory at arbitration for our client against an employee who claimed unlawful discrimination. *Caballero v. Bechtel OG&C Construction (AAA)* (2019).
- Won two-day jury trial and trial court entered judgement in our client, the Plaintiff's, favor, for \$168,644.22, in *Robert Fleming v. The Momenta Group LLC d/b/a Momentum Fitness Solutions and Grant Moyer*, Civil Action No. 4:15-cv-00075, 2016 WL 7742788 (S.D. Tex. June 27, 2016), a FLSA retaliation case (Judge David Hittner).

- Won summary judgment in 2017 in a same sex harassment case. *Smith v. MTC*, No. 4:16-cv-00176-A, In the United States District Court for the Northern District of Texas.
- Plaintiff multi-million dollar victory after a four-day jury trial in May 2014, In the United States District Court for the Southern District of Texas, an unlawful retaliation case.
- Defense victory for Kirkland and Ellis on Motion to Dismiss in November 2013 in *Oberc v. BP PLC*, Civil Action No. 4:12-cv-1382; In the United States District Court for the Southern District of Texas.
- Plaintiff jury verdict after a four-day jury trial in August 2012 in *Brett Czarnecki, et al v. Diesel Pros, LLC*, Cause No. 153-248153-0; In the 153rd Judicial District Court of Tarrant County, a Fair Labor Standards Act case.
- Eleventh Circuit victory in *Cunningham v. Nature's Earth Pellets, L.L.C.*, 433 Fed. Appx. 751 (11th Cir. July 6, 2011) (affirming summary judgment in an Americans with Disabilities case).
- Fifth Circuit victory in *Fahim v. Marriott Hotel Servs. Inc.*, 551 F.3d 344 (5th Cir. 2008) (affirming summary judgment in a national origin discrimination case)
- Fifth Circuit victory in *Bugos v. Ricoh Corp.*, 2008 WL 3876548 (5th Cir. Aug. 21, RES2008) (affirming summary judgment in a reverse sex discrimination case).
- State Appellate Court victory in *Dias v. Goodman Mfg.*, 214 S.W.3d 672 (Tex. App.—Houston [14th Dist.] 2007, pet. denied) (affirming summary dismissal of a retaliation lawsuit).
- Defense jury verdict after a two-day jury trial in May 2007 in *Javier Guevara v. Goodman Mfg.*, Cause No. 2006-092923; In the 280th Judicial District Court of Harris County, a worker's compensation retaliation lawsuit (Judge Tony Lindsay).
- Defense jury verdict after a three-day jury trial in April 2005 in *Peter Geiger v. Merck Medco*, Cause No. DV99-7184; In the 44th Judicial District Court of Dallas County, a TCHR retaliation lawsuit (Judge David Kelton).
- Defense jury verdict after a three-day jury trial in March 2005 in *Brian James Johnsen v. Baker Hughes Inc.*, Civil Action No. MO-04-068; In the Western District of Texas, Midland-Odessa Division, an Americans with Disabilities Act discrimination case (Judge Robert Junell), *aff'd*, 178 Fed. Appx. 386 (5th Cir. 2006).
- Denial of Plaintiffs' motion for class certification after extensive participation in four-day non-jury evidentiary hearing in November 2004 in *Fermin Colindres, et al. & EEOC v. Quietflex Mfg. Co. L.P.*, et al., Civil Action No. H-01-4319; In the U.S. District Court for the Southern District of Texas, Houston Division (Judge Lee Rosenthal). Subsequently,

the Court denied Plaintiffs' motion for class certification. See *Colindres v. Quietflex Mfg.*, 235 F.R.D. 347 (S.D. Tex. 2006).

- Defense jury verdict after a four-day jury trial in December 2003 in *Richard Davis v. Merck Medco*, Cause No. DV99-7184; In the 44th Judicial District Court of Dallas County, a TCHR retaliation lawsuit (Judge Kelton).

#### ***Noteworthy Published Appellate Cases***

- *Hewitt v. Helix Energy Solutions Group, Inc.*, 15 F.4th 289 (5th Cir. 2021).
- *Hewitt v. Helix Energy Solutions Group, Inc.*, 983 F.3d 789 (5th Cir. 2020) (opinion withdrawn for *en banc* consideration)
- *Hewitt v. Helix Energy Solutions Group, Inc.*, 956 F.3d 341 (5th Cir. 2020) (opinion withdrawn for panel reconsideration)
- *Cunningham v. Nature's Earth Pellets, L.L.C.*, 433 Fed. Appx. 751 (11th Cir. 2011)
- *Fahim v. Marriott Hotel Servs., Inc.*, 551 F.3d 344 (5th Cir. 2008)
- *Bugos v. Ricoh Corp.*, 2008 WL 3876548 (5th Cir. Aug. 21, 2008)
- *Dias v. Goodman Mfg.*, 214 S.W.3d 672 (Tex. App.—Houston [14th Dist.] 2007, pet. denied).
- *Johnsen v. Baker Hughes*, 178 Fed. Appx. 386 (5th Cir. 2006)
- *Esparza v. Telerx Mktg.*, 174 Fed. Appx. 806 (5th Cir. 2006)
- *Harris-Childs v. Medco Health Solutions of Tex. LLC*, 169 Fed. Appx. 913 (5th Cir. 2006)
- *Emerson v. Johnson*, 243 F.3d 931 (5th Cir. 2001)
- *Jackson v. Johnson*, 217 F.3d 360 (5th Cir. 2000)
- *Molo v. Johnson*, 207 F.3d 773 (5th Cir. 2000)
- *Felder v. Johnson*, 204 F.3d 168 (5th Cir.), *cert. denied*, 531 U.S. 1035 (2000)
- *Alexander v. Johnson*, 163 F.3d 906 (5th Cir. 1998)
- *Fields v. Johnson*, 159 F.3d 914 (5th Cir. 1998)

#### ***Noteworthy Published District Court Cases***

- *Coffin v. Blessey Marine Servs., Inc.*, 163 Lab. Cas. P 36, 092 (S.D. Tex. 2013)
- *Jones v. SuperMedia, Inc.*, 281 F.R.D. 282 (N.D. Tex. 2012)
- *Payne v. Goodman Mfg. Co., L.P.*, 726 F. Supp. 2d 891 (E.D. Tenn. 2010)
- *Colindres v. Quietflex Mfg.*, 235 F.R.D. 347 (S.D. Tex. 2006)
- *Colindres v. Quietflex Mfg.*, 228 F.R.D. 567 (S.D. Tex. 2005)
- *Ledford v. Thomas*, 144 F. Supp. 2d 709 (S.D. Tex. 2000), *aff'd*, 275 F.3d 471 (5th Cir. 2001)

#### ***Upcoming & Past Presentations***

“Top Fifth Circuit Employment Law Cases of 2021,” State Bar of Texas, Austin, Texas (January 2022)

“Effective Mediation Strategies,” State Bar of Texas, Austin, Texas (April 2021).

*“Top Fifth Circuit Cases of 2020,”* Houston Bar Association's Labor and Employment Section, Houston, Texas (February 2021)

*“Top 15 Fifth Circuit Employment Law Cases of 2020,”* State Bar of Texas, Austin, Texas (February 2021)

*“Employment Law in the Wake of COVID-19,”* LNH Leadership North Houston, Houston, Texas (December 2020)

*“Top 10 Damage Traps For Lawyers Bringing Employment Law Cases,”* Houston Bar Association, Houston, Texas (May 2020)

*“Top 15 Fifth Circuit Employment Law Cases of 2019,”* State Bar of Texas, Austin, Texas (December 2019)

*“Best Mediation Practices,”* Oberti Sullivan LLP CLE, Houston, Texas (May 2019)

*“What Mediators Need to Know About Employment Litigation,”* Houston Bar Association, Houston, Texas (May 2019)

*“Top 15 Fifth Circuit Employment Law Cases of 2018,”* State Bar of Texas, Austin, Texas (January 2019)

*“Top 15 Fifth Circuit Employment Law Cases of 2018,”* State Bar of Texas, Austin, Texas (January 2019)

*“Top 15 Fifth Circuit Employment Law Cases of 2018,”* Houston Bar Association, Houston, Texas (January 2019)

*“Ethics in the Workplace - How To Handle The Sensitive Investigation,”* Institute for Energy Law, Houston, Texas (October 2018)

*“SLAPP Your Opponents (And Save Your Clients Lots Of Money) By Learning About The Texas Anti-SLAPP Act, The Most Useful New Tool In The Employment Lawyer’s Toolkit,”* State Bar of Texas, Austin, Texas (October 2018)

*“Best Mediation Practices,”* Oberti Sullivan LLP CLE, Houston, Texas (June 2018)

*“Top 15 Fifth Circuit Employment Law Cases of 2017,”* State Bar of Texas, Austin, Texas (February 2018)

*“Top 12 Fifth Circuit Employment Law Cases of 2017,”* Houston Bar Association, Houston, Texas (January 2018)

*“Top 10 Labor and Employment Law Mistakes Employers Make,”* State Bar of Texas, Austin, Texas (November 2017)

*“2017: Cutting Edge Retaliation and Whistleblowing Claims And Defenses,”* State Bar of Texas, Austin, Texas (August 2017)

*“Suing or Defending the Departing Texas Employee, Including Non-Competes, Trade Secrets, and Fiduciary Duties,”* Houston Bar Association, Houston, Texas (June 2017)

*“Injunctive Relief-What Judges Care About,”* Oberti Sullivan LLP CLE, Houston, Texas (May 2017)

*“Top 12 Mistakes Made By Employers And How To Counsel Your Client To Avoid Them,”* Houston Bar Association, Houston, Texas (May 2017)

*“Sexual Harassment In The Workplace,”* KCOH Radio, Houston, Texas (April 2017)

*“2017 Non-Compete, Trade Secrets, and Inevitable Disclosures,”* State Bar of Texas, Austin, Texas (April 2017)

*“Top Ten Fifth Circuit Employment Law Cases of 2016,”* Houston Bar Association, Houston, Texas (March 2017)

*“Top Ten Fifth Circuit Employment Law Cases of 2016,”* State Bar of Texas, Austin, Texas (February 2017)

*“Ten ADA Issues That Continue to Confound and Confuse Employers, and Give Hope To Even Slightly Impaired Plaintiffs and their Lawyers,”* State Bar of Texas, Austin Texas (November 2016)

*“Top 10 Ways Plaintiffs Try to Prove Pretext in Discrimination and Retaliation Cases,”* State Bar of Texas, Austin, Texas (August 2016)

*“ADA Issues That Continue to Confound and Confuse Employers, and Give Hope To Even Slightly Impaired Plaintiffs and their Lawyers,”* Houston Bar Association's Labor & Employment Section, Houston, Texas (August 2016)

*“Top 5 Fifth Circuit Cases of the Past 12 Months,”* Oberti Sullivan LLP CLE, Houston, Texas (May 2016)

*“Top 10 Fifth Circuit Cases Of the Past Twelve Months,”* Houston Bar Association, Houston, TEXAS (April 2016)

*“In House Counsel Employment Law Primer: 10 Tips For Identifying Risk, Minimizing Liability,”*

*and Creating Clarity and Calm out of Confusion and Chaos,*” State Bar of Texas, Austin, Texas (March 2016)

“*Top 10 Recent Fifth Circuit Cases,*” State Bar of Texas, Austin, Texas (November 2015)

“*Voir Dire: Finding Your Enemies,*” UT Law CLE, Houston, Texas (October 2015)

“*Labor and Employment Seminar,*” Jackson Walker LLP Presentation, Houston, Texas (October 2015)

“*The Fifth Circuit and Employment Law Cases 2014-2015: What You Need To Know,*” Houston Bar Association's Labor and Employment Section, Houston, Texas (October 2015)

“*Hot Topics In Employment Law,*” Annual Judicial Education Conference, Dallas, Texas (September 2015)

“*The FLSA: Ask the 800lb Gorillas,*” Oberti Sullivan LLP CLE, Houston, Texas (April 2015)

“*Top 10 Employment Law Issues In The Oil Patch,*” State Bar of Texas, Austin, Texas (April 2015)

“*Recent Developments in Causation Standards in Employment Cases,*” 2015 Advanced Employment Law CLE in Dallas, Texas (January 2015)

“*Four Examples of Modern Constitutional Interpretation,*” Garland Walker American Inn of Court, Houston, Texas (January 2015)

“*Top 10 Fifth Circuit Employment Law Cases Every Lawyer Must Know,*” State Bar of Texas, Austin, Texas (October 2014)

“*Voir Dire Tactics,*” State Bar of Texas, Austin, Texas (October 2014).

“*FLSA Litigation: Views from the Tips of the Spears,*” Houston Bar Association's Labor and Employment Section, Houston, Texas (August 2014)

“*ADA and FMLA: Solving Their Most Complex Challenges,*” Top Trial Lawyer CLE, Houston, Texas (May 2014)

“*Sex, Words, and 50 Shades of Causation,*” Fifth Circuit Judicial Conference, San Antonio, Texas (May 2014)

“*ADA: Direct Threat and Enforcing Conduct Rules,*” State Bar of Texas, Austin, Texas (April 2014)

“*Department of Labor Practice & Procedure,*” Houston Bar Association's Labor and Employment Section, Houston, Texas (January 2014)

*“Supreme Court Review,”* Houston Bar Association’s Labor and Employment Section, Houston, Texas (August 2013)

*“Punitive Damages: How Employers Avoid Them, How Employees Obtain Them,”* South Texas College of Law’s In House Counsel Conference and 26th Annual Employment Law Conference, Houston, Texas (July 2013)

*“2013 Update: Texas Noncompete Law; Trade Secrets Litigation; Texas Adopts The Uniform Trade Secrets Act; Inevitable Disclosure Doctrine; and Fiduciary Duties,”* State Bar of Texas, Austin, Texas (June 2013)

*“15 Things You Need To Know About The New Wave of Retaliation, Dodd-Frank, and SOX Whistleblower Claims,”* State Bar of Texas, Austin, Texas (March 2013)

*“Top 10 Ethical Traps for Employment Lawyers (And How To Avoid Them),”* State Bar of Texas, Austin, Texas (November 2012)

*“Employment Law Ethics – Surreptitiously Recording Conversations,”* American Petroleum Labor Lawyers’ Association, Houston, Texas (October 2012)

*“Employment Law 2012 – 10 Hot New Developments All Lawyers Need to Know,”* State Bar of Texas (July 2012)

*“FLSA: How to Prosecute and Defend Texas Overtime Claims,”* State Bar of Texas (December 2011)

*“Rumbles in the ‘C’ Suite – Representing Texas Executives in Employment Disputes,”* State Bar of Texas (October 2011)

*“Retaliation Claims: Welcome to the Danger Zone,”* State Bar of Texas, Austin, Texas (July 2011)

*“Top 10 Mistakes Employers Make, and How to Prevent Them.”*

- Oberti Sullivan LLP podcasts (summer 2011)
- State Bar of Texas, Austin, Texas (September 2010)

*“Analysis of the Supreme Court’s Decision in Wal-mart Stores, Inc. v. Dukes,”* Oberti Sullivan LLP website (June 2011)

*“A Day in the Life Of An Employment Lawyer,”* University of Houston Law Center, Houston, Texas (February 2011)

*“Family and Medical Leave Act – How to Comply,”* State Bar of Texas, Austin, Texas (February 2011)

*“Texas Non-Compete and Trade Secrets Update,”* State Bar of Texas, Austin, Texas (December 2010)

*“Alternative Fee Arrangements In The New Economy,”* Garland Walker American Inn of Court, Houston, Texas (November 2010)

*“Ethical Issues In The Employment Context,”* Houston Bar Association, Houston, Texas (November 2010)

*“Disability Law Update 2010,”* Houston Bar Association, Houston, Texas, (October 2010)

*“FLSA Litigation – Including Collective Actions”*

- University of Houston Advanced Employment Law CLE, Houston, Texas (May 2009)
- University of Houston Advanced Employment Law CLE, Dallas, Texas (May 2009)
- University of Houston Advanced Employment Law CLE, Houston, Texas (April 2008)
- University of Houston Advanced Employment Law CLE, Dallas, Texas (April 2008)
- Houston Bar Association Litigation Section, Houston, Texas (November 2007)
- University of Houston Advanced Employment Law CLE, Dallas, Texas (June 2007)
- University of Houston Advanced Employment Law CLE, Houston, Texas (June 2007)

*“Disability Law Update 2009”*

- University of Houston Advanced Employment Law CLE, Dallas, Texas (March 2009)
- March 2009, University of Houston Advanced Employment Law CLE, Houston, Texas (March 2009)

*“Courtroom Advocacy,”* Illinois Bar Association, Chicago Illinois (November 2008)

*“Handling Reductions In Force in This Economy,”* Seyfarth Shaw LLP Breakfast Briefing in Houston, Texas (November 2008)

*“Five Ways to Reduce Employment Litigation Costs,”* Association of Corporate Counsel of America, Houston, Texas (May 2008)

*“Litigation Hold Letters & Document Preservation Obligations in FLSA Cases,”* Seyfarth Shaw LLP National Videoconference, Houston, Texas (May 2007)

*“FLSA Litigation Strategies”*

- Council on Education in Management, Houston, Texas (February 2007)
- Lorman Education Services, Houston, Texas (January 2007)
- Council on Education in Management, Houston, Texas (October 2006)
- Lorman Education Services, Houston, Texas (October 2006)
- Seyfarth Shaw LLP Breakfast Briefing, Houston, Texas (June 2006)



- “FLSA Discovery Strategies – Summary Judgment And Beyond,” Seyfarth Shaw LLP Videoconference, Houston, Texas (July 2006)

“*Justice Scalia On The Establishment Clause,*” Garland R. Walker American Inn of Court, Houston, Texas (March 2006)

“*Federal Court Practice In The Southern District of Texas – Typical Traps For The Unwary,*” Houston Bar Association, Houston, Texas (December 2005)

“*Interviewing and Hiring Basics,*” National Law Enforcement Recruiters’ Association, Washington, D.C. (September 2005)

“*Is Big Brother Watching? Privacy In The Workplace,*” Gallagher Benefit Services, Inc., Houston, Texas (June 2005)

“*Overtime Litigation-Defendant’s Perspective; Avoiding and Defending Claims,*” UHLC Advanced Employment Law CLE, Dallas, Texas (April 2005)

“*Limitations on the At-Will Employment Doctrine,*” Lorman Education Services, McAllen, Texas (November 2004)

“*The Importance of Effective Documentation,*” Lorman Education Services, McAllen, Texas (November 2004)

“*Navigating the New Overtime Regulations*”

- Houston Hotel & Motel Association, Houston, Texas (October 2004)
- Houston Area Builders and Contractors, Houston, Texas (September 2004)
- Society of Human Resource Managers, Harlingen, Texas (August 2004)

“*Historical Origins of the Freedom of Press Clause to the U.S. Constitution,*” Garland R. Walker American Inn of Court, Houston, Texas (February 2004)

“*Managing the Most Difficult FMLA Dilemmas,*” Council on Education in Management, Houston, Texas (May 2003)

“*What Federal Judges Expect From Judicial Interns,*” University of Houston Law Center, Houston, Texas (May 2003)

“*Differences Between District Judges and Magistrate Judges,*” University of Houston Law Center, Houston, Texas (May 2002)

“*Expectations Placed Upon Federal Law Clerks,*” University of Houston Law Center, Houston, Texas (April 2001)