

MVP: Gibson Dunn's Thomas Dupree Jr.

Law360, New York (December 19, 2017, 4:12 PM EST) – Gibson, Dunn & Crutcher LLP's Thomas Dupree Jr. translated a D.C. Circuit win dismantling Amtrak's regulatory power into another victory by getting the Eighth Circuit to strike a Surface Transportation Board railroad performance rule, upending the regulatory regime for railroads and earning him a spot among Law360's 2017 Transportation MVPs.

HIS BIGGEST ACCOMPLISHMENT THIS YEAR

Dupree is a trial and appellate ace who has argued more than 80 appeals before each of the 13 federal circuits, as well as the U.S. Supreme Court. In 2017, he continued to represent the railroad industry in its bid to unravel U.S. Department of Transportation regulations that seemingly go too far.

Dupree successfully argued an Eighth Circuit challenge on behalf of freight railroads represented by the Association of American Railroads claiming the Surface Transportation Board overstepped its authority when it finalized a 2016 rule defining what it considers an on-time Amtrak train arrival or departure when it's investigating railroads for delays.

The Eighth Circuit in July agreed with Dupree's argument that the nation's economic rail regulator couldn't define on-time performance, because Congress only gave that power to the Federal Railroad Administration and Amtrak in the Passenger Rail Investment and Improvement Act of 2008. In a separate legal challenge, the D.C. Circuit in April 2016 invalidated PRIIA for being unconstitutional, but that in no way meant that the STB could step in and exercise the rulemaking power to "fill the regulatory vacuum."

"It really is three dimensional chess," Dupree said.

But the saga continues. Amtrak has petitioned the U.S. Supreme Court to review that Eighth Circuit

The logo consists of the letters 'MVP' in a blue, serif font. The letter 'V' is partially enclosed by a red circle with an arrow pointing upwards and to the right, suggesting a 'win' or 'award'.

**Thomas Dupree
Jr.
Gibson Dunn**

ruling. Meanwhile, the DOT won't give up its fight to preserve PRIIA in the D.C. courts. Dupree and the AAR successfully convinced a D.C. federal judge in March to reject the DOT's attempt to "sever" an arbitration provision in PRIIA, known as Section 207(d), while still preserving the rest of the law. The DOT has appealed that ruling to the D.C. Circuit.

"On the D.C. Circuit side, the government has made this a much longer trip than it should, but no matter how long they stretch out the journey, the destination remains the same: The law is unconstitutional," Dupree said.

HIS PROUDEST MOMENTS:

Despite a storied track record of major courtroom wins, Dupree insists he's still coming up the ranks as an attorney. As a junior associate at Gibson Dunn, he was tapped by powerhouse partner Ted Olson, who was George W. Bush's attorney in Bush v. Gore, to work on the landmark case resolving the contested 2000 presidential election. Olson became U.S. solicitor general under Bush, and Dupree joined the U.S. Department of Justice as deputy assistant attorney general from 2007 to 2009. It's a stint that Dupree considers one of the highlights of his legal career.

"One of my proudest moments as an attorney was to serve in the Justice Department and to serve alongside the many talented men and women who are devoted to their country, people of immense talent and dedication," he said.

After returning to private practice and corporate litigation, Dupree said another standout moment for him was his work on the Daimler v. Bauman case, in which the U.S. Supreme Court in 2014 clarified the law on a state's exercise of general personal jurisdiction over a nonresident corporation.

"It was a unanimous win in which the court rewrote the law of personal jurisdiction," he said.

Another point of pride for Dupree is playing a part in the Olson-led team that represented New England Patriots quarterback Tom Brady and the NFL Players Association in their challenge to the Second Circuit's 2016 reinstatement of Brady's four-game suspension for his role in the Deflategate scandal.

WHAT MOTIVATES HIM:

A graduate of Williams College who earned his law degree at the University of Chicago Law School, Dupree told Law360 that he feels fortunate to work on cases at the intersection of constitutional, administrative and appellate law.

"I consider myself absolutely blessed to have the job I do, fighting for free enterprise, pushing back the regulatory state. Who could ask for more?" he said.

HIS ADVICE FOR OTHER ATTORNEYS:

Dupree said a well-read lawyer can make for a better lawyer. And he suggests that younger attorneys read more than just legal briefs and opinions to fine-tune their own skills.

“To be a great writer you have to be a great reader. My advice to young lawyers is to put down the Code of Federal Regulations and pick up some great literature,” he said. “If you read widely — novels or history books — you can’t help but learn from them how to write in a persuasive way that speaks to the reader.”

He explained that there’s a misconception that legal writing is fundamentally different from great writing.

“At the end of day, great writing is great writing,” Dupree said. “If all you read is judicial opinions and, God help you, briefs written by lawyers, you’re selling yourself short. Get out there and explore the vast literatures that this world has to offer.”

— *As told to Linda Chiem*

Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2017 MVP winners after reviewing more than 1,000 submissions.

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