

MVP: Gibson Dunn's Thomas Dupree

By **Emilie Ruscoe**

Law360 (October 14, 2020, 6:13 PM EDT) -- Gibson Dunn & Crutcher LLP's Thomas Dupree convinced the Eighth Circuit to decertify a class of Union Pacific employees alleging the rail giant violated the Americans with Disabilities Act and won over a skeptical D.C. Circuit panel in a case concerning authorization for automated railroad track inspection technology, earning a spot as one of Law360's 2020 Transportation MVPs.

HIS BIGGEST ACCOMPLISHMENT THIS YEAR:

Dupree told Law360 that his biggest win this year was persuading the Eighth Circuit to decertify a very large class of about 7,000 current and former Union Pacific employees, who had sued the railroad for allegedly discriminating against people with disabilities.

Dupree and his team argued that determinations about whether Union Pacific's policies violated the ADA needed to be made on an individualized basis, since the nature of any individual employee's claimed disability and the functions that comprise their jobs would be highly relevant in the matter.

"You couldn't possibly say in one fell swoop that the policy violated the ADA, you would need to actually do an individualized assessment to look at the claimed disability," he said.

The case was notable in part because of its unusually large class size, and Dupree also noted that the case was significant "in terms of the development of the law about how you decide these types of claims, and when a class vehicle is a permissible or impermissible way of deciding these claims."

He had also argued that appeal before an auditorium of law students — an atmosphere he described as "electric."

HIS BIGGEST CHALLENGE THIS YEAR:

Dupree said that his biggest challenge was facing a skeptical D.C. Circuit panel to help the Association of American Railroads defeat a challenge in October 2019 from its unions concerning its plan to test automated track inspection technology.



"By the time the argument happened, and I walked up to the podium, the three judges had already issued an order saying that we were likely to lose," he said. "And we argued the case. And ultimately, we prevailed."

Dupree said that in that case, he'd been glad to know that the judges were skeptical of his position, "because as an appellate advocate, I always value the chance to speak directly to the decision-makers."

"Oral argument really is your one opportunity to communicate directly face-to-face with the three individuals who are going to be deciding your case, and if they have concerns about my position, I consider it extremely valuable to have the chance to speak directly to those concerns to address what's on their mind," he said.

WHY HE IS A TRANSPORTATION ATTORNEY:

Dupree said he is in the transportation practice because "it's an absolutely fascinating area of law."

He also highlighted that transportation law "touches on so many different substantive areas," citing as examples regulatory, constitutional, class action, environmental and employment discrimination law.

"For me to have the chance to learn and to practice in so many different substantive areas of law, all within the umbrella of transportation, is a real privilege and keeps things very interesting," he said.

WHAT MOTIVATES HIM:

Dupree said that his passion for his work is itself a major motivator.

"Oh," Dupree told Law360, "I love my job."

"I love having the chance to help clients who are often in difficult situations," he elaborated. "I love the intellectual challenge of puzzling through thorny legal issues. I love the competitive nature of litigation, in that you are facing down an adversary and you're both putting your best arguments on the table and let the best argument win. I love all aspects of my job."

HIS ADVICE TO JUNIOR ATTORNEYS:

Dupree advised junior attorneys to "read widely."

"I think there is a tendency, particularly among busy lawyers who spend their whole days reading legal materials, to confine their reading to legal briefs and judicial decisions — and that's bad," he said. "The world is full of amazing literature, whether that's novels, whether that's history books, whether it's books about science, or technology, poetry — there's so much that is waiting to be read out there."

"When you read widely, and broadly, and don't confine yourself to, you know, any particular type of literature, you become ... a much better writer yourself," he said.

— *As told to Emilie Ruscoe.*

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