

Rising Star: Gibson Dunn's Bradley Hamburger

By Nicole Rosenthal

Law360 (June 1, 2022, 2:02 PM EDT) -- Gibson Dunn & Crutcher LLP's Bradley Hamburger helped defend insurance giant Liberty Mutual Group in a class action over its valuation method for totaled cars and successfully argued against class certification in a wage and hour suit brought against Amazon subsidiary Prime Now, earning him a spot among the class action attorneys under age 40 honored as a Law360 Rising Star.

WHY HE'S A CLASS ACTION ATTORNEY:

Hamburger, who also works in immigration and appellate law, said he enjoys class actions because they can vary widely in subject matter. He said he finds himself taking on cases concerning employment, consumer protection or antitrust laws.

"The reason why I like class action is because it lets me specialize, but I also don't get bored because I am able to do class actions in a variety of different areas," he said. "So while the nuts and bolts of classification is the same rule no matter what kind of claim you bring, the underlying disputes are so different, and so it keeps things very interesting."

"In addition to being a class action lawyer, I'm also an appellate lawyer, and so I often am able to combine these two skill sets and seek review from the courts of appeals of classification rulings," Hamburger added. "I've done a lot of class actions that also overlap with my interest in appellate law."

ON SOME OF THE BIGGEST CASES OF HIS CAREER:

In 2020, Hamburger argued a successful opposition to a motion for class certification in a lawsuit brought against Prime Now, a subsidiary of Amazon.com Inc., before the U.S. District Court for the District of Northern California.

While the employee plaintiffs argued that every Prime Now employee should've been compensated for time spent scheduling shifts online, Hamburger said his team found Prime Now employees schedule shifts

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Bradley Hamburger
Gibson Dunn

Age: 39

Home base: Los Angeles

Position: Partner

Law school: Harvard Law School

First job after law

school: Clerkship at U.S. District Court for the Central District of California

in a plethora of ways, including many workers scheduling upcoming shifts during work hours. The case is still ongoing.

"We marshaled the data, we had an expert who had, what I thought, was a really good expert report," Hamburger said. "We showed that, contrary to the allegations of the plaintiff, there was a wide variety of circumstances in which people were selecting their shifts. Many people were selecting shifts on the clock, while they were working. Putting together a really robust evidentiary record and then arguing it before a district court was a really great experience."

Hamburger also successfully convinced the Ninth Circuit to deny class certification to policyholders contesting Liberty Mutual's method for estimating the cash value of totaled cars.

According to Hamburger, the plaintiffs were interested in establishing "some sort of technical legal violation, but they couldn't establish — at least on a class basis — any injury."

"We really focused on the fact that, under both state law and under Article Three of the [U.S.] Constitution in federal court, you have to have injury," he said. "And if there's no injury, then you can't have a class action, and that's what the Ninth Circuit held. They affirmed the ruling in a published decision, which was also a very good thing."

ON HIS PROUDEST MOMENT AS AN ATTORNEY:

Alongside his passion for class action and appellate law, Hamburger takes on pro bono immigration cases as well. He said that one of his proudest moments as an attorney stems from a case he worked on for 10 years that resulted in the approval of his client's bid to stay in the U.S. permanently.

The client, a U.S. permanent resident for six decades, faced removal because he had been previously convicted of possessing a controlled substance. Hamburger got involved after the resident's previous counsel saw an application for cancellation of removal denied.

Hamburger convinced the Ninth Circuit, after two appeals, to order a new hearing on the cancellation of removal application on the grounds that the prior counsel provided ineffective assistance. In support of that application, Hamburger focused on the client's decade-long sobriety, his ample work history in the U.S., his extensive residency in the country and his numerous family members with U.S. citizenship.

"My client was a U.S. permanent resident who had been here since he was 14 years old, now in his 70s," Hamburger said. "And I had to argue twice before the Ninth Circuit. I got the immigration court reversed twice. And just right around Christmas last year, he finally got his case dismissed permanently and can stay in this country with his family. I feel like I've had a lot of interesting cases and victories for our great clients, but that was something where I felt like I made a difference in one particular family's life."

ON THE FUTURE OF CLASS ACTION LAW:

Hamburger projects that, while the U.S. Supreme Court has set the bar high for class actions in recent years, new kinds of classes — especially technology-based workers emerging from the COVID-19 pandemic — will continually keep the class action realm interesting.

"The Supreme Court, in the last decade or more, has raised the bar for class actions, and some defense lawyers thought that this might be the end of high stakes class actions, that it was just going to be too difficult," Hamburger said. "I actually don't think that's proven to be true. I think there are vibrant classes, and plaintiffs lawyers are very creative. They continue to file large class actions. Courts continue

to certify them, I think, too often. Particularly in a couple areas, I think employment cases, especially in California, aren't going away anytime soon. Actions against tech companies in particular for privacy issues and other issues, we're seeing a lot of those kinds of cases and there will definitely be more."

— *As told to Nicole Rosenthal*

Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2022 Rising Stars winners after reviewing more than 1,350 submissions. Attorneys had to be under 40 as of April 30, 2022, to be eligible for this year's award. This interview has been edited and condensed.