

MVP: Gibson Dunn's Jason Schwartz

By Jon Steingart

Law360 (September 6, 2022, 2:02 PM EDT) -- Jason C. Schwartz of Gibson Dunn & Crutcher LLP's labor and employment practice fended off the New York attorney general's condemnation of Amazon's COVID-19 safety standards and pivoted at the last minute to an in-person overtime exemption trial in a separate case, earning him a spot as one of Law360's 2022 Employment MVPs.

HIS BIGGEST ACCOMPLISHMENT OVER THE PAST YEAR:

A New York appellate court threw out Attorney General Letitia James' suit upon finding that claims Amazon.com Inc. fired employees who spoke out over health and safety concerns related to their right to advocate collectively, which must be decided at the National Labor Relations Board. It also said she couldn't continue to pursue an injunction that would force Amazon to follow certain public health recommendations because the guidance she identified had been withdrawn.

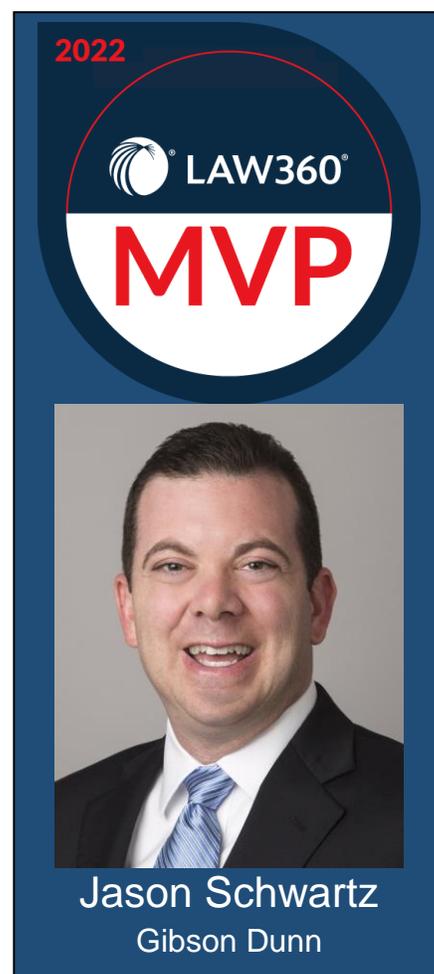
"It was pretty clear that the attorney general had exceeded her authority by trying to pursue matters that were subject to federal law, and by trying to enforce nonbinding and withdrawn COVID guidance because the situation was changing so rapidly," Schwartz said. "Both of those things were really legal barriers to her claim."

Schwartz was grateful to be able not only to land a win for Amazon, but also to get to share the steps it took to protect employees and serve consumers who ramped up their online ordering.

"It was a nice opportunity to be able to explain the amazing things that Amazon had done with respect to COVID safety," he said. "If you think about the ability that Amazon gave people to get essential supplies delivered to their house at a time where many people were not comfortable going out, that's a pretty incredible achievement."

HIS BIGGEST CHALLENGE IN THE PAST YEAR:

COVID-19 played a major role in Schwartz's biggest challenge, when he had to appear in a hearing via videoconference from his basement because he tested positive for the coronavirus. He



defended George Washington University from an emergency motion for a temporary restraining order that would have blocked the university from revoking the men's rowing team's varsity status and canceling a player's scholarship.

"It was great to be able to have the opportunity to step in and help them within literally a week," he said. The court denied the motion and the team captain, who filed the suit, voluntarily dropped it.

Normally in remote arguments, the lawyers are able to come together in the same location. In this situation, he had to rely on computer-based connections to the court and his colleagues.

"We had to come up with the virtual equivalent of the ability to pass each other notes," he said. "It wasn't as easy as passing the Post-It notes back and forth, which is still my favorite method."

HIS PROUDEST MOMENT IN THE PAST YEAR:

Schwartz said a bench trial where he demonstrated Amazon had correctly classified a delivery station manager as exempt from overtime was a big achievement, not only because the judge ruled for his client, but also because he pivoted to an in-person proceeding at the last minute.

"I think the trial was supposed to start on a Monday, and the Wednesday before, the judge issued an order saying he would like everyone to appear for a live trial in person," Schwartz said. He said he thought the June 2021 proceeding was the first in-person trial in the Northern District of California's Oakland courthouse, adding high stakes to an event that was already stressful.

Schwartz's team had been preparing to come together in a location away from the courthouse so they could be ready to assist one another during the virtual proceeding, he said. Conducting the trial in a courtroom required them to change how they interacted with each other and the witnesses, some of whom were permitted to testify remotely, he added.

"I was just really impressed and proud of our team, who were able to pull together all the prep work and to move it from a mobile setting to live," he said. "We had just a really fabulous team."

HIS ADVICE FOR JUNIOR ATTORNEYS:

Schwartz had two tips.

"The first one is pursue your passion," he said. "You're going to be better at it if you're working at something that you like."

One of the reasons he took an associate position at Gibson Dunn after he graduated from law school was its free market system, which gives new attorneys flexibility to pursue the practice areas they want to work in. He credits that approach to career development with pointing him toward employment law.

The second suggestion is recognizing that client service is the centerpiece of a firm's mission. Attorneys should always act with that in mind, Schwartz said.

"When somebody calls or emails you, it's because they have something important on the top of their mind," he said. "Answer them just as quickly as you possibly can so that they know that you're focused on them."

ANOTHER NOTABLE CASE HE'S WORKED ON:

One of the questions that COVID-related job cuts raised was whether pandemic-induced layoffs qualified for an exemption from the Worker Adjustment and Retraining Notification Act. The WARN Act makes employers liable for last-minute mass layoffs, but it has an exception when a natural disaster is to blame. Employers have successfully invoked that provision for severe weather, but it was unclear whether a pandemic counts.

"We were arguing that the COVID pandemic was a natural disaster," he said. "The district judge in Orlando disagreed with us, but he certified the question for an immediate appeal."

Despite ruling that the pandemic doesn't count, the judge credited Schwartz's argument that there was "a substantial ground for a difference of opinion," Schwartz said, quoting the standard district courts follow when they consider whether to authorize a rare interlocutory appeal. The parties ended up settling before they got an answer from the Eleventh Circuit.

"It was a case that a lot of people were watching because it would define the law around an emerging COVID-related issue," Schwartz said.

— *As told to Jon Steingart.*

Law360's MVPs of the Year 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 2022 MVP winners after reviewing more than 900 submissions.