Employment MVP: Gibson Dunn's Jason Schwartz

By **Braden Campbell**

Law360, New York (December 15, 2016, 2:25 PM EST) -- Between his successfully defending Cablevision against a host of unfair labor practice charges, sparing Ford from retirement plan headaches and literally co-writing the book on whistleblower law this year, Gibson Dunn's Jason C. Schwartz was a shoo-in as a Law360 Employment MVP**.**

A handful of significant victories put the Washington, D.C.-based litigation partner on Law360's annual short-list of the top attorneys in employment law for the first time since 2012. The trial pro's top win of 2016 was his clearing Cablevision Systems Corp. of seven of nine unfair labor practice charges in a high-profile case brought by the Communication Workers of America.

"It was a terrific case, a really fun trial and a very gratifying victory for us," said Schwartz, who was lead trial counsel on the case.

The CWA had made numerous allegations against Cablevision, including that it fired a worker in retaliation for his union activity and that former owner Jim Dolan, who sold the company to French firm Altice SA earlier this year, threatened union employees.

But a National Labor Relations Board judge cleared the cable provider of the union's most egregious allegations in April following a 21-day trial, finding only that Cablevision threatened the employee with arrest over his union activity, that his firing had a separate cause, and that the company illegally polled workers' union sentiments.

Schwartz, along with Gibson Dunn partner Gene Scalia, also helped clear up an emerging question of law earlier this year, in a case alleging Ford Motor Co. unfairly denied lump-sum payouts to the estate of a deceased worker. In that suit, the estate had alleged that Ford breached its fiduciary duties to her and wrongfully denied her benefits under the Employee Retirement Income Security Act.

This posed the novel question of whether a breach of fiduciary duty claim can be argued alongside an unfair denial of benefits claim. The district court shot down these claims in 2014 and 2015 respectively, and the Sixth Circuit affirmed in March.

"That was the important takeaway from that case," Schwartz said. "It's kind of a developing area of law, as to whether you can do both of those things. The district court and Sixth Circuit said, 'No, you can't.'"

Schwartz was lead counsel on the district portion of the case, and Scalia, the circuit portion.

Schwartz also successfully defended Ford against a denial of benefits claim by a worker seeking to move up his eligibility window for taking a lump-sum benefit, helping affirm a status quo that he said would harm employers if upset.

"If you were to let people get out of line and go out of order, everybody would have a reason," Schwartz said. "They can't do that. It's a very important case for fair administration."

Meanwhile, Schwartz has represented Sunrise Senior Living several times in his nearly two decades since joining Gibson Dunn full-time out of Georgetown University School of Law in 1998.

He aided the senior care provider again in 2016, when he and co-lead counsel Michele Maryott helped it to two preliminary wins in a California federal class action alleging Sunrise's practice of giving workers their final pay on prepaid cards was illegal, successfully removing the case from state court and winning dismissal of two of four claims.

And Schwartz was nothing short of prolific this year, winning consulting firm AlixPartners a declaratory judgment in Michigan district court barring an employee from filing a class suit, writing amicus briefs for retail advocacy group the Retail Litigation Center, and co-authoring the book "Whistleblower Law: A Practitioner's Guide" with prominent plaintiffs-side attorney Lisa J. Banks, a partner at Katz Marshall & Banks LLP.

These and other wins join a list of career accomplishments that includes winning Enterprise Rent-A-Car a wage suit in which the Third Circuit created a new test for joint employment under the Fair Labor Standards Act, and securing AlixPartners a settlement in a case alleging defectors to McKinsey & Co. stole trade secrets.

--Editing by Edrienne Su.