

Rising Star: Gibson Dunn's Jesse Cripps

By Michael Lipkin



Law360, New York (April 21, 2014, 3:28 PM ET) -- Bringing firsthand knowledge of the business world to his practice, Gibson Dunn partner Jesse Cripps has beaten back class actions against some of the country's largest companies, including Wal-Mart Stores Inc. and Northrop Grumman Corp., earning him a place among Law360's top six employment attorneys under 40.

At just 38, this Rising Star has successfully argued before the Ninth Circuit, worked to keep unwarranted putative classes from getting certified, and won court orders enforcing his clients' arbitration agreements. A surprising key to those victories, Cripps says, was the time he spent between college and law school working for a telecommunications company.

Watching how businesses run from the inside, Cripps says he understands the dual needs of his clients: They want to know the legal risks that affect them and how those risks will impact their business.

"Unless you understand the ins and outs of your client's business, you'll never give your client what they need to make the business successful," Cripps told Law360.

Another important tool in class certification battles has been developing narratives to clearly convey the personal stories of the potential class members. Those stories can resonate with judges in a way that dry, overly legalistic arguments may not, according to Cripps.

"A lot of that requires stripping away the legal jargon and explaining who these people are, what their day-to-day experiences are, and what the realities of the job are," he said.

Those narratives were at play in a recent victory for Wal-Mart, when a California federal court denied certification to a potential class of 150,000 current and former female employees. The case was a spin-off of the blockbuster U.S. Supreme Court decision in *Wal-Mart v. Dukes*, which disbanded a potential class of 1.5 million employees.

Cripps co-led the fact development team, developing declarations from employees, deposing claimants and discovering that the claimants largely had anecdotal issues that were not suited to a class action.

“You realized there was no universal theme,” Cripps said. “A number of these women had had very positive experiences in other stores with other managers. Their concerns were in large part limited to one incident or one manager.”

Cripps’ first argument before the Ninth Circuit as a partner involved store managers for Michaels Stores Inc. who claimed they spent most of their time doing nonexempt work. Michaels had removed the case to federal court on three occasions, but it had been sent back to state court each time.

The plaintiffs had artificially capped their damages to keep them under the \$5 million federal threshold, but Cripps argued that under a recent Supreme Court decision, plaintiffs could not do that to avoid federal jurisdiction. The Ninth Circuit agreed, ruling that Michaels was allowed to rely on the recent change in the law and that there was no time limitation if that change would allow a party to remove the case.

Using estimates of the overtime pay they were seeking, it was then up to Cripps to prove that the managers had alleged more than \$5 million.

“The plaintiffs had been very coy about what their damages were because they knew if they went on record it might come back to haunt them,” Cripps said. “The court focused on the fact that it was not our burden to speak to every class member. It’s enough to put forward evidence that ‘could’ possibly show that it exceeded the threshold.”

The precedent-setting decision garnered calls from other defense lawyers thanking Cripps for winning the case.

“It’s incredibly satisfying to have cases where not only do you help your client solve the immediate problem, but you create a ripple effect throughout the legal community,” he said.

Associates at Gibson Dunn are given a lot of autonomy, so transitioning to partner at 35 did not fundamentally change the way Cripps handles cases. But Cripps rejects the notion that the new title made his job easier.

“I work harder now than I’ve ever worked,” he said. “I still have a long career ahead of me. I’m not taking my foot off the accelerator.”

--Editing by Edrienne Su.