

Employment MVP: Gibson Dunn's Jason Schwartz

By Ama Sarfo



Jason Schwartz

Law360, New York (December 12, 2012) -- Gibson Dunn & Crutcher LLP's Jason Schwartz successfully knocked Enterprise Holdings Inc. from multidistrict Fair Labor Standards Act litigation and even persuaded the Third Circuit to create a new test for determining joint employer relationships, earning him a spot among Law360's Employment MVPs.

A group of current and former Enterprise assistant managers alleged the car rental giant and its subsidiaries improperly classified them as exempt from overtime pay, but Schwartz and his team argued that Enterprise, the parent couldn't be held liable for alleged FLSA violations. In August 2010, a Pennsylvania federal judge agreed, striking Enterprise from the MDL, which remains ongoing.

The plaintiffs appealed, but Schwartz secured another win when the Third Circuit in June established a new test for determining a joint employer relationship under the FLSA and then concluded that Enterprise was not an employer of its subsidiaries' assistant managers under the new standard.

Schwartz said he found the appeal challenging, but also rewarding, when the appeals court asked his team to weigh in on a proper standard for determining joint employment.

"The circuit was interested from hearing from us as to what the law of joint employment should be, and we were honored to be in that position," Schwartz said.

Under the new test, courts aiming to decide whether a joint employment relationship exists under the FLSA should consider the alleged employer's authority to hire and fire the relevant employees; its power to promulgate work rules and assignments and to set the employees' conditions of employment; its involvement in day-to-day employee supervision, including employee discipline; and its actual control of employee records, such as payroll, insurance or taxes.

Schwartz said that the Enterprise test could be applied in a variety of litigation outside of employment law.

“One of the issues the Enterprise test deals with is pretty common in parent-subsidary relationships, which is when the parent provides routine services to a subsidiary, such as human resources and training. Are those services enough to trigger the parent’s responsibility for the subsidiary’s actions?” Schwartz said. “The Third Circuit recognized that it’s not sufficient to pierce the corporate veil. So this could appear in all kinds of contexts.”

In February, Schwartz secured another victory when a California federal judge denied class certification in a lawsuit alleging Sunrise Senior Living Management Inc. withheld meal and rest breaks and overtime pay from three proposed classes covering more than 60 job classifications — including nurses, dietitians and cooks — and, according to Sunrise, about 13,000 people.

Schwartz lauded the Sunrise decision, saying class certification would have created reverberations in the employment law world and made it easier for plaintiffs to file undeserving litigation in what he called a “cottage industry of meal and rest break cases,” particularly in California.

“The facts here were individualized, and it didn’t make sense to say one was representative of all Sunrise employees,” Schwartz said. “We conducted a sophisticated statistical analysis that showed there was no pattern, job by job, community by community, department by department. If the court granted certification, it would have set a dangerous precedent to say you can aggregate these claims in a way that is simply unfair.”

Also in June, Schwartz obtained a \$20 million settlement for Capital One Financial Corp. in noncompete litigation against two former executives who left the company for BankUnited Inc. and sought to expand the bank’s services into New York — a planned expansion that allegedly violated their noncompete pact with Capital One.

Currently, Schwartz is representing Dow Corning Corp. in a trade secret misappropriation case and is also representing defense company SAIC in a whistleblower suit filed by a former employee who alleges he was terminated for whistleblowing under the False Claims Act, but whom the company contends was terminated after a government client found his work unsatisfactory.

When asked how he handles his extensive roster of high profile litigation, Schwartz, who in March was also named one of Law360’s 2012 Rising Stars, was quick to attribute his successes to several people.

“I’d attribute probably 99 percent of the success I’ve had to the fact I’ve had really great mentors, particularly in Gene Scalia and Bill Kilberg, who are two senior partners on our team, along with the tremendous associates who work with us,” Schwartz said. “If I could go over 100, the other 99 percent has been really great clients willing to give me the opportunity to try their cases.”

Over the years, Schwartz has handled employment litigation for companies such as MGM Resorts International, The Corporate Executive Board Co., Ford Motor Co., Wal-Mart Stores Inc., CSX Corp. and Weight Watchers International Inc.

Schwartz, who joined Gibson Dunn immediately after graduating from Georgetown University Law Center, said he didn’t intend to become an employment lawyer, but that his love for people issues drew him to the practice.

“I love to help clients with difficult and sensitive problems — that’s most satisfying for me. Employment cases always deal with a lot of human issues, and you have to untangle them and find a resolution for the company, which I love,” Schwartz said. “Every case has its own cast of characters, and people do all sorts of crazy things at work. I love to see what’s interesting and new.”

--Additional reporting by Abigail Rubenstein and Ben James. Editing by Eydie Cubarrubia.

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