

Rising Star: Gibson Dunn's Jason Schwartz

By **Megan Leonhardt**

Law360, New York (March 22, 2012) -- Jason Schwartz of Gibson Dunn & Crutcher LLP has tapped into his fascination with workplace dynamics and passion for learning on numerous cases, including his recent work to protect Dow Corning Corp.'s trade secrets, which has earned him a spot among Law360's top five under-40 employment partners.

Schwartz has worked to defend some of the nation's largest employers, including Wal-Mart Stores Inc. and Enterprise Holdings Inc. in wage-and-hour disputes, noncompete litigation, trade secret disputes and whistleblower suits since making partner at Gibson Dunn in January 2007.

Gene Scalia, co-chairman of the firm's employment group, called Schwartz the firm's expert on trade secret disputes, saying he was an "unusually gifted lawyer."

"From the start, he's been one of those lawyers who's particularly quick to catch on," Scalia said, adding that Schwartz was at his best in evidentiary proceedings.

Schwartz is currently lead counsel in a high-stakes trade secrets case, in which he is representing Dow Corning and Hemlock Semiconductor Corp. The companies claim a former employee and his partner misappropriated Dow's secret formula for materials used in solar panel production.

The two formed LXEng LLC and proceeded to sell Dow's processes to Chinese companies for as much as \$18.4 million per contract, according to the suit.

In September, Schwartz won a major victory in the case when a Michigan federal judge tossed LXEng's counterclaims alleging Dow and Hemlock invaded founder and named defendant Jie Xiao's privacy.

Schwartz prevailed again in January when the court allowed Dow and Hemlock to send 17 letters rogatory and letters of request — formal requests to a foreign court to essentially issue subpoenas for evidence — seeking evidence LXEng licensed Dow's trade secrets to foreign companies.

It was the first time Schwartz had come across letters rogatory in a case, he said, adding that the experience was as neat as it was informative.

"I'm a curious guy, I like to learn," Schwartz said, adding that he loved learning about other people's jobs and the dynamics of a workplace.

Most recently, Schwartz defended the dynamics of the working environment at Sunrise Senior Living Management Inc., which operates more than 55 senior citizen living and medical care facilities in California.

Last month, Schwartz successfully convinced a judge to deny class certification to more than 13,000 nurses, dietitians and cooks alleging the senior care provider failed to provide meal and rest breaks, as well as improperly assessed overtime pay and maintained inaccurate payroll records.

A California judge on Feb. 29 agreed with Schwartz's argument that a class action was not the best way to handle the case, saying litigating the case that way would require numerous "mini-trials."

The decision — which Schwartz called "nicely thought out" — stripped the suit down to a single plaintiff, effectively eliminating the bulk of the threat to Sunrise.

This was not the first time Schwartz had worked to defeat a class action. The Washington-based employment star was one of the firm attorneys who worked on the landmark U.S. Supreme Court case *Dukes v. Wal-Mart Stores Inc.* that was decided in favor of the retailer in June.

Schwartz also acted as lead trial counsel for Wal-Mart on a case that is now on appeal before the Occupational Safety and Health Review Commission.

In that case, the family of a former employee filed a complaint with Occupational Safety and Health Administration against Wal-Mart after a crowd of Black Friday shoppers trampled the worker to death at a suburban New York store in November 2008.

Scalia said that Schwartz brought the "whole package," including a robust common sense and a flair for trial situations.

Earlier in his career, he worked as co-lead counsel defending Enterprise in multidistrict litigation brought by employees alleging company and several subsidiaries wrongly denied them overtime pay.

In August 2010, the judge in charge of the case awarded Enterprise summary judgment, finding that subsidiaries, rather than the parent, Enterprise Holdings, were the workers' employers. The parent company cannot be held liable for any alleged violations of the Fair Labor Standards Act by Enterprise subsidiaries, the judge ruled.

The employees appealed the decision, which is set to be argued in the Third Circuit this year.

Schwartz said much of the credit for his many successes goes back to his mentors, including Scalia, who helped him develop his skills and his practice while still an associate with Gibson Dunn.

Calling himself "really fortunate," Schwartz says that his passion for employment litigation stems from being a people-person.

Scalia agreed, saying Schwartz's "infectious enthusiasm" has made him a favorite among clients and his colleagues.

"I love the people-oriented stuff," Schwartz said.

--Editing by John Quinn.