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MVP: Morgan Lewis' Sam S. Shaulson

By **Vin Gurrieri**

Law360 (November 21, 2019, 4:49 PM EST) -- Morgan Lewis & Bockius LLP partner Sam Shaulson helped JPMorgan Chase secure a first-of-its-kind appellate ruling by the Fifth Circuit that workers who had signed arbitration agreements shouldn't be notified of a pending collective action, earning him a spot among Law360's 2019 Employment MVPs.

HIS BIGGEST ACCOMPLISHMENT THIS YEAR:

The February decision involving JPMorgan Chase Bank NA stemmed from a suit Shannon Rivenbark filed in 2017 accusing the financial giant of illegally failing to pay her and other employees at its call centers for off-the-clock work, in violation of the Fair Labor Standards Act.

U.S. District Judge Keith P. Ellison conditionally certified a collective of over 40,000 call center workers shortly thereafter, a procedural step that plaintiffs often clear in FLSA cases. The judge also approved the workers' request that potential members of the collective receive a notice informing them of the pending lawsuit.

However, Chase took the notice issue to the Fifth Circuit, which agreed with the bank's argument that about 85% of those potential notice recipients had signed arbitration agreements, which included collective action waivers that would prevent them from opting in to the case, and ordered the trial court to rethink its decision. The parties later agreed to settle the dispute and are awaiting court approval of the deal.

Shaulson said the Fifth Circuit's ruling that arbitration signers couldn't be given notice and their contact information needn't be disclosed — the first time an appellate court has issued such a ruling — was "quite a market shift" from how most district courts had ruled up to that point.

"I think Rivenbark is the [case] that is most impactful and the one I'm most proud of because it was not only a precedent-setting decision in a circuit court on an issue that has previously not gone the employers' way, but it's something that was a very novel procedural strategy [since] ordinarily this type

of interlocutory ruling would not be appealable," Shaulson said. "We made a decision to do something unconventional and that is to seek the court's review on writ of mandamus, including under the very seldom used supervisory mandamus, where the circuit court undertakes an obligation to supervise lower courts, and to get this first to the Fifth Circuit was quite an accomplishment."

HIS OTHER NOTABLE CASES THIS YEAR:

In another case in which Shaulson stepped into the arena of arbitration agreements, he persuaded a New York federal judge in June to push sexual harassment claims brought against Morgan Stanley & Co. by former employee Mahmoud Latif to arbitration.

U.S. District Judge Denise Cote found that a New York law banning the mandatory arbitration of sexual harassment claims was preempted by the Federal Arbitration Act.

In issuing the ruling, Judge Cote noted that it was the first time a court has analyzed the law, enshrined as Section 7515 of the New York Civil Practice Law and Rules.

"It's the first published decision to conclude that a state law like New York's trying to prohibit mandatory arbitration of sexual harassment and other discrimination claims is inconsistent with the Federal Arbitration Act and must give way," Shaulson said. "That decision will not only be precedential with respect to the New York statute, but I think will be used effectively in other jurisdictions where state and local legislatures are trying to encroach upon the Federal Arbitration Act and prohibit arbitration of certain employment law claims."

ON USING UNIQUE STRATEGIES IN LITIGATION:

As exemplified in the Rivenbark and Latif cases, Shaulson, who co-chairs Morgan Lewis' labor and employment financial services practice, often handles cases that involve cutting-edge legal issues affecting employers.

In those instances, he says he takes great enjoyment out of working with colleagues to devise novel legal strategies. That includes not only coming up with rarely used approaches, but also researching them to find whether they can be supported, running them by trusted colleagues within the firm "to see just how crazy an idea it is," and ultimately presenting the idea to the client, he said.

"Coming up with and pursuing a novel strategy is the most exciting thing for me in the practice of law and so I relish it," he said. "The first step is to really think out of the box and never confine yourself to what's been done before. ... Once we have a reasonable belief that the strategy could bear fruit, presenting it to the client with the arguments as to why it could be successful, the pros and cons of pursuing the strategy and the likely possibilities of results."

WHY HE'S AN EMPLOYMENT LAWYER:

Although he is now a leading employment lawyer, Shaulson said he went to law school with designs of becoming an intellectual property attorney, believing that his background as a business major with a concentration in management information systems would transfer well to that area of law.

But as he got his first taste of life as a lawyer, he began gravitating to employment. He noted that people, whether they be employees or members of management, often see their careers and livelihood as the most important aspect of their lives aside from their health and their families, which results in cases where the issues involved become "very personal" for all involved.

"As I went through law school — my first summer at a law firm — I really gravitated toward doing something that had a real meaningful impact on human beings and was highly contentious and likely to result in contentious litigation. And that was employment law," he said.

HIS ADVICE TO JUNIOR ATTORNEYS:

Even if a lawyer is just starting out, Shaulson said it's never too early for them to take initiative and try to sell senior attorneys on an idea if they think it's worthwhile.

"What I always say to junior attorneys is we endeavor to hire the best and the brightest and so anyone on the team can come up with the winning strategy, the winning document, the winning line of questioning — so be confident that you can do that," Shaulson said. "If you see an opportunity to come up with a great strategy [or] a great idea, do it and make your best case as to why you think it's the right way to go. Any person on the team, no matter how junior and regardless of their position, can come up with the winning idea or the winning strategy."

— As told to Vin Gurrieri

Law360's MVPs 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 2019 MVP winners after reviewing nearly 900 submissions.