

Employment MVP: Morgan Lewis' Samuel Shaulson

By **Scott Flaherty**

Law360, New York (December 05, 2013, 6:33 PM ET) -- Helping Citigroup Inc. secure a Second Circuit win that allowed the bank to enforce an individual arbitration policy in an overtime dispute is just one of the recent successes that landed Morgan Lewis & Bockius LLP's Samuel Shaulson among Law360's Employment MVPs.

Shaulson headed up the representation of Citigroup in a Fair Labor Standards Act case that wound its way to the Second Circuit, after a district court denied Citigroup's motion to compel individual arbitration of claims that the bank had misclassified its home-lending specialists as exempt from overtime.

Though named plaintiffs Tara Raniere and Nichol Bodden, who sued Citigroup and some of its business units in 2011, had signed pacts promising to arbitrate FLSA disputes on an individual basis, the lower court ruled that collective action rights under the FLSA could not be waived through an arbitration agreement. After Citigroup appealed to the Second Circuit, the appellate court overturned the district court's ruling, handing a win to the bank.

The Citigroup case was one of a trio that came in front of the Second Circuit in 2013 that helped determine whether employers can use arbitration agreements to avoid possible employment class actions. Shaulson, who serves as co-chair of the financial services group in Morgan Lewis' labor and employment practice, said he had a sense early on in the Citigroup case that it could have broader implications, especially in the Second Circuit, which is a global hub for financial services companies.

"This decision by the Second Circuit is going to directly impact the law of arbitration for employment claims and, really, how employment claims are resolved," he said, adding that he felt "privileged to help shape" the law in that area.

In addition to the Second Circuit appeal of the Citigroup case, Shaulson had another successful outcome at the appellate level in 2013, representing the Mortgage Bankers Association at the D.C. Circuit in a case challenging an administrative interpretation handed down by the U.S. Department of Labor. The administrative interpretation at the heart of that case reversed an earlier DOL opinion letter that loan originators qualified as exempt from overtime under the FLSA's administrative exemption.

In the case, Shaulson and his team argued, among other things, that the DOL's administrative interpretation — which held that loan originators did not, in fact, qualify for the FLSA's administrative exemption — ran counter to its earlier stance, a change that was effectively equivalent to making a new regulation without first going through a formal rulemaking process.

The mortgage bankers association was denied summary judgment at the lower court, but the D.C. Circuit in July reversed that ruling. The appeals court did not take a position on the substance of the DOL's administrative interpretation, but still, Shaulson said, the circuit's decision was significant on two fronts: First, it makes it harder for agencies to engage in “flip-flopping,” and, second, it “revives” the opinion letter that found loan originators could qualify for the FLSA's administrative exemption.

“It's significant to financial services firms that have loan originators because it ... helps those companies fend off wage and hour actions,” Shaulson said.

Though he's had success in the employment arena, Shaulson said it wasn't necessarily the area in which he thought he'd wind up practicing.

“I guess I always thought that I would end up as an intellectual property lawyer,” he said.

But after taking a labor law class during his years at the University of Pennsylvania Law School, he realized he was interested in the practice because it “created a lot of contentious battles” that might end up in litigation.

“I really wanted to go into an area that had the ability to litigate,” he said. That ambition, he added, stemmed in part from watching his grandfather — who practiced for decades as a trial lawyer in Providence, R.I. — in court.

And as his career has gone on, Shaulson said, his interest in the substance of employment law and his passion for litigation have not waned, and he doesn't expect them to anytime soon.

“I just hope I continue to have the privilege and good fortune to represent marquee clients in their cutting edge employment cases,” Shaulson said. “Every new cutting edge legal issue that comes across my desk, I still get really excited about it.”

--Editing by Jeremy Barker.