

Rising Star: Morgan Lewis' Jeremy Blumenfeld

By **Melissa Lipman**

Law360, New York (March 25, 2011) -- Morgan Lewis & Bockius LLP partner Jeremy P. Blumenfeld's creative handling of large, complicated employee benefits class actions has won the respect of his peers and landed him on Law360's list of five class action attorneys under 40 to watch.

Splitting his time between the firm's New York and Philadelphia offices, Blumenfeld, 38, mostly handles cases brought under the Employee Retirement Income Security Act, working on a range of large class actions challenging employee benefit plans.

While plenty of ERISA litigation turns on fairly routine breach of contract claims, Blumenfeld has made his name working on complex class actions dealing with more difficult issues involving companies who have converted their traditional defined benefits plans to cash balance plans and stock-drop litigation involving 401(k) plans.

Joseph J. Costello, who leads the firm's labor and employment practice, highlighted Blumenfeld's "thought leadership" in handling those cases as one of the top reasons he has "develop[ed] a really tremendous reputation" with everyone involved in ERISA litigation from the courts themselves to the insurers who sometimes refer cases.

In one particularly high-profile case now before the U.S. Supreme Court, Blumenfeld and Costello handled a cash-balance plan class action against Cigna Corp. that went to trial in the Connecticut district court.

As a senior associate, Blumenfeld served as a co-first chair with Costello for the suit, which boasted a class of more than 20,000 members.

Even though ERISA class actions generally end up in front of judges rather than juries, Blumenfeld said that it was important to be able to address the human side of the case over the seven-day trial spread over several months.

"One might think because it's a class action that the class members really don't show up front and center in the case and oftentimes there are ... pure legal issues at issue, but when you go to trial there is a human element to this and people can tell a story that you have to be prepared for," Blumenfeld said.

The judge ended up siding with Cigna on the primary cash-balance claims on age discrimination, backloading and ERISA claims over the reduction of accrued benefits. Blumenfeld acted as "the architect of our strategy," on each of those claims, Costello said.

In the middle of litigating the case, however, the U.S. Court of Appeals for the Second Circuit ruled in another suit that when there are discrepancies between a plan summary and the plan itself, the summary can control. That left the district court with no choice but to reject Cigna's argument that the claimants should have to prove they relied on the summary and were harmed by that reliance, which would make it much more difficult to litigate those types of claims as class actions, Blumenfeld said.

Even though the team knew they stood no chance on the claim in the district court or in the Second Circuit, Blumenfeld still made sure to argue that the appellate court's logic was wrong in order to give Cigna the chance to appeal the issue.

"Jeremy had the foresight in that case to preserve for appeal an issue that the Second Circuit had already decided," Costello said. "[It was] dead against us in the Second Circuit, but he had the foresight to see there might be a circuit split."

The split ultimately gave Cigna basis to seek and win a writ of certiorari from the U.S. Supreme Court and Blumenfeld played a key role in working with appellate litigators at Gibson Dunn & Crutcher LLP to design a strategy to convince the justices to hear the issue, according to Costello.

The Supreme Court heard oral arguments in November and a decision is expected soon.

Despite the prestige of working that sort of high-stakes case, Blumenfeld singled out the time spent holed up with team members from his firm and from Cigna in Connecticut while working on the trial as one of the highlights of the case for him.

"It's personally an intense but very rewarding environment," Blumenfeld said. "It's very rewarding. The teamwork and camaraderie you get out of a circumstance like that, you don't see that every day."

Blumenfeld, who made partner in late 2006, has also handled a number of other complex ERISA class actions.

In one long-running ERISA action in the Southern District of New York, Avon Products Inc. and several of its top executives faced a consolidated putative class suit after the company's share price fell that claimed that the company's stock was not a prudent investment and that it should not have been offered as part of the company's 401(k).

Blumenfeld and his team convinced the judge to dismiss the suit by arguing that the 401(k) plan was a long-term investment and that it was unfair to look at stock drops over a short period of time.

While a number of Second Circuit courts have since reached the same conclusion in similar cases, the court hearing the Avon case was the first to grant a motion to dismiss in this type of stock drop case, according to Blumenfeld.

"Because these are class actions where the stakes are high, you have the opportunity to work with your colleagues to try to develop new and creative arguments," Blumenfeld said.

Ultimately, it's Blumenfeld's talent for analysis — one of his few opportunities to use an undergraduate degree in chemical engineering, he said — that separates him from his peers.

"Even though ... he's one of the younger partners in our group, he every day brings a creativity and thoroughness to his analysis of the issues," Costello said. "It's just been a big part of our success over the past several years."

--Editing by Jonathan Jacobson.

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