Portfolio Media. Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Class Action MVP: Hunton & Williams' Michael Mueller

By **Dan Packel**

Law360, Philadelphia (November 12, 2015, 12:04 PM ET) -- Hunton & Williams LLP partner Michael Mueller's hard work on behalf of Tyson over the last year led to appellate court decisions that erased $24 million in class action awards and helped land him on Law360's 2015 list of Class Action MVPs.

MVP

CLASS ACTION

Michael Mueller
Hunton & Williams

In two separate appeals decided by the Eighth Circuit on the same day, the court vacated a $19 million award from a bench trial and a $5 million award from a jury trial in two lawsuits over wages for time spent donning and doffing protective equipment.

While the cases emerged from two separate Tyson Foods Inc. processing facilities in Nebraska, the appeals featured one shared issue — the fact that the plaintiffs did not file the proper consent forms under the Fair Labor Standards Act.

"If a case starts as a collective action, you need to file the consent forms," Mueller said.

The appeals court agreed, throwing out the FLSA claims. That left the plaintiffs with two separate issues under Nebraska state law.

In Manuel v. Tyson — which featured the $19 million verdict — Mueller and his team at Hunton & Williams succeeded in convincing the panel there was no agreement in place between Tyson and the employees in the class governing the wages in question.

"The plaintiffs argued there was an agreement from the various things Tyson said over the years. But the Eighth Circuit said those things didn't prove an agreement," Mueller said. "They actually looked at the facts themselves, which we encouraged them to do."

In the second case, Gomez v. Tyson, the plaintiffs had secured more than $5 million after a jury trial. But Mueller and his team convinced the panel that the collective bargaining agreement in place at the facility did not pay for the activities in question.

“We offered that as a strategy to make it really simple at oral arguments,” he said. “If they had gotten into everything it would have been a very long opinion.”

Mueller’s work on behalf of Tyson in 2015 continued beyond the most recent Eighth Circuit rulings. On Tuesday, he had another donning and doffing case before the U.S. Supreme Court. This challenge to a decision by the same appeals court to uphold a nearly $6 million jury verdict turned on whether averages and statistical analyses are enough to show similarities between disparate workers.

“The defendants admitted that there were hundreds of uninjured people in the class,” he said in advance of the arguments. “We argued that you can’t have a class filled with so many uninjured.”

Mueller has been trying class action cases since 1987, and as his career unfolded, he has witnessed a surge in wage-and-hour litigation.

“When I started doing this, there weren’t that many wage-and-hour suits,” he said. “Now they are the number-one cause of action in the federal courts.”

He attributes this growth to a decline in securities class actions and the implementation of tort reform in a number of states, which has reduced a number of other types of claims.

At the same time, wage-and-hour suits, along with “no injury” consumer class actions — where claims focus on the diminished value of products — have flourished. Prominent examples include a pending case over GE’s microwaves and a number of related cases over front-loading washing machines.

“You didn’t use to see those kinds of cases,” he said.

The practice has also changed, according to Mueller, with more and more law firms offering class action defense as an area of expertise.

“A record of getting class certification denied and getting classes decertified, taking cases to trial and winning on appeal makes firms stand out, and we’ve done — I’ve done all of these,” he said.

--Additional reporting by Lisa Ryan and Kat Greene. Editing by Rebecca Flanagan.
