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## Bankruptcy Group Of The Year: Outten & Golden

By **Vince Sullivan**

Law360, Wilmington (January 23, 2018, 4:47 PM EST) -- Outten & Golden LLP's employment attorneys made an outsized impact on the bankruptcy world this year when *Czyzewski v. Jevic Holding Corp.* — the firm's yearslong case on behalf of thousands of laid-off truck drivers — made its way to the U.S. Supreme Court and struck a blow to the trend of structured dismissals, earning the group a spot among **Law360's 2017 Bankruptcy Groups of the Year**.



With a focus on representing employees cut loose by companies heading into bankruptcy, Outten's WARN Act group finds itself involved in insolvency cases frequently. The Workers' Adjustment and Retraining Notice Act requires employers of a certain size to provide adequate notice of their intent to lay off large numbers of works, and Outten's team represents the interests of those jilted employees when they don't receive that notice.

Their expertise in the employment arena, especially as it relates to bankruptcy, led to their representation of more than 2,000 truckers who were unexpectedly laid off by Jevic's 2008 Chapter 11.

"There are very few shops that do WARN actions at all and ours is the one with a lot of experience, a lot of resources, and we only represent employees, and those are distinctions that really no other shop has," Jack Raisner, co-chair of the firm's WARN Act group, told Law360.

The group boasts six attorneys who focus on WARN Act litigation and work hand-in-hand with the larger employment practice group made up of 60 attorneys spread across four offices, Raisner said. The combination of experience gives the firm an edge in landing clients seeking representation in insolvency matters.

"Most of our cases, more than 90 percent, are litigated in bankruptcy court," Raisner said. "We have the experience of the deep bench at the firm with respect to employment law, but we also have the experience in the bankruptcy court."

That experience came in handy when the Jevic employees sought representation to prosecute their \$8.3 million in claims against the company and its parent company, Sun Capital Partners, for the lay-offs. In 2012, Jevic received court approval in Delaware bankruptcy court for a structured settlement of its Chapter 11 case that left no money for the WARN Act plaintiffs. Outten & Golden attorneys, led by Raisner, appealed to the district court and the Third Circuit.

The appellate court held that such structured settlements can be allowed in very narrow circumstances and upheld the lower court's approval of the deal, but the truck drivers and their attorneys were not done yet.

"You're talking about a couple thousand unemployed truck drivers who otherwise it would have been the end of the road for them," Rene S. Roupinian, co-chair of the Warn Act group, told Law360. "It wasn't the news we wanted to report to them. To their credit, our class representatives were active in the case and obviously involved along the way. We really never lost hope and particularly when WilmerHale was willing to come on board with us, it put a little wind in our sails."

Outten partnered with law firm WilmerHale for the appeal to the U.S. Supreme Court, which was argued in December 2016. Raisner said the cooperation helped get the discrete creditor issue heard before the country's highest court, a hurdle it would not have been able to leap without the firm's assistance.

"The challenge was to have that issue be given its due and in doing that we did our best in the circuit and district court and then it was largely through the expertise of WilmerHale that it could be properly framed and brought to the attention of the Supreme Court," Raisner said.

The Supreme Court ruled 6-2 in May in favor of the truck drivers, finding that the absolute priority rule that delineates the payment sequence for creditors cannot be violated by a decision of the bankruptcy court, ordering the case be remanded to Delaware.

In the weeks following the decision, Jevic and the WARN Act plaintiffs agreed to enter mediation to come up with a new deal that wouldn't leave the truck drivers out in the cold on their claims. The ripples of the decision were felt immediately, as some debtors delayed hearings on their own dismissal settlements until the high court made its ruling, going back to the drawing board when the structured settlement option was restricted. Others, like Sungevity, included creditors in their negotiations to get consent on the dismissal plan.

"The immediate and long-term legacy is that it bolsters the resolve of bankruptcy court judges to apply the absolute priority rule the way it was meant to be applied, which is desirable because those judges are under an enormous pressure to accommodate parties who sometimes would like to bend the rules to their advantage," Raisner said.

The decision clarified conflicting opinions issued in the Second and Fifth circuits, leading to the nationwide application of the standard for approving a negotiated bankruptcy plan.

Raisner said the Jevic decision removes some of that pressure placed on bankruptcy judges who had to deal with issues of forum shopping by debtors.

"We practice across the country and we can go into any of our cases and say Jevic is now the law and you have to follow it," he said.

--Editing by Alyssa Miller.

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