

FIGHTING UNFAIR LABOR PRACTICES

Shearman & Sterling, along with the Urban Justice Center (UJC), is representing 43 current and former employees of Ollie’s restaurants in a lawsuit involving widespread labor violations. Ollie’s, a popular Chinese-themed restaurant chain, has several locations throughout Manhattan. Workers filing the suit include deliverers, delivery packers, servers, and busboys from three of those locations. This lawsuit comes on the heels of several other recent cases against Asian-themed restaurant chains in New York.



Jordan Wolff, Colleen Carey, and David Wishengrad

The workers allege failure to pay the minimum wage, failure to pay overtime, failure to pay “spread of hours” compensation, failure to pay for the cost of purchasing and maintaining required uniforms, illegal deductions from wages, illegal retention of gratuities, unjust enrichment, and retaliation.

Associate David Wishengrad (NY-LT) has been working on the matter since May. He describes this case as “a very compelling situation.” Other members of the Ollie’s team include partner Henry Weisburg (NY-LT), associates Colleen Carey (NY-LT), Kristen Fitzmaurice (NY-LT), Brian Burke (NY-LT), Jordan Wolff (NY-LT), and legal assistant David Hudson (NY-LT).

The firm, along with co-counsel UJC, filed a complaint in the Southern District of New York at the end of March. The UJC is a non-profit organization that advocates for low-wage New York City residents on a variety of social and economic issues.

Workers are seeking their unpaid minimum wages and overtime and an equal amount in the form of liquidated damages. They are also requesting payment of their attorneys’ fees and costs of the action and pre-judgment interest.

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HEARING A SUCCESS

POLITICAL ASYLUM

Associates Gloria Huang (NY-BR) and Michel Werthenschlag (NY-MA) represented a Haitian man seeking political asylum in the United States. The case was referred to Shearman & Sterling by Human Rights First.

The client, C.C., was a founding member of a student group that protested against the government of President Jean-Baptiste Aristide. C.C. and his girlfriend were attacked by Aristide supporters in 2004. His life was threatened and he fled the country.

“Our client had been beaten up because of his political opinions as a student leader, his girlfriend had been slashed in the face, and his daughter almost kidnapped. Haiti is a small place and had our client returned there, he would undoubtedly have faced death by the local militia,” says Werthenschlag. “It is one of the most noble aspects of our profession to be able to use our time and resources to impact lives in such positive ways with the help of the firm’s vast resources.”

The Shearman team interviewed the client and his family members and prepared affidavits detailing the persecution C.C. suffered, as well as his fear of future persecution. The affidavits were bolstered by a brief, expert reports, and articles and reports evidencing the political situation in Haiti. The application was adjudicated by an immigration judge following a hearing on the merits conducted by Huang and Werthenschlag.

Huang states, “Our client was very keen to begin working to help out his family and take care of them. It was difficult for us to see how discouraged he was during the lengthy [hearing] process, especially after he had been through so much in his personal life. In the weeks leading up to the hearing, I think I was more nervous than I have ever been before in my life –

including the times prior to major examination trials like the LSAT and the bar exam – because I knew how much this meant to our client.”

C.C. was very grateful for their assistance. Huang says, “After the hearing, he sent an email explaining that he didn’t know how to thank us because he knew we worked so hard, and that even though he had nothing to give us, he believed that we would be given rewards for the rest of our lives.”

Now that C.C. has been granted asylum he is, with the help of Huang and Werthenschlag, petitioning to bring his two small children to the United States from Haiti. He currently lives in New York.



Michel Werthenschlag and Gloria Huang

ICTR COUNTS MANY ACCOMPLISHMENTS

MIKO BRADFORD

Bradford is counsel in the London office.

The building that houses the ICTR (International Criminal Tribunal for Rwanda) is an imposing sight in the midst of the bustling safari town of Arusha, Tanzania. As politicians negotiate the “transfer” of untried prosecutions from the ICTR back to Rwanda in mid-2009 (for trials) and mid-2010 (for appeals), the daily work of trial and appeal preparation proceeds apace. In Rwanda, investigations and preparation of witness statements also continue. Investigators and lawyers face the challenge of locating and gaining access to witnesses, spending often fruitless days searching for elusive individuals, and re-scheduling missed appointments. Witnesses are asked to remember in detail events that now occurred over 13 years ago, generally in deeply traumatic circumstances. The process is painstaking, at times disheartening, and often heartbreaking.



In Arusha, the ICTR offices are a hive of activity. For a lawyer accustomed to a high-tech first world environment, the comparative scarcity of resources is striking. It takes at least three days to set up an email account, the power flicks onto generator at least once each day, and basic office sup-

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plies like stationery and paper are rationed. In addition, the steady stream of attorney departure drinks is a constant reminder that the work of the Tribunal is slowly but surely drawing to a close. Against this background, Shearman & Sterling has, over the life of the ICTR, provided ongoing support to its prosecution office through the provision of secondees, advocacy training, and more general resources. This support has provided invaluable assistance to the team of prosecution lawyers who work tirelessly to bring perpetrators to justice and support witnesses.

Indeed, despite all the challenges, in two years' less time than it took the Scottish judicial system to prosecute three accused for the Lockerbie bombing, the ICTR has set up a new judicial system, police force, prison system, and criminal prosecution process, rendered jurisprudence on crimes never before prosecuted (including the first judgment on genocide), arrested 69 fugitives, tried 66, and rendered judgment for 33. Of those, 27 defendants were convicted.

Shearman & Sterling can be proud of the part it has played in this huge international effort to bring the perpetrators of these horrendous crimes to justice.

DEBTOR RECEIVES ASSISTANCE

Bankruptcy isn't usually an area that springs to mind when thinking of pro bono. But organizations and companies do find themselves in financial trouble on occasion and require assistance with Chapter 11.

One such organization, Jamaica Neighborhood Based Alliance Coalition, Inc. (JNBA), went to the Lawyers Alliance for New York (LANY) asking for help. LANY included JNBA's request for assistance in its pro bono opportunities listing, and attorneys from Shearman & Sterling agreed to assist.

JNBA is a not-for-profit corporation that was founded to provide job training and placement assistance for residents in the South Jamaica, Queens community.

Several Shearman & Sterling attorneys have been working on JNBA's case, including partner Fredric Sosnick (NY-BR), and associates Solomon Noh (NY-BR), Ned Schodek (NY-BR), and Ronni Gershowitz (NY-BR) since the beginning of 2007.

Noh explains that JNBA depends on funding from the New York state and city governments to sustain itself. "In 2003 and 2004, the money from the government started drying up, and it ended completely in 2005," he says. "The client allegedly complied with the procedural requirements for reimbursement," he

says, but was not reimbursed. That meant that the organization was unable to pay off its debts, including rent for the office space it leases in a mall in Jamaica, Queens. The office space was crucial to the organization because all the documents relating to reimbursement were being held there. JNBA was also unable to pay its only employee, the executive director, for a year and a half, and she is owed back pay. The organization filed Chapter 11 on a *pro se* basis on behalf of JNBA in October 2006, in part to stave off eviction from the office space. Noh says, "This was essentially one person administering Chapter 11 for an organization she used to run."

Schodek says that JNBA filed the petition and had difficulty meeting bankruptcy procedural requirements. "She didn't know what to do and didn't have any assistance," he says. "The US Trustee filed a motion to dismiss the case because of her failure to abide by the bankruptcy requirements." JNBA was not represented by counsel until January 2007.

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IS LESS MONEY AT STAKE. IT’S MORE PERSONAL. ”

“There are many hoops to jump through in bankruptcy,” adds Noh. “The first thing we did upon taking the case was to learn about the organization itself and begin to fix procedural defects that were the cause of the US Trustee’s motion to dismiss.”

Schodek, who regularly represents debtors in bankruptcy cases, also has been filing monthly operating reports for JNBA. And to help meet the bankruptcy requirements, Schodek filed what is referred to as the “1007 affidavit,” which explained the facts and circumstances surrounding the Chapter 11 filing. JNBA was also required to file information regarding the organization’s assets, liabilities, and financial affairs. Gershowitz, a first-year associate, appeared in court for two status conferences. “It was good experience to appear in court, especially as a first year,” she says.

Noh and Schodek also filed a motion to extend the organization’s exclusive period within which to file a plan or reorganization. They also filed a motion to establish a bar date, the date by which a creditor must file a proof of claim. Gershowitz presented that motion on June 18. It was granted, and the court established July 20 as the bar date.

According to Schodek, “I had done pro bono work before, but nothing related to bankruptcy. This was in my realm of expertise and I felt comfortable with it. Normally, I work with large corporate clients, but this was a small business debtor. There are different requirements for small business debtors, and I learned about those.”

Gershowitz agrees. “This is very different from corporate work. There are fewer creditors involved and there is less money at stake. It’s more personal,” she says. “I was able to take a more active role. I learned a lot from working with Fred, Ned, and Solomon.”

This matter was also educational for Noh. “I am usually on the creditor side, representing banks and other financial institutions. This involved representing a debtor, and it has been a great experience.”

The JNBA bankruptcy filing was recently converted from a Chapter 11 reorganization to a Chapter 7.

GOING TO PRISON TO MAKE A DIFFERENCE



Marianna Orenshteyn, James Diaz, Annette Wong, Manuel Arreaza, and Sara Padua

A team of Shearman & Sterling legal assistants has been assisting Legal Aid Society (LAS) attorneys to enforce the settlement agreement of a class action suit involving guard brutality at Rikers Island prison in New York. The Rikers Island Prisoners' Rights Project arose out of the need to reform systemic brutality at the prison.

LAS wanted extra assistance with the project and called on Shearman & Sterling to assist. A group of legal assistants from the New York office, including Marianna Orenshteyn and Sara Padua, stepped up. Others joined later, including Raymond Remezo, James Diaz, Annette Wong, Manuel Arreaza, and Elizabeth Shuman, an intern at the firm. After being trained by LAS attorneys, the legal assistants perform document reviews and interview inmates about alleged guard brutality while on site at the prison.

When the legal assistants go to Rikers, they are under the supervision of LAS attorneys and analyze packets of documents, each packet about an alleged incidence of abuse. The packets contain reports from the inmates themselves, witnesses, investigating officers, and other inmates. Also included are medical reports, photos, and video about the alleged incident.

THE LITIGATION SUPPORT GROUP AT SHEARMAN & STERLING HELPED TO BUILD A DATABASE TO MAKE THE DOCUMENT REVIEW MORE EFFICIENT AND ORGANIZED.

The legal assistants' job is to catch inconsistencies and irregularities. Orenshteyn says, "It is a substantive review where I get to use reasoning and draw conclusions." The legal assistants were shocked to realize the brutal and inhuman treatment faced by inmates. Padua remembers one prisoner in particular. "He was roughed up by an officer known for being violent. It all got caught on camera," she says.

After the extensive process of reviewing the reports, LAS attorneys and legal assistants conduct interviews with the inmate victims to get the full background. Interviews usually last between half an hour to an hour. The victim interviews allow LAS attorneys and the legal assistants to see all angles to form a bigger picture of the incident. The goal is to build a history of violations to move toward a more strictly enforced settlement. If it is determined that a staff member has acted outside the bounds of his authority, disciplinary charges are recommended.

The litigation support group at Shearman & Sterling helped to build a database to make the document review more efficient and organized. The database allows the LAS attorneys to easily search incidents for similar injuries, for example.

Orenshteyn says, “The project is a good experience where I have responsibility to do something that makes a difference.” Legal assistants know that what they do carries weight. Their conclusions influence whether to proceed with an interview. Orenshteyn says, “You develop critical thinking skills like an investigator. You get independence and guidance from the LAS attorneys. You are exposed to human rights law and the daily problems faced by inmates and attorneys. It is a critical thinking exercise where we try to make sense of such a gray situation.”

As for the project itself, Padua says, “There is a lot of work and we have a long way to go to secure the rights inmates deserve.”

Fighting Unfair Labor Practices | CONTINUED FROM COVER

Ollie’s filed a response to the complaint in June. According to Wishengrad, “The answer has no surprises. They are denying any wrongdoing and preserving their rights to seek summary judgment.” The Shearman team is currently working on drafting and creating document requests and interrogatories. Discovery could take up to a year, but the firm is actively pursuing expedited discovery on several important issues.

To Wishengrad, the most shocking aspect of the case is the size of the damages. “This is a multi-million dollar claim,” he says. “This appears to be an industry that is unchecked and unmonitored. And this seems to be the only way to draw attention to the plight of these individuals.” Fitzmaurice doesn’t think the firm and co-counsel will be willing to back down on the dollar amount.

Helpful in the case are New York statutes that hold that the 10 largest shareholders of closely-held corporations are personally responsible for unpaid wages. “This is good leverage,” Wishengrad says. “Generally, there is a corporate shield. This is very pro-labor and pro-employee and is probably not invoked as often as it should be. This is a good law that protects employees.”

Fitzmaurice thinks this is a good opportunity for junior litigators to develop their skills. “This case will present some great opportunities, including time in court,” she says.

Wishengrad and Fitzmaurice are pleased to be part of the Ollie’s team. He says, “People who need protection the most, like these workers, are least likely to get legal representation unless it’s through a public interest organization or advocacy group.” Fitzmaurice

adds, “This is very different from anything else I do during the day.”

According to Wishengrad, “The workers are first-generation immigrants who don’t speak English and are at a distinct disadvantage to assert their rights. Some of these claims go back to 1998. Our clients live and work in one of the wealthiest cities in the world and many of them have been barely surviving for a decade earning \$1.40 an hour.” Brian Burke, in addition to his legal skills, contributes his Chinese language ability on the case. His ability to speak to the workers in their language makes communication efficient and puts the clients at ease.

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Molly Biklen, an attorney at the UJC, explains, “This case represents a significant step in the effort to curb widespread labor abuses in New York City restaurants. Both restaurant workers and restaurant owners are learning about the labor laws as a result of the media attention arising from the Ollie’s case and similar cases. We hope this case will have a ripple effect through the entire industry. The Urban Justice Center is thrilled to be working with a great team of lawyers from Shearman & Sterling.”

ADOPTION PROCEEDINGS PRESENT CHALLENGES

Shearman & Sterling has been assisting on several adoption cases over the past few months.

Associate Stephen Ashley (NY-CM) has been working on an adoption of an 11-year-old boy in New York. The clients are an unmarried couple, Mr. D and Ms. A, who have been in a relationship for many years. The couple decided to adopt the boy, whose birth mother did not want to keep him. Mr. D was never entered as the father on the child's birth certificate. The boy, who doesn't know he's adopted, knows Mr. D as the only father he's ever had. Mr. D wants to correct the situation and be named as the boy's legal father, in part to reflect their relationship, but also to ensure that the child is covered by his benefits.

“ GETTING THE PARENTS TO UNDERSTAND THAT [ADOPTION] IS A PROCESS THAT INVOLVES A LOT OF DOCUMENTATION AND TIME IS CHALLENGING. ”

Ashley has been preparing the necessary court filings and helping the clients gather the relevant supporting documents. It could take several months for the adoption to be completed as it depends on receipt of the supporting documents and the date the court sets for the hearing. Associates Sylvia Lee (NY-FG) and Alyse Rosenberg (NY-FG) have helped draft the numerous filings.

“Getting the parents to understand that [adoption] is a process that involves a lot of documentation and time is challenging,” Ashley says. “They feel that a mistake was made when the child was initially adopted, so

this shouldn't be so complicated. But because it does involve a court granting legal guardianship of a child to a second person, the court is going to check that the adoption served the best interests of the child.”

The case was referred to the firm as part of MFY Legal Services Kinship Caregiver Law Project. The project matches grandparents and other kin caregivers with attorneys who represent the caregivers on a pro bono basis. MFY screens the cases, trains volunteer attorneys, matches them with cases, and provides ongoing supervision and support to the volunteers.

Associate Karen Saah (NY-CM) handled an adoption in the Bronx. The child, a 4-year-old girl, has been cared for by her grandparents since she was four months old; they obtained legal custody of her in March 2006. The girl's biological mother was having personal problems at the time and was unable to care for her, so her parents stepped in. The natural mother continues to have difficulties, and the grandparents, with Saah's assistance, filed in court to legally adopt their granddaughter.

Saah interviewed the parent, prepared and filed all the documents related to the adoption with the Bronx County Family Court, and appeared with the family at the court for the hearing to finalize the adoption. Saah says she has learned a tremendous amount about a very different area of the law. Preparing the required filing and navigating the family courts has been challenging. “I had previously done a pro bono adoption, so that was helpful, and I had some idea what I was doing, though the filings for this adoption were quite different,” she says.

MFY recently conducted a new volunteer training at the Shearman & Sterling offices. Training materials are available for anyone interested in volunteering.

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- ATTORNEYS HELP THE HOMELESS

PROACTIVE is a review of Pro Bono activities at Shearman & Sterling LLP.

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