



## Rising Star: Munger Tolles' Malcolm Heinicke

By **Samuel Howard**

Law360, New York (March 21, 2011) -- Munger Tolles & Olson LLP partner Malcolm A. Heinicke recently defused a putative class action by security officers challenging Guardsmark LLC's uniform maintenance and rest period policies, augmenting a formidable track record that has earned him a spot on Law360's list of five employment lawyers under 40 to watch.

Heinicke, 39, has developed a stellar practice tackling emerging wage-and-hour issues and high-profile employee mobility litigation, helping to shape labor law while representing clients such as Hewlett-Packard Co., Wells Fargo Securities LLC, and 99 Cents Only Stores.

He spearheaded Guardsmark's victory at the U.S. Court of Appeals for the Ninth Circuit in December 2009, which focused on on-duty meal periods and ultimately changed the California labor commissioner's position. Then last week, he set the stage for the favorable dismissal of another putative class action against the private security provider.

That case, filed in the U.S. District Court for the Northern District of California, involves allegations that Guardsmark failed to properly pay its employees an allowance for the upkeep of their uniforms and denied them rest periods.

In April, Heinicke put to rest claims that Guardsmark unlawfully altered its pay structure and shifted the cost of uniform maintenance on its workforce. Then, in February, Heinicke defeated the plaintiffs' bid for class certification on the remaining claims relating to Guardsmark's rest period policies, ushering the case toward resolution. He filed a stipulation for dismissal in the case in mid-March.

Heinicke, who joined Munger Tolles' San Francisco office in 1998 after a federal clerkship and rose to partner at 32, credited the firm for giving associate attorneys the opportunity to garner significant experience and form strong client relationships early in their careers.

Heinicke said the firm helps propel young attorneys and assures that they accumulate the experience

that often eludes counterparts at other firms.

“The problem for a lot of young attorneys is that it’s hard to gain critical experience,” Heinicke said. “I’ve been blessed to be at a firm that really fosters practices and to have loyal and supportive clients.”

While his relative youth may have surprised one or two CEOs in his time, it never proved a burden, Heinicke said, because he always met potential concerns head-on and immediately demonstrated his expertise.

Although Heinicke’s achievements are rooted to the culture at Munger Tolles, he conceded his success is also built on tireless work and an unflagging commitment to client service.

“The secret to success is that there is no secret. As attorneys, our job is to provide excellent practical advice and problem-solving,” Heinicke said. “ We treat clients’ problems like our own and work diligently to resolve them.”

The Guardsmark suits are only the latest in a string of visible litigation sweeps for Heinicke. In March 2010, he scored a notable win for Wachovia and Wells Fargo Advisors LLC, dismantling a putative class action alleging the financial services giant denied its sales assistants overtime pay.

Heinicke deployed a novel statute of limitations argument regarding equitable tolling to trump a suit that threatened millions of dollars in damages and a class potentially numbering thousands.

In 2009, Heinicke also made Hewlett-Packard a gratified client, representing a former EMC Corp. executive in litigation over the noncompete provisions of his employment contract and successfully resolving the case to allow the individual to continue at HP.

Russell F. Wolpert, general counsel for 99 Cents Only Stores, relied on Heinicke in class action litigation over the company’s seating policies and said that he is nothing short of “brilliant” in and out of the courtroom.

“Malcolm consistently outmaneuvers everyone. It is very rare indeed to come across someone who is so precise that he misses no detail, no matter how microscopic or obscure, yet is also enormously creative,” Wolpert said.

--Editing by Greg Ryan.

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