

## **MVP: Cravath's Wes Earnhardt**

By James Boyle

*Law360 (November 20, 2024, 12:03 PM EST)* -- Wes Earnhardt of Cravath Swaine & Moore LLP's litigation department has represented high-powered media companies such as Walt Disney and Starz Entertainment and successfully argued before the Supreme Court for extended copyright damages, earning him a spot as one of the 2024 Law360 Media & Entertainment MVPs.

### **His biggest accomplishment:**

In a recent interview with Law360, Earnhardt pointed to the U.S. Supreme Court's 6-3 decision in May ruling that copyright ownership disputes can recover damages beyond the three-year statute of limitations for bringing a claim. The decision was reached after he argued the point on behalf of his client, music producer Sherman Nealy, who sought damages against Warner Chappell Music.

"I was very pleased with the fact the court was bringing some clarity to copyright law," Earnhardt said. "The Second Circuit and the Eleventh Circuit had different rules over copyright damages, which created uncertainty and forum shopping. I was happy to take that debate and have it settled."

Before that case, the Second Circuit Court held there was a three-year cap on damages, even if discovery shows alleged infringement occurred outside that window. The Eleventh Circuit, on the other hand, ruled that Nealy could recover damages from Warner Chappell for injuries that allegedly happened before he sued in 2018. The Supreme Court sided with the Eleventh Circuit after hearing arguments from Earnhardt and Warner Chappell Music's attorneys.

Earnhardt said he was brought in by Nealy to make the case at the Supreme Court following his success with a similar argument in 2023 while representing Starz Entertainment at the Ninth Circuit. Starz sued MGM Domestic Television Distribution for allegedly breaching their agreements by licensing films to other networks when Starz had exclusive rights.

MGM's attorneys argued the lawsuit should have been filed within three years of the alleged infringement, not within three years of learning of the alleged infringement. But the Ninth Circuit agreed with Earnhardt, saying the Copyright Act did not have a time-based damages limit, and damages could accrue when the plaintiff becomes aware of the possible infringement.



"It created another circuit court split," Earnhardt said. "I was the winner of the underlying issue, and [Nealy] got in touch with me to take over the appeal."

Clearing up the confusion on a major question in copyright law is a notable accomplishment, especially considering it was the first time Earnhardt had appeared before the Supreme Court.

"I went into the court with a lot of excitement," he said. "It was a great experience. I knew the issue well, and I felt very strongly about my position."

#### **His biggest challenge:**

Earnhardt's litigation talent and experience at federal and appellate courts makes for a busy schedule representing clients on complicated matters. He works to maintain a steady balance of the heavy work load, knowing each client should get the best service and advice he can provide.

"The clients expect and deserve my A game," Earnhardt said. "I made a commitment to deliver my best work, and I have a tremendous team to support my efforts."

Earnhardt's most recent work includes representing Disney in a pair of ongoing antitrust suits. A class action suit brought by YouTube TV and DirecTV subscribers claims Disney's carriage agreements over ESPN's live sports coverage violated the Sherman Act by preventing competitors from lowering their prices to gain customers.

Earnhardt also represents Disney in a suit brought by FuboTV, which seeks to stop a proposed partnership between Disney, ESPN, Fox and Warner Brothers Discovery to combine their sports programming into a single streaming platform.

#### **Why he is a media and entertainment attorney:**

Earnhardt has spent his entire career with Cravath, joining its New York office in August 2004 after earning his law degree from the University of North Carolina. He said he wanted to go to a place where attorneys trained to be the best lawyers, and that meant going to Cravath and moving to New York.

"I told myself I would stay with Cravath as long as I continued to learn and have fun," Earnhardt said. "To this day, I can't imagine being as challenged and supported by colleagues who are world-class lawyers than I am here."

His practice has developed into representing clients on a variety of matters, including antitrust, securities and financial reorganization. Over the last few years, Earnhardt found himself becoming more involved with the media and entertainment industry.

"I was trained as a general litigator, and I remain true to that," he said. "The media and entertainment industry has become very dynamic, with a lot of rapid changes. There are a lot of interesting, complicated issues, and those are the kinds of cases I like."

#### **His advice for junior attorneys:**

Earnhardt has practiced at Cravath for 20 years, with duties that include participating with associates'

training. He advises up-and-coming talent to commit themselves to the profession and show they are capable of doing the work.

"Take ownership of everything you do," Earnhardt says. "Practicing law is not a spectator sport. The best way to learn is to get up and do it. Find ways to be indispensable on whatever the firm is working on, and do the work that is required."

*--As told to James Boyle. Editing by Adam LoBelia.*

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