

THE AMERICAN LAWYER

An ALM Publication

americanlawyer.com

JANUARY 2016

SPECIAL REPORT

LITIGATION

★ DEPARTMENT OF THE YEAR ★

The American Lawyer's biennial selection of the nation's top litigation departments and litigators.

WINNER, WHITE-COLLAR/REGULATORY GIBSON, DUNN & CRUTCHER LLP

How We Select the Litigation Department of the Year

This year's contest covers litigation matters between Aug. 1, 2013, and July 31, 2015. Last April, we contacted all Am Law 200 firms and some smaller firms, soliciting entries in this year's general litigation contest, as well as practice-specific contests in intellectual property, white-collar/regulatory work and product liability.

Firms were asked to provide, among other things, lists of and details about their 12 most notable results, a description of their two biggest losses, details of new matters, references and information about the size and financial performance of their practices or departments. They were also asked to submit an essay, arguing for their selection as Litigation Department of the Year.

We received 64 submissions in the general litigation contest, 25 in the intellectual property contest, 10 in the white-collar/regulatory contest and nine in the product liability contest. Teams of American Lawyer reporters and editors evaluated all of the submissions on the basis of reporting and conversations with clients and colleagues at rival firms, among other things. The general litigation category was evaluated by David Bario, Emily Barker, Michael Goldhaber, Jennifer Henderson and Ginny LaRoe. This team also selected

the Litigators of the Year and the Honorable Mentions. The IP category was evaluated by Scott Flaherty, Nell Gluckman and Lisa Shuchman. White-collar/regulatory was evaluated by Jenna Greene, James Schroeder and Julie Triedman, while product liability was evaluated by Susan Beck, Kim Kleman and MP McQueen.

On the basis of their reporting, the teams pared the submissions to a short list of finalists: six in general litigation, four in IP, three in product liability and two in white-collar/regulatory.

A three-person panel from each finalist firm then met with the reporter teams in their category in two-hour question-and-answer sessions in our office. The purpose of the sessions was to elaborate on and clarify the submissions. After the sessions, each reporting team then embarked on a final round of reporting and interviews before meeting to select the winner in its respective categories.

Our next Litigation Department of the Year contest will be published in January 2018 and will cover matters from Aug. 1, 2015, to July 31, 2017. Solicitations and instructions for submissions will be sent out in the spring of 2017.

LITIGATION

WHITE COLLAR/REGULATORY

*** Winner ***

Best Defense

A deep bench and appellate strength set Gibson Dunn apart.

By Julie Triedman

CLIENTS ROUTINELY DESCRIBE LAWYERS AT GIBSON, Dunn & Crutcher in superlatives. “Strategic thinkers,” “creative,” “tenacious” and “responsive” were words we heard again and again. But the firm, with its premium fees, is not “for everyday blocking and tackling,” admits Ford Motor Co. appeals counsel Marcy Hahn. “They’re a go-to firm where there’s more at stake.”

A lot was at stake for Ford, for example, when the company faced an adverse appellate panel decision in 2014 that revived a potentially disastrous Equal Employment Opportunity Commission claim. The EEOC, in a test case, accused Ford of violating the Americans with Disabilities Act when it didn’t accommodate an employee with irritable bowel syndrome who wanted to telecommute. The case went to the heart of whether an employer should be able to define what a work environment should be, Hahn says. Gibson Dunn’s Helgi C. Walker and Eugene Scalia obtained a rare en banc rehearing for Ford from the full U.S. Court of Appeals for the Sixth Circuit. In April, after Walker’s oral arguments, the court reversed its earlier decision. The Gibson Dunn team “was not just thinking about how to win the case,” Hahn says, “but the broader legal landscape and how, in light of that, Ford could prevail.”

Gibson Dunn’s other achievements during our judging period also reflect its creativity and tenacity. The firm’s work at the appellate level, long a particular strength, was exceptional, sometimes involving areas where there was little law on the books.

After Puerto Rico enacted a binding Chapter 9-like debt restructuring regime for its grossly indebted public entities, giving it more leverage to force severe haircuts on bondholders, BlueMountain Capital Management LLC tapped Gibson Dunn’s Matthew D. McGill to get the new law thrown out.

Despite Puerto Rico’s claim that the law was its last chance to grapple with its crippling municipal debt, the hedge fund’s arguments prevailed at the First Circuit. “It’s a big case, and a big win, and I give them credit,” says Puerto Rico’s lawyer, Kirkland & Ellis’ Christopher

Landau. “It’s easier to defend a law than to get one struck down.” McGill “did much of the heavy lifting,” says Kramer Levin Naftalis & Frankel’s Thomas Mayer, who represented another bondholder plaintiff. BlueMountain portfolio manager Chad Valerio agrees: McGill, he says, “hands-down delivered the win for us.”

The firm also posted a major trial win in 2014, when New York-based partner Joel M. Cohen won an unanimous verdict exonerating his client, hedge fund founder Nelson Obus, of insider trading allegations. The U.S. Securities and Exchange Commission’s 14-year investigation of and suit against Obus and two other executives at Wynnefield Capital, Obus’ relatively small fund, involved more than 25 SEC staff attorneys and cost Wynnefield \$9 million in legal fees. Just days after the defense verdict, the SEC announced that it would seek to avoid jury trials in the future. Obus says that he was “in awe” of Cohen’s trial skills, particularly in a key cross-examination.

Outside the courtroom, Gibson Dunn’s strength extends to negotiations with senior regulators and prosecutors, clients say. The firm’s 141 regulatory and white-collar partners, a healthy 38 percent of the partnership, includes one of the deepest benches of former government lawyers, including 62 lawyers formerly with the U.S. Department of Justice or other federal agencies.

Clients say that it helps in facing top regulators that F. Joseph Warin, the firm’s litigation department chair and a onetime federal prosecutor, negotiated the first-ever deferred prosecution agreement in 2001 for Sears, Roebuck & Company, as well as many since then. “Demands are so draconian now that our clients are saying, ‘What’s the fight alternative?’” Warin says. “We take a lot of time to talk about developments in the [deferred- and nonprosecution agreement] area with clients. It’s really important to us.”

Hewlett-Packard Co., for example, faced a broad probe of possible Foreign Corrupt Practices Act violations in 15 different jurisdictions, most involving alleged misconduct years earlier. The company tapped other firms to handle various jurisdictions, but gave Gibson Dunn and Warin the lead role in overall negotiations at the U.S. Department of Justice, according to general counsel John Schultz.

Warin and colleague John W.F. Chesley convinced the Justice Department to take 12 jurisdictions off the table, leaving only Russia, Poland and Mexico. Hewlett-Packard ended up with a \$108 million fine. Though it was among the larger FCPA penalties of 2014, the penalty was substantially below the floor set in the sentencing guidelines. It also insulated the parent company from long-term damage, a priority for HP, Schultz says; only certain foreign subsidiaries were charged, and no monitoring was instituted. Neither the Justice Department nor the SEC required a monitor—a key demand of HP. Nightmare averted.

In negotiating with regulators, Warin says, “we don’t confuse aggression with tactics. We are aggressive when necessary, but we recognize that we have 30 clients in the queue, and we want to maintain credibility.”



Practice Group Size and Revenue: Partners 141 Associates 255 Other 24

Department as Percentage of Firm 34% Percentage of Firm Revenue, 2014 N/A

FROM LEFT Eugene Scalia, Debra Wong Yang, Helgi C. Walker, Joel M. Cohen and F. Joseph Warin