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Environmental Group Of The Year: Gibson Dunn

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Gibson Dunn & Crutcher LLP's environmental practice handled a particularly diverse array of cases last year, including successfully defending eBay against U.S. Department of Justice and Environmental Protection Agency allegations that it violated three environmental statutes via harmful products sold using its platform, earning the team a spot among the 2024 *Law360* Environmental Groups of the Year. The firm's environmental litigation and mass tort team has 17 attorneys, including eight partners, primarily based out of Washington, D.C., along with the California markets of Los Angeles, Orange County and San Francisco. Group co-chair Stacie Fletcher told *Law360* that a standout aspect of the past year is the diversity of cases the environmental team handled. That includes work in the retail, aviation, energy, automotive and food and beverage industries for a number of large corporate clients, including Fortune 500 companies. "We had a broad range of successes to report in areas such as Clean Air Act enforcement, class action defense, climate change litigation and a number of other areas," Fletcher said. "We have a strong tradition of collaboration both within our practice group, as well as other practice groups, which allows us to put forth the best team with attorneys that have the best experience to advise our clients on these difficult issues. The ability to leverage any attorney for any case is part of our secret sauce." Group co-chair Daniel Nelson said another factor in the environmental group's success is the substantial experience of its attorneys, adding that a number have been doing environmental litigation and mass tort work for decades, which puts Gibson Dunn at an advantage over firms that tend to focus environmental practices more on advisory and regulatory work. "There's not a lot of people with this type of experience, and we believe that bringing that perspective to a matter from the very beginning puts us in a position to develop effective results for clients, including coming up with strategies in various areas, whether that's the best way to narrow cases, knocking out issues that matter for clients, winning on dispositive motions or at trial, or positioning them for a settlement," he said. Fletcher noted that one of Gibson Dunn's biggest successes last year was successfully defending eBay from a number of DOJ and EPA claims accusing the online marketplace giant of violating the Clean Air Act, the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act by providing a platform for people to distribute and sell products that violate the aforementioned statutes. "It really exemplifies the type of work clients are bringing to the Gibson Dunn environmental group," she said. "The government's claims under three environmental statutes as applied to online marketplaces were literally unprecedented, and we were very pleased to be part of the team that secured a victory for eBay." In October, a New York federal judge ultimately dismissed the claims against eBay, determining that it does not meet the definition of a "seller," as it doesn't actually own the products being sold by website users, and adding that eBay has immunity under the Communications Decency Act as a publisher of third-party content. Fletcher said the eBay suit is an example of the "bet the company" environmental matters the Gibson Dunn team typically handles, noting that had the court ruled in favor of the government, that could've led to a deluge of similar claims by other parties against third-party e-commerce platforms. "It was a unique case because the government was advancing claims against a true third-party platform that allegedly violated the environmental statutes governing products," Fletcher said. "Those series of liabilities had never been applied to online marketplaces, so it was really the type of unique and novel matter that companies bring to Gibson Dunn." One ongoing matter the Gibson Dunn environmental team has been working on is a class action by Seattle-area

Related People

Stacie B. Fletcher

Daniel W. Nelson

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residents who live within 5 miles of the city's airport and are accusing client Delta Air Lines and Alaska Airlines of causing personal injuries and property damage with the air pollution their flight operations create. "The client came to us with this case because it's a very significant matter for them," Nelson said. "Obviously, it's a heavily regulated company that flies out of Seattle only on the express authorization of the federal government with flight paths, aircraft and engines all being heavily regulated. Confronted with a state court class action with significant in-state defendants, we leveraged flight operations at the direction of the federal government as a basis to remove under the federal officer removal statute, which in turn led to plaintiffs not filing a remand motion." Although Delta tried to have the class action dismissed, Nelson said that bid was recently denied, with a Washington federal judge determining in November that it's too early to tell whether the claims will be preempted by federal regulations governing air travel or plane emissions. In January, Delta and Alaska Airlines asked for permission to have the Ninth Circuit review the November decision. Reprinted with permission from *Law360*.

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