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Gibson Dunn Wins Significant Victory for Coinbase in the Third Circuit

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On behalf of Coinbase, a Gibson Dunn team won a major victory Tuesday against the SEC in the U.S. Court of Appeals for the Third Circuit. Coinbase challenged the SEC denial of Coinbase's petition requesting that the agency issue new rules explaining the agency's views about whether and how the federal securities laws apply to digital assets.

This has been a closely watched case, carrying potentially significant implications for the digital-asset industry, which has been targeted by the SEC in recent years with an aggressive campaign of enforcement actions.

In a blow to the SEC, a unanimous Third Circuit panel held that the SEC's denial of Coinbase's rulemaking petition was "conclusory and insufficiently reasoned" and therefore arbitrary and capricious under the Administrative Procedure Act. In an opinion penned by Judge Ambro, the Court remanded Coinbase's petition to the SEC for a more complete explanation.

A concurring opinion by Judge Bibas further took the SEC to task on due-process grounds. Judge Bibas faulted the agency for failing to provide "meaningful guidance on which crypto assets it views as securities," adding that the SEC's "silence and contradictory unofficial signals breed uncertainty," target "a whole industry," and risk "de facto banning it." Judge Bibas added that the SEC's "caginess" about how the securities laws apply to digital assets "creates a serious constitutional problem" that should be addressed in SEC enforcement actions against crypto firms.

The Gibson Dunn team was led by partners Eugene Scalia, Jonathan C. Bond, and Nick Harper and included associate Zach Young.

Related People

Eugene Scalia

Jonathan C. Bond

Nick Harper

Related Capabilities

Administrative Law and Regulatory Practice

Appellate and Constitutional Law

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