Allison Kostecka

Partner

akostecka@gibsondunn.com

T: +1 303.298.5718

Denver



Allison K. Kostecka is a partner in the Denver office of Gibson, Dunn & Crutcher. She practices in the firm's Litigation Department, where she focuses on securities litigation, antitrust investigations and litigation, other complex commercial litigation, and data privacy. Since 2016, Allison has been recognized by *Super Lawyers* as a Colorado "Rising Star." She is recognized by *Best Lawyers: Ones to Watch® in America* for Antitrust Law, Litigation-Antitrust, and Commercial Litigation and has been listed in the publication since 2021.

Allison represents companies in a range of complex, civil litigation matters. She has defended multiple companies in derivative lawsuits and securities class actions before federal and state courts. In addition, Allison has represented clients in a variety of antitrust and consumer protection matters before administrative bodies and federal courts. For over 10 years, she represented a large energy company in multiple federal court actions that exposed a fraudulently obtained, multi-billion dollar judgment against the company. In addition to working on extensive discovery, preliminary injunction actions, and both pre- and post-judgment motions practice related to this transnational matter, Allison was on both the trial and appellate teams for this matter.

Representative Securities Litigation and Derivative Matters:

- *Immunomedics, Inc.*: Representing Immunomedics, Inc. and certain of its officers and directors in their defense of a securities class action based on alleged misstatements and omissions regarding a data integrity breach. Discovery in this matter is ongoing.
- *ViewRay, Inc.*: Represented ViewRay, Inc. and certain of its officers in their defense of securities class action allegations based on statements regarding the company's backlog. The U.S. District Court for the Northern District of Ohio granted the defendants' motion to dismiss the putative class action complaint with prejudice.
- *Trinity Industries, Inc.*: Represented Trinity Industries, Inc. and certain of its officers in their defense of securities class action allegations based on an overturned jury verdict in a False Claims Act case. This case ultimately settled.
- *Patriarch Partners and Lynn Tilton*: Represented Ms. Tilton and her companies in a variety of federal and state court actions regarding ownership and control of multiple portfolio companies.
- *Thompson Creek Metals Company Inc.*:Defended Thompson Creek Metals Company and its officers and directors against an individual shareholder's lawsuit alleging securities fraud and common law claims. The U.S. District Court for the District of Colorado granted defendants' motion for summary judgment, the Tenth Circuit affirmed, and the U.S. Supreme Court denied *certiorari*.
- *Molycorp, Inc.*: Defended Molycorp, Inc. and its outside Board members in

Capabilities

Securities Litigation
Anti-Corruption & FCPA
Antitrust and Competition
Class Actions
Consumer Protection
Litigation
Privacy, Cybersecurity, and Data Innovation
Securities Enforcement
Tech and Innovation
White Collar Defense and Investigations

Credentials

Education

Duke University - 2010 Juris Doctor
University of Colorado - Boulder - 2005 Bachelor of Arts
University of Colorado - Boulder - 2005 Bachelor of Science

Admissions

Colorado Bar

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connection with two different securities class actions filed in federal district courts in Colorado and New York, a consolidated derivative action filed in the Delaware Court of Chancery, a consolidated derivative action filed in federal court in Colorado; and related shareholder demands. In the securities class actions, both the federal courts in Colorado and New York granted the defendants' motions to dismiss before the actions were ultimately settled. The related Delaware derivative action was dismissed on the pleadings.

- *Gold Resources Corp.*: Successfully defended Gold Resources Corp. and its directors and officers in derivative litigation and a parallel securities class action filed in the U.S. District Court for the District of Colorado. The claims in both matters arose out of alleged misrepresentations and a minor restatement of financial results. After the securities class action was dismissed on the pleadings, and the dismissal was affirmed by the Tenth Circuit, the plaintiffs voluntarily dismissed the derivative action.
- *FTV Capital*: Defended individuals and FTV Capital private equity limited partners and general partner on LLC receiver's breach of fiduciary duty claims. The case was dismissed by a Colorado state court on the defendants' motion and the dismissal was affirmed on appeal, with review denied by Colorado Supreme Court.
- *SM Energy*: Defended officers of SM Energy in a shareholder derivative action asserting claims of breach of fiduciary duty and unjust enrichment. The lawsuit, which was filed in Colorado state court, was dismissed on the pleadings and no appeal was filed.
- *Advanced Emissions Solutions, Inc.*: Defended Advanced Emissions and its officers in securities class actions filed in the U.S. District Court for the District of Colorado after the company announced a restatement of its financial statements, and in related shareholder derivative lawsuits. While a motion to dismiss the securities class action was pending, the parties agreed to settle the lawsuits.

Other Representative Commercial Litigation Matters:

- *Johns Manville Corporation*: Representing Johns Manville Corporation in its defense of antitrust claims brought by a competitor in the U.S. District Court for the District of Colorado. After the plaintiff's initial complaint was dismissed on the pleadings, the plaintiff was granted leave to file an amended complaint and discovery ensued. After nearly two years of discovery, the U.S. District Court for the District of Colorado granted Johns Manville's motion for summary judgment, and dismissed the matter in its entirety.
- *Chevron Corporation*: Represented Chevron Corporation in its successful RICO suit against the purveyors of what The *Wall Street Journa*l called the legal "fraud of the century." Since 2010, Allison was an active member of the team pursuing claims against the U.S. lawyer who masterminded an extortion scheme against Chevron. Gibson Dunn obtained a trial verdict in favor of Chevron in 2014. Allison was a member of the Gibson Dunn team that subsequently obtained Second Circuit affirmance of that trial verdict and persuaded the U.S. Supreme Court to deny review. Allison continues to represent Chevron in post-judgment proceedings during which Chevron secured a finding of willful contempt from the U.S. District Court for the Southern District of New York against the U.S. lawyer for his violation of multiple court orders.
- *Ingram Micro*: Defended Ingram Micro in three antitrust cases filed against the company, among others. The U.S. District Court for the District of Colorado granted the defendants' motion to dismiss the antitrust claims, but allowed discovery to proceed on state law tort claims. Ingram Micro settled the claims against it in 2018.
- *Eclipse Aviation Corporation*: Defended former employees of Eclipse Aviation Corporation on claims of negligent misrepresentation and alleged violations of New Mexico Unfair Practices Act in three cases in state court in New Mexico. These cases ultimately settled.

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Allison is registered to practice law in the State of Colorado, as well as in the U.S. Courts of Appeal for the Sixth, Tenth, and Eleventh Circuits and the U.S. District Courts for the District of Colorado and the Northern District of Ohio.

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