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Securities Group Of The Year: Gibson Dunn

Accolades | February 24, 2025

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Craig Varnen

Monica K. Loseman

Brian M. Lutz

Gibson Dunn & Crutcher LLP won a Fifth Circuit ruling last year that repealed a U.S. Securities and Exchange Commission rule that would have given the agency more oversight over hedge funds and private equity funds, earning the firm a spot on the 2024 *Law360* Securities Groups of the Year.

The circuit court ruled last year that the SEC lacked the congressional authorization necessary to oversee the governance structure of private funds, striking down an agency rule that would have required fund managers to disclose everything from fund performance to fees and conflicts of interest.

The case was brought by a team of Gibson Dunn attorneys on behalf of trade groups like the Managed Funds Association and the National Association of Private Fund Managers.

"This was an SEC rule that the SEC estimated was going to cost the private funds industry about $5.4 billion and millions of hours of employee time, but the court agreed with Gibson Dunn's position," Craig Varnen, one of three co-chairs for Gibson Dunn's securities litigation practice, told *Law360*.

"Everyone was watching this one, and it was an example of a really high-profile victory that had really sweeping ramifications for the way private funds do business," he said.

A Gibson Dunn team that included Varnen's fellow co-chair Monica Loseman won a ruling in favor of Edward Jones in September that Loseman said demonstrated the "sticktoitiveness and creative thinking" of the firm.

The financial firm was sued in 2018 by brokerage clients who said they were encouraged to become advisory clients even when that higher-fee option wasn't correct for them.

They alleged that Edward Jones breached its fiduciary duty by switching them from one

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service to another, but U.S. District Judge Daniel Calabretta ruled that the evidence demonstrated that there was no breach of fiduciary duty and, in some cases, no duty owed at all. The case is on appeal before the Ninth Circuit.

"That win was about eight years in the making," Loseman said of Judge Calabretta's decision. A loss for Edward Jones would have had huge ramifications for the financial industry, she said.

The case presented "a new theory of class-based liability that really could have plagued the industry as it turned toward more advisory services being offered than brokerage services for retail clients."

The practice group's attorneys are busy preparing for an upcoming May trial in a case accusing Energy Transfer of misleading investors about risks linked to a pair of multibillion-dollar pipeline projects.

Gibson Dunn was brought onto the case two years after it was filed, and securities litigation group co-chair Brian Lutz said they were able to get the claims against Energy Transfer substantially narrowed before trial.

Securities class action cases rarely go to trial, Lutz pointed out.

"We have a client who is very interested in litigating the case to its conclusion, and we are grateful to be trusted to partner with them on that path," he said.

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Securities Litigation

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