Appellate Group Of The Year: Gibson Dunn

By **Andrew Strickler**

Law360, New York (January 16, 2018, 3:42 PM EST) -- Employing a "beginning to end" approach to appellate work, the Gibson Dunn & Crutcher LLP team won a major U.S. Supreme Court decision in recent months limiting the doctrine of general personal jurisdiction and secured a historic False Claims Act judgment at the Fifth Circuit, earning the firm a spot on Law360's 2017 Appellate Groups of the Year.

The signs are also positive for the firm's appellate practice in an ongoing high court challenge to a federal ban on states legalizing sports betting.

Those matters and other recent wins were borne, in part, from a roster of some 20 partners dedicated to appellate work — an unusually deep bench even for major appellate practices — and a willingness to focus early on appeal avenues even before a dispute gets to a trial court, Mark Perry, co-chair of the practice, said.

"It's not just about taking over for an appeal," Perry said. "We work as closely as we can with trial teams, with government regulators, and to really have a broad base approach that will later help the client" if or when a case heads to an appellate court.

In a headline-making victory last spring, Gibson Dunn secured an 8-1 vote in the U.S. Supreme Court for BNSF Railway. The majority agreed that the Montana Supreme Court incorrectly concluded that individuals had the right to sue in the state even though they have no connection to it under both the Federal Employers Liability Act and state law.

But the high court said Section 56 of FELA does not address personal jurisdiction over railroads, and that a state court had to follow the Supreme Court's 2014 ruling in *Daimler AG v. Bauman.* That decision found the due process clause forbids a state court from exercising general personal jurisdiction over a defendant that is not at home in the forum state.

Gibson appellate partner Andrew Tulumello handled the oral arguments for BNSF — his first appearance in the highest U.S. court.

"Our client was getting sued in FELA cases from all over the country in Montana, and they asked us if we could develop a strategy for getting these cases into their proper jurisdictions," he said. "We started looking early at Daimler, started brainstorming jurisdictional arguments, and as Gibson has demonstrated time and time again, if you invest in a well-crafted, long-term strategy, the payoff can be enormous."

In another major high court case, a Gibson team defended government contractor Leidos Inc. from a proposed class action alleging fraud at predecessor SAIC Inc. in a slow disclosure of a criminal probe stemming from the scandal-plagued CityTime payroll project.

With groups like the U.S. Chamber of Commerce and the Securities Industry and Financial Markets Association acutely interested in the central question of whether private liability for "pure omission" claims can be imposed under securities laws, shareholders made a late decision to opt for mediation and a $6.5 million settlement rather than head to court.

Notably, the plaintiffs did not seek an attorney fee award as part of the settlement.

"Obviously we think the settlement was a great result for our client, even if I was disappointed we didn't have the argument," Tulumello said. "The terms were extremely favorable."

Representing Trinity Industries Inc. in a major False Claims Act case, the Gibson appellate team in November also secured the court's denial for reconsideration on its decision to overturn a $663 million judgment against the company for allegedly making defective highway guardrails.

Gibson Dunn also landed two notable recent appellate wins for ride-hail giant Uber.

In May, the U.S. Court of Appeals for the Eleventh Circuit enforced Uber's arbitration agreements to defeat a class action alleging driver misclassification. That came after the Ninth Circuit in late 2016 overturned a district court decision that had invalidated hundreds of thousands of Uber's arbitration agreements and allowed a number of class and putative class actions to proceed.

In an ongoing case, a Gibson Dunn team led the charge to the U.S. Supreme Court to defend New Jersey's law legalizing sports betting, a dispute delving into federalism and the constitutionality of a federal law prohibiting states from authorizing sports wagering. While no decision has been made, several justices appeared open to overturning the Professional and Amateur Sports Protection Act.

"I truly believe this is the best appellate practice in America, and that's why I'm here," Nicole Saharsky, co-leader of the practice, said. Saharsky was part of the team representing New Jersey, and she **joined** the firm in November after a decade in the Office of the Solicitor General, where she appeared for the government 29 times before the U.S. Supreme Court.

"The practice is a whole constellation, a significant number of outstanding appellate partners, and in a firm where every practice is top notch," she said.

--Editing by Alyssa Miller.