

## Privacy Group of the Year: Gibson Dunn

By **Ben Kochman**

*Law360, New York (January 30, 2018, 4:35 PM EST)* -- The privacy team at Gibson Dunn & Crutcher LLP swatted away a massive data breach suit against a government background check contractor while helping longtime clients Uber and Facebook fend off data security disputes, remaining a go-to firm for tech giants in behind-the-scenes cybersecurity matters and landing it a spot on Law360's Practice Groups of the Year.

A deep bench of former cybercrime prosecutors — including former CIA General Counsel Caroline Krass, who joined the firm in January 2017 — does much of its work out of the public eye, including recent confidential matters after news erupted of potential Russian meddling in the U.S. presidential election.

In court, Gibson Dunn attorneys scored big for the U.S. Office of Personnel Management and contractor KeyPoint Government Solutions in September, when a D.C. federal judge nixed multidistrict litigation brought in the wake of a data breach that compromised personal data belonging to 21.5 million current, former and prospective government employees, ruling that the theft of data alone was not enough to establish standing.

Members of the firm's privacy, cybersecurity and consumer protection practice also convinced a California federal judge in November to toss a suit against ride-hailing app Uber for its 2014 data breach on similar grounds, guided social network MySpace through government inquiries into 360 million user records offered for sale in a hacker forum, and helped Facebook avoid paying consumer cash damages in a settlement resolving claims over the firm's data collection on private messages.

Companies handling troves of consumer data turn to Gibson Dunn for guidance because of its depth of experience and flexibility in crafting legal strategies tailored to each business, said group practice head Alex Southwell.

"One of the hallmarks of the group is that we approach problems really creatively," Southwell said. "It's not a cookie-cutter approach. We think about things with the client's perspective to come up with business-oriented solutions."

The team's eclectic array of cybersecurity cases includes its representation of Toyota in a suit claiming



the carmaker violated consumer protection laws because its vehicles' electronic systems are vulnerable to hacking. Gibson Dunn attorneys went before the Ninth Circuit in November to urge the panel to affirm a district court's dismissal of the case in November 2016 on the grounds that the speculative risk of being hacked in the future couldn't be considered an "injury in fact."

"These cases are fascinating because the court challenges marry up issues concerning cutting-edge technology but also bedrock constitutional doctrine like Article III standing," said Mike Wong, a Gibson Dunn partner leading Uber's defense of litigation over its 2014 data breach. "For someone like me, who fancies himself a little bit of a constitutional geek and a bit of a tech geek, it's pretty interesting."

The group added to its already deep roster of high-ranking former prosecutors in 2017 by nabbing Krass, who has already completed a cybersecurity government compliance review for a major U.S. energy company, as well as Ben Wagner, the Obama-appointed former U.S. attorney in the Eastern District in California from November 2009 until April 2016.

Gibson Dunn in October also added Kristin Linsley, a former Munger Tolles & Olson LLP partner whose litigation practice includes representing and counseling clients on internet privacy and data protection matters. Linsley is helping lead the firm's response, on behalf of travel company Expedia, to a wave of state and local laws across the country seeking to regulate short-term rental websites such as Expedia's HomeAway.com and VRBO.com.

The Expedia cases involve a wide range of complex issues, from consumer privacy under the Stored Communications Act to the protections of the Fourth Amendment for electronic communications and state preemption of local laws.

Southwell said one of the team's greatest accomplishments in the past year came on the amicus front, in which the firm helped convince the U.S. Department of Justice to restrict the use of secrecy orders preventing internet providers from telling customers when law enforcement has issued a warrant for their user data.

Gibson Dunn represented a group of 18 constitutional and criminal procedure law professors who filed an amicus brief in support of Microsoft's constitutional challenge to the gag orders on the grounds that they violated the Electronic Communication Privacy Act. The case was resolved in October, after the Justice Department agreed to a policy change restricting the use of such orders, marking a major shift in how authorities conduct digital searches and seizures.

"To participate in a changing of the regime there is a significant role for us, and one that I'm proud to be a part of," Southwell said.

--Additional reporting by Allison Grande, Kat Sieniuc and Christopher Crosby. Editing by Catherine Sum.