

Securities Group Of The Year: Gibson Dunn

By **Chuck Stanley**

Law360, Washington (February 8, 2018, 5:05 PM EST) -- In the past year, Gibson Dunn & Crutcher LLP's securities practice won dismissal of a high-profile SEC suit seeking a \$200 million disgorgement from a distressed debt fund manager and defended Yahoo board members in a shareholder class derivative action related to the firing of the company's chief operating officer, earning the firm Practice Group of the Year honors for 2017.

In September, Gibson Dunn won a dismissal of civil fraud charges against so-called diva of distressed debt Lynn Tilton after a three-week trial, in which an administrative law judge found the Securities and Exchange Commission had failed to prove any of its factual allegations against the fund manager.

Gibson Dunn was brought in six weeks prior to trial in that case, which had already been ongoing for years. Tilton's previous counsel had brought a constitutional challenge to keep charges filed in 2015 from going before the ALJ, but when a Second Circuit appeals panel rejected the argument, Tilton brought in Gibson Dunn to defend her at trial.

The SEC was seeking a \$200 million disgorgement from Tilton, the largest such payment ever sought from an individual in an SEC administrative proceeding.

Gibson Dunn's trial team debunked the fraud charges at trial, arguing Tilton had been denied due process because of a shoddy investigation by the SEC.

Rob Serio, who co-chairs Gibson Dunn's securities litigation practice told Law360 that clients facing long odds frequently turn to the firm because of its comfort in the courtroom.

In Tilton's case, he said, the fund manager was facing a scenario where in-house ALJs side with the SEC roughly 90 percent of the time.

"We are trial lawyers and we're not afraid to take cases to trial and to judgment," Serio said. "Of course we prefer to win matters on motions, but we do have a strong trial bench."

Five members of Yahoo's board of directors, including the company's CEO Marissa Mayer, also turned to



Gibson Dunn when they were faced with a shareholder suit in the Delaware Chancery Court, related to the firing of the firm's former Chief Operating Officer Henrique de Castro, who received a \$57.96 million severance package after just 16 months on the job.

The board members were accused individually of breaching the company's by-laws by failing to get full board approval for the termination, firing de Castro without cause and making misleading disclosures related to the severance package.

Once again, Gibson Dunn was brought in after key events did not go in the board members' favor, according to Brian Lutz, who also co-chairs the firm's securities litigation practice.

"Gibson Dunn was brought on later in the case, and we managed to work out a very favorable resolution for the directors of Yahoo in that case," Lutz said.

Gibson Dunn devised a settlement framework, under which the firm's board member clients paid nothing, and Yahoo agreed to pay \$2.3 million in attorney's fees and make certain improvements to its corporate governance.

"I think one of the reasons clients turn to Gibson Dunn is we have exceptional lawyers throughout the country to handle securities cases, and they're confident that we're going to dive in and dig into the facts and put on the best defense possible," Lutz said.

In addition to the expertise Gibson Dunn attorneys bring to securities litigation, Lutz said, the firm also backs up its clients with a strong appellate practice to safeguard favorable outcomes and challenge adverse results.

"We have the added benefit of the nation's best appellate practice," Lutz said. "We can take a case to trial and we can take it to the Supreme Court, and we're equally comfortable with either of those in a way I think our competitors can't match."

Gibson Dunn's global reach also allows the firm to provide counsel to foreign-based clients facing litigation in the United States, Serio said.

In March, Gibson Dunn helped ax most of the claims in a putative securities fraud class action against Brazilian mining company Vale SA in New York federal court, related to a catastrophic dam collapse in Brazil.

"I really think of it as top to bottom in terms of the type of litigation solution we offer, from the trial level to appellate level litigation, and also in terms of the breadth we have, where we have top lawyers in strategic international markets like London, Paris and Sao Paulo," Lutz said.

--Editing by Alyssa Miller.