

White Collar Group Of The Year: Gibson Dunn

By **Sindhu Sundar**

Law360 (February 7, 2018, 12:28 PM EST) -- Gibson Dunn & Crutcher LLP helped contractor KeyPoint Government Solutions exit multidistrict litigation over a data breach that affected more than 20 million government employees and represented Och-Ziff Capital Management Group LLC in a \$413 million deal with regulators, landing on Law360's list of White Collar Practice Groups of the Year.

The MDL, which was consolidated in federal court in D.C., had stemmed from the U.S. Office of Personnel Management's 2015 disclosure that its employees' personal information, including Social Security numbers, had been exposed in a breach reportedly by Chinese hackers.

Gibson Dunn worked closely with the Justice Department, which represented the office, to get the cases consolidated in D.C. It was a mutually beneficial venue, said Joe Warin, co-chair of the firm's white collar defense and investigations practice. That's not only because the office's headquarters are there, but it's also because judges in D.C. more frequently see cases involving governmental litigation that involve concepts like sovereign and governmental immunity and issues of standing.

The Office of Personnel Management and Gibson Dunn argued there was no financial harm to the workers, since the hack appeared to be more related to espionage than identity theft.

In September, U.S. District Judge Amy Berman Jackson dismissed the cases and appeared to side with the defense arguments. Although she called the workers' allegations about the breach "troubling," she ruled that the exposure of sensitive personal information, when there was no indication that the information was being or could be misused, was not enough to give the plaintiffs standing under the Privacy Act.

"It's easy to have the banner headlines of a data breach case overwhelm the law and the facts," Warin said. "Twenty-one million records, intrusion occurs," and everyone thinks, 'Well that's my personal



information, that could be my credit card and my medical records, etc.' Our goal was to strategically work through the legal issues and dissect the factual issues and so that we could tell the story to the judge."

Gibson Dunn's white collar and investigations practice has more than 200 lawyers, including more than 50 former government attorneys, according to Warin. The firm's white collar attorneys have a strong presence in its D.C., New York, San Francisco and Denver offices, among others.

"The investigations, white collar and compliance practice group is a cornerstone, foundational practice group for Gibson Dunn," Warin said.

Gibson Dunn had previously represented KeyPoint in matters including a False Claims Act case out of its Denver office, but the manner in which Warin clinched the representation of the government contractor in the data breach case was somewhat unconventional.

He remembers driving with his family on a July 4 eve on a vacation, when he took a phone call from KeyPoint's CEO and leaders of a private equity company that invests in the contractor.

While his wife drove and several children sat in the back, he spoke with the executives for one and a half hours, answering their questions about how Gibson Dunn might approach the cases that were coming in as a result of the breach.

"I essentially had to do a beauty contest presentation out of a car, which is not the most elegant way of doing it," Warin said. "We were fortunate that they decided that our perspective was right for them. Clients don't really want to hear about legal theories. What they want to know is: Can they win?"

The case is currently on appeal before the Federal Circuit.

In the fall of 2016, Gibson Dunn also ushered hedge fund Och-Ziff Capital Management Group LLC through a \$413 million settlement with the U.S. Securities and Exchange Commission to resolve charges that it violated the Foreign Corrupt Practices Act by using intermediaries and business partners to pay bribes to high-level government officials in Africa.

One of the things that was distinctive about that settlement was that the parent company itself entered into the agreement without admitting or denying the charges, though its African Och-Ziff subsidiary did plead guilty to bribery. It was also the first FCPA case against a hedge fund.

"Och Ziff has always had a strong reputation for integrity and trustworthiness, and [it's] considered a blue chip in the hedge fund investment world," said Joel Cohen, a Gibson Dunn white collar partner and practice group co-chair who represented it in the case. "But acting as private equity investors in Africa was unusual for them."

Like most such cases involving government investigations, the task involved reviewing millions of

documents in connection with the firm's internal investigation and in fielding requests from the SEC and the Justice Department. Over the five years of the case, some 75 Gibson Dunn attorneys worked on it, a significant assignment, according to the firm. The work also involved conducting interviews in countries in Saharan and sub-Saharan Africa, where the firm doesn't have offices.

"We tend to have a group of lawyers in the U.S. and Europe that go there," Cohen said.

--Additional reporting by Allison Grande, Carmen Germaine and Jimmy Hoover. Editing by Jeremy Barker.

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