

## D.C. LITIGATION DEPARTMENTS OF THE YEAR

A SPECIAL REPORT

### GIBSON, DUNN & CRUTCHER

#### GENERAL LITIGATION WINNER

**GIBSON, DUNN & CRUTCHER'S WINNING** streak in 2017 was marked by cases that may prove instructive for future litigation, including those that took down an Obama-era regulation, enabled a controversial \$4 billion oil pipeline project to move forward and squashed class actions directed at wide-reaching cyberattacks and claims of mislabeled snack food.

No crisis facing big business seemed too much for the Washington, D.C., powerhouse, which last year became the go-to firm for handling high-stakes regulatory cases.

"We have been enormously fortunate to have unusual and challenging matters that required more creative and non-routine approaches to advocacy," said Joe Warin, co-chair of the firm's D.C. office litigation department.

Fighting federal regulations, for example, is typically not a winning proposition. He estimated that more than 90 percent of the time federal agency regulations are upheld. At the U.S. Court of Appeals for the Fifth Circuit, D.C. partner Eugene Scalia is credited with taking down the Department of Labor's fiduciary rule, which essentially requires brokers to act in the best interest of their clients. The rule was voided by the appeals court in March.

In several of the firm's major cases, the attorneys were able to halt scattered and widespread class action lawsuits. In a case before the U.S. District Court for the Northern District of California, partner



JOE WARIN

Andrew Tulumello won a class action against PepsiCo Inc. and its affiliates over claims of false and misleading labeling. Tulumello also successfully argued before the U.S. Supreme Court in a BNSF Railway case that reinforced constitutional limits on personal jurisdiction. Gibson Dunn won the PepsiCo and BNSF cases in June 2017.

"We took loss after loss in the Montana courts, but ultimately came away—after several years of litigation—with a definitive and enduring 8-1 win that ended truly abusive forum-shopping against our client on a nationwide basis," Tulumello said of the BNSF win.

The firm defeated other class actions in other federal courts, as well, including overlapping lawsuits arising from a 2015

cyberattack on the Office of Personnel Management. In March 2017, partner Miguel Estrada also successfully fought an attempt by Native American tribes to halt the construction of the Dakota Access oil pipeline project in the U.S. Court of Appeals for the D.C. Circuit.

Warin said many of these cases will be instructive in the future, particularly with emerging cyberspace cases and others involving the regulatory approval of building pipelines.

"As you can imagine, you can have a death by thousand cuts if you are in multiple courts. You have to hit it right on each one," Warin said. "As opposed to have diffusion of cases across the country and you essentially orchestrate a common strategy through all those." —ERIN MULVANEY

#### firm facts

Name of firm: Gibson, Dunn & Crutcher  
Founded: Los Angeles  
Total number of attorneys: 1,370  
Litigators as percentage of firm: 59 percent  
Litigators as percentage in D.C.: 83 percent  
Litigation partners firmwide: 204  
Litigation associates firmwide: 575  
D.C. litigation partners: 50  
D.C. litigation associates: 126

#### keys to success

- It is imperative that the team has a granular understanding of facts and forges a compelling narrative based on factual distillation.
- At the outset of an engagement, we trigger deep dive strategic sessions and arrive at a core strategic plan and themes which are reinforced in every step of the litigation.
- We daily embrace vigorous advocacy making every viable legal theory consistent with our core strategic themes at all times never personalizing the litigation.

—F. Joseph Warin