

Class Action Group Of The Year: Gibson Dunn

By **Sam Reisman**

Law360 (January 22, 2019, 3:31 PM EST) -- Gibson Dunn & Crutcher LLP's 215-attorney class action team secured its place as a leader in "gig economy" lawsuits, successfully arguing on behalf of Uber and others for the decertification of large classes of independent contractors, among other high-profile victories that earned it a place among Law360's 2018 Class Action Groups of the Year.

In one of the group's most notable victories from the year, Gibson Dunn prevailed in the Ninth Circuit in *O'Connor v. Uber Technologies Inc.*, when the appellate court in September decertified a class of hundreds of thousands of drivers, reversing the district court's finding that the company's arbitration agreement was valid and enforceable.

Theane Evangelis, co-chair of the group, said it was a significant win not only for Gibson Dunn's client, but a bellwether for the gig economy at large.

"I think the O'Connor decision from the Ninth Circuit makes clear that you can't certify a class that includes thousands of people who have agreed to class waivers, and certification there would be inappropriate," she said. "So it was gratifying to get that ruling from the Ninth Circuit, and I think the opinion provides helpful guidance to everyone really about what to do in that situation."

The firm had previously notched a victory from a California federal judge who ruled in February after a six-day trial that a onetime GrubHub Inc. delivery driver was an independent contractor, rather than a company employee.

In a number of standout matters from the last year, the firm's class action team stepped into representing a client after it had weathered adverse rulings at various stages and were tasked with developing and applying a new strategy to turn things around.

"We really go back to first principles and look at everything in the case and bring fresh thinking and fresh perspective to what's already happened," Evangelis said. "And we've been successful doing that."

In one remarkable turnaround, on behalf of client J.B. Hunt Transport, Gibson Dunn came on as counsel after a five-year stay on a matter that had been pending for more than a decade. In August, the firm



secured decertification of a class of roughly 11,000 truck drivers mere weeks before a trial was due to begin.

"Not only had a class already been certified, but an earlier motion to decertify had already been denied," recalled Rachel Brass, a litigation partner in the firm's San Francisco office. "So we had the challenge of jumping in, reorienting the court, reframing the issue to make clear why the class could not be litigated on a classwide basis."

Brass said Gibson Dunn had to redo all discovery completed prior to the five-year stay in a matter of months. While the class had been certified on the assumption that it involved a single pay plan, the firm developed a factual record showing that there were actually more than 190 different pay plans, prompting the court ultimately to decertify the class, she said. The parties came to a \$15 million settlement about two months later.

In another rescue operation, the firm was brought in to defend Yahoo Inc. after the company was stuck with a Telephone Consumer Protection Act action brought by a certified class of Sprint customers who had received a welcome message from the tech giant in the course of a single month.

With discovery closed, and the judge rejecting a bid to reopen it, the firm set about analyzing data previously received from the phone carrier and cross-referencing it against Yahoo accounts, finding that about one-fourth of recipients may have been Yahoo users.

Because the court had ruled that Yahoo users would have consented to receiving the allegedly unwanted messages, Gibson Dunn was able to show a manageability issue that resulted in the decertification of the class in February. The order to decertify has since been appealed to the Seventh Circuit.

Practice group Co-chair Christopher Chorba said the group, which is represented in offices across the country and the globe, is growing both in headcount and in geographic reach. He attributes this in part to plaintiffs increasingly bringing claims in foreign jurisdictions and to the work's growing complexity, as clients become more confident in their ability to take a matter all the way to trial and make their case before a jury.

"That's changed, I think, dramatically in the last decade," Chorba said. "[Clients] view these as an opportunity for them to really exonerate themselves and so class certification is no longer the pivot point whereby if you lose it, you have to settle it."

--Editing by Nicole Bleier.