

Environmental Group Of The Year: Gibson Dunn

By **Andrew Westney**

Law360 (January 28, 2019, 2:55 PM EST) -- Gibson Dunn & Crutcher LLP's attorneys scored several high-profile victories in environmental litigation in 2018, including defeating a suit in Florida claiming International Paper Co. was responsible for flooding that damaged scores of homes, securing the firm a place among Law360's Environmental Groups of the Year.

The firm's environmental litigation and mass tort group works out of five firm offices in D.C., Los Angeles, San Francisco, Orange County and New York, with about 18 partners and around 40 associates working on a variety of suits for corporate clients and advising on transactional matters.

In February 2018, a Gibson Dunn team led by partner Daniel Nelson helped International Paper beat back a proposed class action from more than 300 property owners in neighborhoods around Cantonment, Florida, alleging the flooding of their homes was caused or worsened by the collapse of an abandoned dam on the property of a company-owned paper mill that the plaintiffs claimed was not properly maintained or shut down.

While in similar cases firms may be able to take a two-pronged approach — asserting both that their client isn't liable and that there wasn't really an effect on the plaintiffs — "here there was undeniable damage," Nelson said.

"That's a challenge, when you try a case where people are undeniably impacted," Nelson said. "We felt very badly for them, but we also felt strongly that the flooding wasn't something the company had done."

International Paper avoided potentially tens of millions of dollars' worth of liability for property damage when U.S. District Judge M. Casey Rodgers granted International Paper's motion for a judgment on the homeowners' claims for trespass, nuisance and strict liability, with a jury then finding for International Paper on the remaining negligence claim.



Nelson, a 25-year veteran of Gibson Dunn and co-chair of the environmental litigation and mass tort practice group for two years, said the firm has a wide range of expertise on federal environmental laws, from the Clean Air Act to the Comprehensive Environmental Response, Compensation and Liability Act.

"I'm pretty confident we're the only law firm that has two former general counsels of the [U.S. Environmental Protection Agency] among our practicing members," he added, referring to D.C.-based partners Ray Ludwiszewski and Avi Garbow.

The firm is also "a front-runner in the multinational environment and mass tort space with the work we've done over the years for Chevron," and has extensive experience litigating in California, Nelson said.

Both those factors came into play in the firm's June win for Chevron against a suit brought by Oakland and San Francisco seeking to hold a group of global oil giants liable for climate change-related infrastructure damage.

U.S. District Judge William H. Alsup ruled that Chevron and the other companies' promotion of fossil fuels despite their knowledge of the climate impacts didn't mean courts could hold them responsible for infrastructure costs necessitated by sea-level rise under public nuisance law.

A key feature of the trial was an innovative "tutorial" hearing in March on the science of climate change that Judge Alsup drew on frequently in his decision.

"The tutorial really was an opportunity to present the issue of climate change in a way that it hadn't been presented before," said partner Peter E. Seley, the other co-chair of the group. "The tutorial was tremendously helpful in laying out the basics of the issue of climate change, and how the history of knowledge of climate developed over time."

Ultimately the judge ruled that global warming should be tackled by lawmakers, not the courts, a decision that was cited in July by a New York federal judge in tossing New York City's suit against several oil companies, in which Gibson Dunn again represented Chevron.

The firm earned another significant favorable ruling in California when a state appeals court in October issued a last-minute stay of a scheduled trial to determine what penalties Starbucks Corp. and other coffee roasters owe for violating cancer-warning statute Proposition 65, after the roasters asked to wait until the state agency enacting the proposition finalizes a proposed rule saying coffee needs no cancer warnings.

The coffee companies had already lost two trials in the 8-year-old case brought by the nonprofit Center for Education and Research on Toxics, or CERT, leading to a ruling saying they violated Proposition 65, and they were scheduled to head to trial to determine what, if any, civil penalties they must pay for that violation. With millions of coffee sales at issue in the case, civil penalties stood to climb into the billions of dollars.

But Gibson Dunn stepped in last April, well into the litigation, and turned the case around, as the revised regulation is expected to resolve the case in favor of the coffee companies, Nelson said.

"It's not uncommon for us to be brought in when the industry was in a very difficult circumstance, and our team put together a strategy to get the matter shut down before it went into a potentially disastrous remedy phase," he said.

The case is "a good example of bringing the right expertise to bear in the right jurisdiction to handle an issue that could've had far-reaching implications," Seley said.

--Additional reporting by Nathan Hale, Keith Goldberg and Daniel Siegal. Editing by Marygrace Murphy.