

## Securities Group Of The Year: Gibson Dunn

By John Petrick

*Law360 (January 16, 2019, 3:45 PM EST)* -- Securing a landmark U.S. Supreme Court decision that opened up potential appointments clause challenges to administrative law judges who decide enforcement cases for the U.S. Securities and Exchange Commission is one of the victories that earned Gibson Dunn & Crutcher LLP a spot among Law360's Securities Practice Groups of the Year.

Lucia v. the SEC took on constitutional proportions, raising the question of whether ALJs are actually "officers of the United States," who the appointments clause requires be appointed by the president, a court of law or head of a department. Previously, the SEC selected its ALJs through an in-house hiring process.

Gibson Dunn argued successfully before the court in April that, based on prior case law known as Freytag, SEC ALJs are in fact officers in that they preside over adversarial enforcement proceedings.

"First of all, it's important to the individual defendant, who we represented in that he was tried in front of an unconstitutionally appointed ALJ, lost his case and was subject to a lifetime ban from the securities industry," said securities group Co-chair Robert Serio. "By virtue of this challenge, that decision was vacated. He is not subject to the ban."

More broadly, he noted, the 7-2 decision found that the SEC improperly delegated the appointment of its ALJs to its staff when the Constitution requires that such officers be appointed either by the president or the department head. The June decision not only impacts how the SEC picks its judges but could reach across other agencies using ALJs, he said.

Gibson Dunn scored another important win when the Ninth Circuit in February affirmed the dismissal of a federal securities class action against its client, Arrowhead Pharmaceuticals, and some of its directors.

The case unsuccessfully alleged that Arrowhead misled investors as to the success of human trials for its flagship hepatitis B drug by saying the company had seen the same positive outcomes in both humans and chimpanzees.

The class action claimed the alleged misstatement caused a 44 percent drop in Arrowhead stock price,



upon publication of the human trial results. Both the district and appellate court found that the plaintiffs did not properly plead that the statements were misleading or made to deliberately deceive anyone, as Arrowhead had made the differences between its human trials and its primate trials public.

A second set of Arrowhead cases in which investors alleged that the company made deliberately misleading statements about problems the FDA had with an ongoing animal toxicology study were also dismissed in December 2017, with Gibson Dunn arguing that Arrowhead never hid anything about the issue and that it did not affect the accuracy and integrity of the study overall. The plaintiffs in those cases have filed an appeal.

Gibson Dunn also scored a major trial victory in a dissenters' rights action on behalf of China Housing & Land Development Inc. A hedge fund and one of China Housing's biggest stockholders filed suit seeking the fair value of its China Housing shares after a going-private action, according to the firm.

After six days of trial, the court found their fair value to be \$3.70, while the dissenter argued the fair value was up to \$37.90. The actual dollar difference between the two positions was about \$21 million, according to the firm.

"We had an important trial victory here. It showed one of Gibson Dunn's strengths — our ability to try cases to successful judgment. It was certainly meaningful to our clients, who were spared what would have been an exorbitant amount of money — 10 times the value of the dissenter's shares — had we not prevailed," Serio said.

The group this year was bolstered not only by in-court wins but an in-office win with the July addition of Michael Celio as a partner in the Palo Alto office. After 17 years at Keker Van Nest & Peters, where he served as a partner in its San Francisco office, the Harvard Law School graduate will continue to focus on securities litigation and white collar defense.

"We try to bring a deep bench of securities experts, trial lawyers, appellate specialists, former government officials, and we work collaboratively with our clients to assess the unique facts and issues of each case, develop strategies and execute those strategies," Serio said.

Gibson Dunn, with more than 1,300 lawyers in 20 offices in major cities in the U.S., Europe, the Middle East, Asia and South America, has established an internationally networked group of qualified U.S., English, French, Spanish and German lawyers representing clients with international business interests, according to the firm's website.

--Editing by Nicole Bleier.