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NINTH CIRCUIT JUDGES CALL FOR EN BANC REVIEW OF THE FEDERAL TRADE COMMISSION'S AUTHORITY TO OBTAIN MONETARY RELIEF

To Our Clients and Friends:

With increasing regularity, the Federal Trade Commission (“FTC”) is seeking and obtaining large monetary remedies as “equitable monetary relief” pursuant to Section 13(b) of the FTC Act. Indeed, FTC settlements and judgments exceeding \$100 million, and even \$1 billion, are becoming commonplace.

The Supreme Court, however, has never held that Section 13(b) of the FTC Act empowers the FTC to obtain monetary relief. Although multiple federal circuit courts have held that Section 13(b) provides the agency with this power, several weeks ago two Ninth Circuit judges issued a concurrence in *FTC v. AMG Capital Management, LLC et al.* calling for the full Ninth Circuit to reconsider this issue *en banc* in light of the Supreme Court’s 2017 decision in *Kokesh v. SEC*.

Gibson Dunn partners Sean Royall, Blaine Evanson, and Rich Cunningham, and associate Brandon J. Stoker recently published an article discussing the *AMG Capital Management* concurrence in the Washington Legal Foundation’s *The Legal Pulse* blog. The article describes the concurrence and how it fits into the broader legal landscape around this issue, which is clearly poised for further attention from the federal appellate courts, including the Supreme Court.

Ninth Circuit Judges Call for *En Banc* Review of the Federal Trade Commission’s Authority to Obtain Monetary Relief ([click on link](#))

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Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the authors of this Client Alert, the Gibson Dunn lawyer with whom you usually work, or one of the leaders and members of the firm's Antitrust and Competition or Privacy, Cybersecurity and Consumer Protection practice groups:

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