

Class Action Group Of The Year: Gibson Dunn

By Khorri Atkinson

Law360 (February 4, 2020, 3:14 PM EST) -- Gibson Dunn & Crutcher LLP helped a pair of Korean ramen companies beat a \$500 million antitrust suit and secured a \$20 million settlement for Uber to resolve independent contractor misclassification claims by drivers, landing it among Law360's 2019 Class Action Practice Groups of the Year.

Gibson Dunn's successes can be attributed to the 130-year-old litigation powerhouse firm's "cutting edge" expertise in various class action "issues that cut across different industries," according to Theane Evangelis, co-chair of the firm's class action practice group. The unit has roughly 250 attorneys worldwide.

"We're dealing with novel issues that I'm happy to say we're successfully defending," Evangelis said. "We're seeing cases going to trial. I think that's a huge factor."

Chris Chorba, the practice group's other co-chair, echoed similar sentiments, saying his attorneys' wide breadth of experience in trial and appellate litigation "gives us a leg up."

In a closely watched \$500 million antitrust trial, Gibson Dunn and Squire Patton Boggs LLP attorneys defended Nongshim and Ottogi, a pair of Korean ramen makers, against price-fixing conspiracy claims and in March sealed a jury verdict in their favor when direct and indirect purchasers ultimately dropped their bid for a new trial.

A California federal jury initially cleared the companies in December 2018 after a five-week trial, finding that the instant-noodles buyers had failed to show there was a conspiracy to fix prices. The buyers subsequently surrendered their fight for a new trial and accepted the original judgment.

The Uber misclassification settlement involved nearly 14,000 California and Massachusetts drivers who claimed they are employees, not independent contractors as the company has classified them.

Although the ride-hailing giant had to shell out \$20 million to resolve the matter, the settlement was a major win for Uber because it covered far fewer drivers than it originally would have. Hundreds of thousands of current and former Uber drivers had sought to gain employee status.



The settlement also ended the litigation after more than six years in California federal court.

Under the deal, which won final approval last August, drivers not bounded by arbitration would each get an average payment of \$2,206 after fees and other costs are deducted. The agreement did not change the drivers' status as independent contractors.

The California class was subsequently upended after the Ninth Circuit ruled unanimously in September 2018 that Uber's arbitration agreements with class waivers were valid and enforceable. That decision, a reversal of a trial court judge's holding, was a blow to the plaintiffs who now have to pursue their claims against Uber in individual arbitrations.

"The combination of trial and appellate skills that we bring to the table have really distinguished our practice and our ability to win cases," Evangelis said. "We have been on the cutting edge on these issues."

She reasoned that the firm has been paying closer attention to gig-economy cases as a growing number of industries are grappling over the proper classification of workers.

"The law is continuing to change, [as are] the procedures about where these issues are going to be decided — [whether they would] be decided by courts or arbitrators," Evangelis said. "All of these aspects of these cases are very complex and challenging."

In another appellate case, the D.C. Circuit last summer sided with four of the country's largest railroads represented by Gibson Dunn and other law firms in long-running multidistrict litigation accusing them of conspiring to fix fuel surcharges.

A three-judge panel affirmed a lower court's decision not to grant class certification to the rail shippers, which include Carter Distributing Co., Dust Pro Inc. and Dakota Granite Co. The panel concluded that while the shippers invoked "documentary evidence that the defendants enforced fuel surcharges 'uniformly and with few exceptions,'" they did not show common injuries among the proposed class caused by the alleged conspiracy.

A big part of Gibson Dunn's success last year is that the firm deployed appellate attorneys to work with trial litigators in the early stage of cases playing out in lower courts, Chorba explained. The firm is "completely integrated," he added, and the new year would be no different.

"Our plan for 2020 is really the same," he added. "When we're fortunate to be entrusted as we have been with the most significant matters, [we have to] keep doing the absolute best that we possibly can and that is not just one person doing it. It's working as a team."

--Editing by Bruce Goldman.