

Appellate Group Of The Year: Gibson Dunn

By Christopher Cole

Law360 (January 28, 2022, 2:03 PM EST) -- Gibson Dunn & Crutcher LLP came out on top in a long-running tug-of-war over media ownership rules that culminated in a U.S. Supreme Court case, scoring a unanimous decision that helped land the firm among Law360's 2021 Appellate Groups of the Year.

The firm also successfully led the Roman Catholic Diocese of Brooklyn's legal challenge to then-New York Gov. Andrew Cuomo's pandemic restrictions on in-person church attendance in COVID-19 "hot spots" and persuaded a California appeals court to uphold Hewlett-Packard Co.'s \$3 billion verdict in a contract battle with Oracle.

Mark A. Perry, co-chair of the firm's appellate and constitutional law practice group, told Law360 it would be a "challenge" to pick out just a few of Gibson Dunn's biggest achievements in the last year. While Supreme Court cases get you "lots of attention," he said, "the bread-and-butter work is in the courts of appeals, state and federal."

In the media ownership case, partner Helgi Walker represented the National Association of Broadcasters and served as lead counsel for a broadcast and newspaper industry group to successfully argue that the Federal Communications Commission could eliminate what the industry claims are outdated ownership restrictions. Clients included News Corp., Fox Corp. and Sinclair Broadcast Group.

Perry said the FCC media case — which involved a tangle of litigation over a roughly 20-year span, with the advocacy group Prometheus Radio Project fighting to keep ownership restrictions in place — demonstrated Gibson Dunn's ability to commit resources over a long period.

"It is kind of nice to have the Supreme Court getting the last word," he said. "One would think litigation should not take that long. ... Sometimes it does. I do think it's a good example of perseverance, if you will, and following through on having a strategy that can carry through the long haul and ultimately get to the Supreme Court — we get a 9-0 decision on a position we have been advocating."

"Sometimes you get a quick victory. Sometimes they do take years and years [of] grinding litigation," he added.

The case brought by the Roman Catholic Diocese ended with another marquee decision as the Supreme Court issued a per curiam decision holding that the Diocese "clearly established [its] entitlement to relief



pending appellate review" and that its First Amendment free exercise claim, which remained pending in the lower courts, was "likely to prevail" on the merits.

The case was the first in which Justice Amy Coney Barrett participated, and it overturned prior precedent. The opinion cautioned that "even in a pandemic, the Constitution cannot be put away and forgotten."

Earlier in the year, Gibson Dunn notched a big-dollar win when the California Court of Appeal for the Sixth Appellate District affirmed a more than \$3 billion verdict in Hewlett-Packard's favor in its protracted contract dispute with Oracle Corp.

The verdict was, according to the firm, one of the largest single-plaintiff verdicts in U.S. history, capping 10 years of litigation following Oracle's decision in March 2011 to cease offering new versions of its software products to customers running HP's high-end Itanium servers.

Perry cited that win, along with a defense victory on behalf of EMD Serono Inc. and Pfizer Inc. in a patent infringement suit brought by Biogen MA, as cases the firm successfully tried in the trial court, "and then our appellate teams came in and sustained those victories on appeal."

"And that's a significant part of our practice — the interplay between the trial practice and the appellate practice," he said. "And, you know, we love winning cases. And we love even more holding those victories on appeal, particularly in the face of well-financed and well-funded adversaries."

Gibson Dunn also faced unusual hurdles as a nationwide appellate practice during the pandemic. Allyson N. Ho, co-chair of the firm's appellate and constitutional law practice, told Law360 that the group has met the challenges head-on, adapting to remote client meetings and court hearings.

"We're dispersed across the nation, [and] our clients are dispersed across the nation and across the world," she said. "Going through that experience and learning to use those tools, I think we've come out of that closer to each other, closer to our clients."

--Additional reporting by Kelcee Griffis and Craig Clough. Editing by Gemma Horowitz.