

White Collar Group Of The Year: Gibson Dunn

By **Max Jaeger**

Law360 (January 25, 2022, 2:05 PM EST) -- Gibson Dunn & Crutcher LLP deftly navigated a shifting regulatory landscape to clinch favorable resolutions in SEC probes of Kraft Heinz Co. and Deutsche Bank, and exposed significant prosecutorial missteps defending a \$500 million real estate fraud case, earning the firm a place among Law360's 2021 White Collar Practice Groups of the Year.

Kraft Heinz called in Gibson Dunn the very day the U.S. Securities and Exchange Commission served it with notice of an inquiry into procurement practices, and the firm immediately spearheaded a comprehensive cross-continental internal review of 100 witnesses and millions of documents that earned the company substantial cooperation credit.

"We, like other firms dealing with the SEC, had to contend with an increasingly aggressive SEC orientation across matters," said Stephanie Brooker, who co-chairs the firm's white collar defense and investigations group, to Law360.

With the SEC taking a more aggressive posture under the Biden administration, sealing the deal was critical. Kraft Heinz ultimately agreed in September to pay \$62M on a no-admit, no-deny basis — far less than the nine-digit penalty the government had previously sought.

"Although enforcement work continued unabated through the last administration, certainly some of the messaging and policy goals of the new administration are taking that even to a higher level in terms of aggressiveness," said Brooker, a former D.C. federal prosecutor and enforcement director at the U.S. Department of the Treasury's Financial Crimes Enforcement Network. "And we certainly found that in negotiating with the SEC in the Kraft matter. That would be the key unique challenge that we experienced with the timing of the settlement of Kraft Heinz."

Gibson Dunn's 100-lawyer white collar group boasts more than 75 attorneys with extensive government experience from agencies including the SEC, the U.S. Treasury's Financial Crimes Enforcement Network, the U.S. Department of Justice, the Commodity Futures Trading Commission or the Office of Foreign Assets Control. And the firm achieves spectacular results for clients, in part, because its attorneys can engage with regulators and prosecutors on their level, according to white collar co-chair Joel M. Cohen, a former prosecutor in the Eastern District of New York.



That came to bear when the firm helped Deutsche Bank resolve parallel investigations by the SEC and DOJ on Jan. 8, 2021, arising from alleged Foreign Corrupt Practices Act accounting violations. The firm negotiated for a deferred prosecution agreement and \$123 million payment under one administration — then had to ensure the incoming regime would abide by the previous framework, according to Cohen.

"[To] some extent it was really more a matter of trying to make sure that the framework that was put in place, even before the change in administration, carried forward," he said. "Our having credibility with the regulators helps. Not that they're generally not honorable, but you need to make sure when the new senior team shows up, they stand by the preliminary representations that were made about the way in which a matter might settle — that they don't shift that in a way that hurts the client's interest."

To address the complex challenges white collar work presents, the firm leverages its members' wide-ranging expertise by putting white collar lawyers with broad enforcement expertise like Brooker and Cohen on teams with subject-matter experts from other practice groups. It's a unique arrangement that's proven effective and fulfilling, according to Brooker.

"There may be two or three 'lead partners,' if you will — and then we're matrixing in our partners who have that deep expertise in those agencies," she said. "And it's actually fun, because it allows you to play a role on different teams at the same time. The other thing I found here, which I think is unusual for a large law firm, is, there are no egos. That's another hallmark of how we handle our matters so successfully, because we've got the right expertise, and then it comes without egos."

Gibson Dunn's ability to really go to the mat for a client was no more evident than when it obtained a rare dismissal in October 2020 of an indictment accusing Rochester, New York, developer Bob Morgan in a \$500 million real estate fraud.

Cohen and his colleagues on the case uncovered significant discovery missteps by the U.S. Attorney's Office for the Western District of New York that doomed the prosecutors' first case. And while they were allowed to refile, the missteps appeared so egregious that a judge is considering whether the 114-count indictment should be dismissed permanently.

In yet another coup, the firm convinced New York U.S. District Judge Paul G. Gardephe in September to hand down a reduced time-served sentence for former KIT Digital CEO Kaleil Tuzman, who faced a recommended-guidelines sentence of 19 years.

Tuzman, the lead defendant in one of the Southern District of New York's highest-profile criminal fraud trials, had been arrested in Colombia while on a business trip and spent 10 months in La Picota prison, where he was sexually assaulted and subjected to extortion.

"He was sentenced to no imprisonment [after his extradition to the U.S.], which is an extraordinary outcome, given the charges and how hard fought the case was," Cohen said, noting that Gardephe, "who is by no means a pushover," was emotional and "deeply upset" during the sentencing.

"When we have to go to war, we go to war," Cohen said.

--Additional reporting by Pete Brush. Editing by Andrew Cohen.
