

Rising Star: Gibson Dunn's Brad G. Hubbard

By Kevin Penton

Law360 (June 27, 2023, 1:12 PM EDT) -- Brad Hubbard of Gibson Dunn & Crutcher LLP worked on obtaining a reversal of a \$663 million judgment in a False Claims Act case, earning him a spot among the appellate practitioners under age 40 honored by Law360 as Rising Stars.

HIS MOST SIGNIFICANT CASE:

Hubbard represented Trinity Industries Inc. as the Fifth Circuit in September 2017 overturned the judgment against the highway guardrail manufacturer in a False Claims Act case, determining that the federal government's decision to keep buying the company's allegedly defective products undermined its case.

The Fifth Circuit found that even after hearing all the evidence in the case by Joshua Harman, a whistleblower and sometime Trinity competitor, and becoming aware of the jury's verdict, the government continued to use Trinity's guardrails to line America's highways.

That fact, U.S. Circuit Judge Patrick E. Higginbotham wrote in the panel's decision, undermined Harman's allegation that a change to Trinity's ET-Plus guardrail system that it allegedly kept secret had been material to the Federal Highway Administration's decision to purchase it.

"It was a really great day for us and for our client when the Fifth Circuit agreed that Trinity's former competitor's disagreement with the federal government was not the stuff of fraud," Hubbard said.

ANOTHER NOTABLE CASE HE WORKED ON:

Hubbard represented the company currently known as Meta when the Texas Supreme Court in June 2021 trimmed common law claims brought by a trio of Jane Does who claimed Facebook provided an unrestricted platform for predators to exploit and extort children and recruit them into the sex trade.

2023



Brad G. Hubbard
Gibson Dunn

Age: 36

Home base: Dallas

Position: Partner

Law school: University of Chicago Law School

First job after law school: Law clerk for Eighth Circuit Judge Steven Colloton

The state's high court agreed with the social networking site that claims such as gross negligence, negligent undertaking and products liability should be dismissed under Section 230 of the Communications Decency Act, as the law bars holding internet platforms accountable for the words or actions of users.

Hubbard worked on the case, which had major implications for social networks, as the state's high court at the time had yet to interpret Section 230, he said.

"We brought to bear a strong, textualist argument looking at what the [act's] words meant and how they operated, and managed to persuade a unanimous Texas Supreme Court," he said.

WHAT MOTIVATES HIM:

When a client takes a matter to court for litigation, Hubbard recognizes that ending up at the appellate stage, sitting across a table from an attorney like him, is not what they envision.

He says he's motivated by attempting to make that process as clear and as painless as possible for clients. He tries to present a realistic and clear plan for the litigation at hand, taking into account the needs of his client.

"No client wants to be involved in an appeal," Hubbard said. "Either they lost below and need to vindicate their position, or they won and are now being forced to expend mental time, effort and resources defending their win."

HIS PROUDEST MOMENT:

Hubbard said he's proudest of his work that led to a split Fifth Circuit panel ruling in September that Justice of the Peace Wayne Mack in Montgomery County, Texas, may continue to open his court with prayer from volunteer chaplains, as the practice doesn't favor one religion over another and nobody is forced to attend.

The majority found that Judge Mack's daily routine of having a religious leader who volunteers as part of his Justice Court Chaplaincy Program conduct a short prayer ceremony before calling the court to order was no different from prayers given when a legislative term opens.

Hubbard noted that justices of the peace such as Judge Mack not only conduct what are in effect small claims courts, but can also serve as coroners in local communities and provide support to grieving families who have just lost a loved one.

"To enable him to continue to serve the people ... and to honor those chaplains that go out of their way to volunteer their time was really rewarding," he said.

HOW HIS PRACTICE WILL CHANGE IN 10 YEARS:

Hubbard anticipates that the appellate practice will continue to become further specialized over the next decade.

He notes that in the past, a lawyer who initially tried a case could be expected to continue with the matter as one side or another appealed. Yet in recent years, a distinct bar has developed that specializes in cases before the U.S. Supreme Court or at other federal and state appellate courts.

Hubbard also anticipates that appellate lawyers who are versed in textualism and originalism will be in

greater demand, given the shifts on what appellate courts and judges focus on.

"It's a major shift from what judicial philosophies looked like in the 1950s, 1960s and 1970s," he said. "Being able to read the text and bring to bear the tools related to textualism will be increasingly important."

— *As told to Kevin Penton. Editing by Adam LoBelia.*

Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2023 Rising Stars winners after reviewing more than 1,350 submissions. Attorneys had to be under 40 as of May 1, 2023, to be eligible for this year's award. This interview has been edited and condensed.

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