

## Class Action Group of the Year: Gibson Dunn

By Jess Davis

*Law360, Dallas (January 6, 2016, 1:17 PM ET)* -- Gibson Dunn's class action lawyers in 2015 racked up an impressive string of victories in state and federal courts, securing the dismissal of billions' worth of putative class claims across a wide breadth of industries, earning the firm Class Action Group of the Year status for the sixth time in a row.



The firm swayed the Fifth Circuit to vacate class certification in a \$150 million case alleging Stream Energy Inc. ran a pyramid scheme through its retail electric business, persuaded the D.C. Circuit to affirm dismissal of a \$2 billion class claim against American Insurance Group and others, and wiped out putative class claims alleging that PepsiCo. products caused cancer and that Yamaha Motor Corp. made defective engines.

Its lawyers also helped shepherd Uber Inc. through a series of putative class actions brought by drivers, won the dismissal of a putative class action alleging NASDAQ and others rigged securities markets to favor high-frequency traders, and reduced by billions of dollars the scope of price-fixing claims against egg producers when a district judge declined to certify massive classes of consumers from 21 states.

"I think the reason why clients continue to entrust us with their most high-stakes matters is really the results you see," Chris Chorba, a co-chair of the group, said. "Our lawyers have been able to turn around some of the most significant lawsuits brought in recent years, including some very high profile class actions. Results matter in this business, for better or worse. That's why clients keep coming back to us for their most significant and high profile matters."

In the egg price-fixing case, Gibson Dunn represented Cal-Maine Foods Inc., the nation's largest shell egg producer, in a potentially whopper-sized class action alleging a cartel of egg producers conspired to keep supply down and thus increase the cost of eggs. Facing down a sprawling putative class that could have encompassed most American households, Gibson Dunn attacked the issue by raising for the first time questions related to the requirements for and scope of what's called the Capper-Volstead antitrust

exemption for agricultural producers.

Practice group co-chair Drew Tulumello said in settings with multiple defendants, the Gibson Dunn practice group tries not to “just run the usual playbook,” but to think about fresh, new and different ways to attack a case.

“The law is always changing, the facts in each case are always different; there’s really no reason to just go through and make the standard moves,” he said. “That’s part of why our class action team adds a tremendous amount of value. We’re always looking for how do we find right strategy for this case, which may be completely different from what’s been done in this area before.”

Tulumello said the firm essentially has its own “brain trust” of talented lawyers who think deeply about Rule 23 issues, and whose writing and internal webinars about wonky class action subjects help the practice group stay on the leading edge of class action litigation by marshaling the best possible arguments.

The class action group also benefits from the firm’s many partners who work primarily in other areas of the law but who provide expertise that can be the key to nailing down the right argument, Chorba said.

“That collaboration may be our secret sauce,” he said.

In March, Gibson Dunn stopped at the gates a putative class action claiming Pepsi should provide medical monitoring to plaintiffs who said a chemical in its drinks is linked to a form of lung cancer. The judge dismissed, with prejudice, personal injury and medical monitoring claims and agreed with the firm that the plaintiffs did not come close to proving the beverages they drank would have exposed them to the chemical equivalent to the exposure in certain rodent studies that were cited by the plaintiffs.

In April, Gibson Dunn won a dismissal with prejudice of all claims in a putative nationwide class action that alleged Yamaha Motor Corp. USA boat motors contained a defect that caused them to corrode years after Yamaha’s express warranties expired.

In June, Gibson Dunn scored an appellate victory from the D.C. Circuit, which affirmed the dismissal of a \$2 billion case claiming AIG, four other insurers and 23 defense contractors improperly denied workers’ compensation benefits to employees injured while working in overseas combat zones. The firm took primarily responsibility for preparing a consolidated brief and presenting oral argument on behalf of all defendants in the appellate court.

And in October, the Fifth Circuit vacated certification of a fraud class action against Stream Energy that alleged the company was operating an illegal pyramid scheme. In the Stream Energy case, Gibson Dunn was brought in to try to be the “rescue squad” after briefing had closed in the district court, which certified a class of more than 150,000 current and former Stream salespeople.

After coming on board, the firm filed a Rule 23(f) petition and stay application with the Fifth Circuit before winning the vacation of the certification order.

“I think there was a recognition that the appeal was going to be a make-or-break or significant inflection point in the case and they felt very comfortable with having our team take the lead,” Tulumello said.

It’s common for Gibson Dunn to be one of several high-profile defense teams trying to knock out a class

action, so the firm's lawyers sometimes have to persuade their co-counsel to buy in to novel, off-the-beaten-path arguments before they can make those same arguments to a judge.

"For our lawyers, it starts with treating co-counsel with respect," Chorba said. "It comes naturally to our lawyers because that's the culture we have internally."

In California state court, the firm in December 2014 obtained unanimous reversal of a \$94 million judgment for ABM Industries Inc. in a wage-and-hour class action that targeted employers that require employees to carry radios and remain on call during rest breaks. Gibson Dunn's approach — attacking the trial judge's interpretation of the substantive law — debunked the plaintiff's theory of liability and is binding on the entire plaintiff class.

A California appellate court in February affirmed dismissal of a \$6 billion putative class action against Time Warner Cable over its television rights agreements with Los Angeles sports teams, agreeing with Gibson Dunn arguments that the plaintiffs' claims were preempted by federal communications laws.

"When you put together the results we've had with a team that is energetic, enthusiastic, working very hard to understand all the business dynamics at play and is fun to brainstorm with, it's a good combination," Tulumello said. "That's probably not all of it, but it's a lot of what separates us from other firms."

--Editing by Patricia K. Cole.

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