

Litigation Powerhouse: Gibson Dunn

By **Dani Kass**

Law360, New York (August 3, 2016, 10:18 PM ET) -- The litigation team at Gibson Dunn handles each case as if it's going to trial, creating a mindset that regularly brings in courtroom victories, such as recent high-profile wins for Apple, MetLife and T-Mobile, earning the firm a spot on Law360's list of Litigation Powerhouses.

From the start of a case, Gibson Dunn's litigators make decisions as if they're going to trial and bring in appellate attorneys to prepare for the future, firm partners said. The litigation group comprises 769 of the firm's 1,261 attorneys, including 194 partners, whom partner Josh Krevitt described as "first and foremost trial attorneys."

"We love to go to trial. We don't fear going to trial," said Randy Mastro, co-chair of the litigation practice group. "Our adversaries know that. That makes a difference in the results we get for our clients."

Gibson Dunn's litigation team stretches across a far range of practices, including patent litigation, securities, antitrust, employment class action, constitutional law, white collar and regulatory work.

In one of the firm's recent victories, the U.S. Supreme Court ruled 5-2 in June that a Puerto Rican law attempting to restructure part of Puerto Rico's \$70 billion in debt is preempted by federal bankruptcy laws, in a win for creditors BlueMountain Capital Management and Franklin Templeton Investments. Gibson Dunn partner Matthew McGill argued the case before the high court on behalf of the creditors.



Gibson Dunn

Litigation Attorneys: 769

Litigation Partners: 194

Big Wins:

Puerto Rico v. Franklin California Tax-Free Trust et al. - The U.S. Supreme Court ruled that Puerto Rico can't enact a law to restructure a portion of its \$70 billion debt, handing a victory to creditors in the territory's utilities who argued the law was preempted by the federal bankruptcy code.

Prism Technologies v. T-Mobile USA Inc. - A Nebraska federal jury found that T-Mobile didn't infringe Prism's patents for systems including 4G LTE, 3G, roaming and Wi-Fi calling network, only months after Prism beat Sprint and settled with AT&T over the same allegations.

In re: Order requiring Apple Inc. to assist in the execution of a search warrant - A New York magistrate judge shot down the government's attempts to force Apple to break into a confessed drug dealer's iPhone. While the police were later able to obtain the passcode, the ruling is still on the books.

MetLife Inc. v. Financial Stability Oversight Council - A D.C. federal judge allowed MetLife to shake its designation as a systemically important financial institution, a status that brings increased regulatory oversight. The case was the first legal challenge against FSOC's designation.

Trinity Wall Street v. WalMart Stores Inc. - The Third Circuit allowed Wal-Mart to exclude a shareholder proposal that aimed to tighten the store's oversight of firearm sales, finding the investors were meddling too much in the corporation's day-to-day business.

Trial Tip:

"The most important thing approaching trials is to be authentic, to have a position that you believe in." — Josh Krevitt

Following the death of Justice Antonin Scalia and recusal of Justice Samuel Alito, McGill had to win over a seven-justice court, with fellow powerhouse Kirkland & Ellis LLP on the other side. In what was his first case before the justices, McGill said he was preparing until the second he stood at the lectern.

“There’s no such thing as overpreparation,” he said.

McGill snagged that win through a “strong textual argument” and said the ruling became an “integral part” of the policy changes that followed in Puerto Rico’s debt crisis, including the creation of an oversight authority to manage the debt.

At the trial court level, Krevitt was the lead attorney defending T-Mobile USA Inc. in Prism Technologies LLC’s patent infringement suit, wherein the ownership of its 4G LTE, 3G, roaming and Wi-Fi calling networks was put at stake. Prism had won a \$30 million verdict over similar allegations against Sprint Corp. in June 2015, and AT&T Inc. had settled with Prism in November 2014 while the jury was deliberating. But in November, T-Mobile beat the lawsuit.

Krevitt said instead of sticking to a simple position in the case, the team fought each claim made by Prism. During the jury trial, Gibson Dunn cross-examined Prism’s experts for hours and tore apart evidence, which Krevitt said AT&T and Sprint hadn’t done.

“Prism litigated the case by creating a veneer of substance,” he said. “It was very important for us to be very detailed and substantive and trust the jury would understand what we were saying and how our system worked.”

In another case, when the FBI was trying to access the locked iPhone used by one of the suspects in the December shootings in San Bernardino, California, Gibson Dunn represented Apple Inc. The tech giant was refusing to cooperate, citing the privacy concerns implicated and the dangerous precedent they were setting. The government dropped that case when it hacked into the phone without Apple’s help.

Gibson Dunn also represented the company in New York, where the government was trying to pull data from a confessed drug dealer’s iPhone. The feds later gained access to his passcode and then dropped the case, but not before a magistrate judge ruled in Apple’s favor.

“The case raised very important issues that we believe are public policy issues that the American people need to decide: the balance between the security of data and privacy of citizens ... and law enforcement needs,” said litigation group co-chair Ted Boutros, who was on the team for Apple. “Those are issues for Congress, the American people and the president, not for the courts to decide. That was really our overarching theme in that matter.”

The firm also scored a major victory for MetLife Inc. when it convinced a D.C. federal judge to remove the Financial Stability Oversight Council’s designation of the insurer as a systemically important financial institution, which leads to increased regulatory oversight. The judge ruled the FSOC didn’t take into account the likelihood that MetLife would fail because of a financial shock when issuing the designation, which went against its own guidance on determining whether a nonbank firm posed a threat.

At Gibson Dunn, collaboration is key to the firm’s culture, whether it be across offices or specialty areas, according to firm partners. Boutros said the firm “pioneered” the practice of bringing in appellate attorneys from the very beginning of a case.

“Oftentimes, the legal issues that are going to be crucial in the case, you litigate them very early on, so it’s really important to be thinking about those issues and to team up with the trial team right away,” he said.

Each attorney who joins the group is trained to think about how each decision they make or position they take will affect the trial, even if it’s years into the future, so associates and partners alike are “thinking about cases as trial lawyers,” according to Krevitt.

Boutros also emphasized that when working on a trial, thinking creatively is key, as too many attorneys tend to fall back on “the same old cases.”

“I strongly advocate that you should not accept conventional wisdom. You should be creative. You should look at different areas of the law as you fashion your arguments in a particular case even if those areas aren’t directly applicable,” he said.

“Oftentimes, lawyers focus too narrowly on the specific case and specific issue in front of them when there are all kinds of sources and legal principles and authorities that really support their argument and that can be deployed in that case,” he added.

These are among the strategies that worked in the firm’s favor in its more recent wins, including a massive \$3 billion jury verdict on June 30 in a win for Gibson Dunn client Hewlett Packard Enterprise Corp. In that case, HP argued that Oracle Corp. poached their former CEO Mark Hurd by phasing out software for an HP server, hurting its rival’s sales.

In April, Gibson Dunn snagged another win when the Supreme Court said that families of the victims of the 1983 Beirut Marine Corps barracks bombing should be allowed to collect a \$1.75 billion award against Iran’s central bank. The firm is also currently representing Uber Technologies Inc. in a fight over how to classify its drivers, in which a \$100 million settlement has been proposed.

"We litigate smart. We litigate creatively. We litigate zealously," Mastro said. "All of those factors I think contribute to the best possible results for our clients."

--Additional reporting by Jonathan Randles, Ryan Davis and Evan Weinberger. Editing by Christine Chun and Philip Shea.