

Employment Group Of The Year: Gibson Dunn

By **Carolina Bolado**



Law360, Miami (January 09, 2015, 7:38 PM ET) -- Gibson Dunn's labor and employment group continued its winning ways last year with key victories in the Fifth and Ninth circuits that beat back class actions on behalf of clients UBS Financial Services Inc. and Michaels Stores Inc., earning the group a spot on Law360's Employment Practice Groups of the Year list.

The firm's labor and employment practice group, which represented Wal-Mart Stores Inc. in the landmark 2011 Wal-Mart v. Dukes case before the U.S. Supreme Court, continued to help shape class action jurisprudence with its work.

"It's great to get those high-impact cases that the client believes are important and to actually try the case if necessary," Catherine Conway, co-chair of the group, said.

In November 2013, the firm scored a big win in the Fifth Circuit for UBS Financial Services on the issue of enforceability of arbitration and class waiver agreements in employment agreements. A group of employees had filed a putative class action in federal court instead of submitting their claims in individual arbitration as required under their employment agreements.

Gibson Dunn appealed a district court order denying a motion to compel arbitration and certifying a nationwide class action, and the Fifth Circuit, in a unanimous *per curiam* opinion, reversed it.

Practice group co-chair Eugene Scalia called the case significant because of the importance of being able to hold employees to arbitration agreements.

In the Ninth Circuit in February, the firm's labor and employment attorneys were able to win the reversal of a decision remanding a wage-and-hour putative class action against Michaels to California state court. Michaels had removed the case to federal court under the Class Action Fairness Act, which began a two-year battle to secure jurisdiction in federal court.

After the Ninth Circuit's decision, the firm secured an order from the Central District of California denying certification of a class of Michaels store managers throughout the state.

Defeating class certification is the most critical juncture of any case, Conway said, because the liability is far lower in individual cases.

“That's an area of the law where Gibson Dunn has made some important contributions in the last few years with the Dukes case and the [Comcast v. Behrend] decision,” Scalia said.

The success of the practice group, which has always been a key part of the firm, can be attributed in part to the collaborative nature of Gibson Dunn, according to Scalia and Conway. The practice groups work together closely, and the labor and employment team often leans on the firm's strong appellate group as well as its securities attorneys for help with whistleblower cases.

“One of the absolute greatest strengths of the firm is the caliber of the associates we are able to bring to matters,” Scalia said. “It's a great leg up.”

In addition, Gibson Dunn's labor and employment attorneys have a deep well of trial experience from which to draw and are not afraid of taking a case to a jury, according to Conway.

“We do have the depth of trial experience to actually take the case through a trial and appeal,” Conway said. “Often we are either taking over a case because of a bad result or we actually have clients that are willing to go to the mat because of the issues involved or because it's a policy that cannot be changed, so the client is not going to settle the case.”

In August, the group secured a settlement on behalf of client AlixPartners in a high-profile trade secrets battle in Delaware state court. After three days of trial, AlixPartners entered into a confidential deal with two former employees who had left for competitor McKinsey & Co. The firm had previously secured a temporary restraining order that had required the two defendants to return company data and mandated a third-party forensic review of their electronic devices and email accounts.

The Gibson Dunn attorneys also secured a victory for Global Linguists Solutions LLC in July, when plaintiffs in a putative class action in the Eastern District of Virginia agreed to drop their case. The plaintiffs, current and former linguists who had worked for GLS on a U.S. military contract in Kuwait, surrendered after a series of wins by GLS, including enforcing the jury trial waiver and Virginia choice-of-law provision in their employment contracts. The company had also succeeded in getting nine of the plaintiffs' 11 claims dismissed.

The firm also defeated class certification in June in a suit in California against Sunrise Senior Living LLC, a Virginia-based company that operates senior living communities around the country. Two former workers had sued on behalf of more than 11,000 Sunrise employees alleging various wage-and-hour claims.

The Central District of California found that individual issues precluded resolution of the plaintiffs' claims on a classwide basis.

The group's attorneys were also kept busy defending Wal-Mart against spinoff cases of the landmark Dukes case, in which the U.S. Supreme Court reversed class certification for a group of 1.6 million female current and former employees of the retail giant who alleged gender discrimination in pay and promotion policies.

In August, the firm won summary judgment on behalf of Wal-Mart in a Dukes spinoff case brought by four women in Wisconsin who asserted the same general discrimination claims on behalf of a putative regional class of female Wal-Mart employees. Gibson Dunn won dismissal of the class claims, and the case now deals only with the merits of the individual women's claims of discrimination.

In the coming year, a number of these so-called “mini-Dukes” cases are set for trial, according to Conway.

Scalia said he expects that federal regulatory authorities, such as the U.S. Equal Employment Opportunity Commission, will become more active in 2015.

“I think one of the things that makes the employment practice interesting is its diversity and unpredictability,” Scalia said. “You can't predict what trends will prove most significant this year.”

--Editing by John Quinn.

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