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Securities Group Of The Year: Gibson Dunn

By **Stewart Bishop**

Law360, New York (January 29, 2015, 8:03 PM ET) -- Gibson Dunn gave federal prosecutors a pair of black eyes in 2014, securing a trial victory in a 14-year-long insider trading case against a hedge fund manager, and ensuring an oil company executive walked away from a criminal fraud action with no jail time, earning its lawyers a place among Law360's Securities Groups of the Year.

With a core group of about 35 dedicated partners backed up by another 75 or so associates, Thad Davis, co-chair of Gibson Dunn's national securities litigation practice group, said the firm's securities law practitioners stand out because of their experience across the whole gamut of securities matters, as well as their strong substantive expertise in growth areas like anti-corruption and data privacy.

"We're tightly integrated," Davis told Law360. "The fact that we only have 35 partners means that most people are doing regulatory and private plaintiff civil work, so there's a really good sense of perspective. We're going to understand all the different fora that we sometimes have to deal with all at once."

Another source of strength for the firm is its seasoned appellate practice, Davis said. Those chops were on display when Gibson Dunn litigators went to bat for Credit Suisse Securities (USA) LLC, Deutsche Bank Securities Inc., Goldman Sachs & Co. and Morgan Stanley & Co. LLC at the Second Circuit and convinced the court to block a group of retirement systems from intervening in a securities fraud class action.

The appeals court found the tolling doctrine outlined in the U.S. Supreme Court 's decision in *American Pipe & Construction Co. v. Utah* doesn't apply to a three-year statute of repose in the Securities Act of 1933. That case was set for review at the high court, before the justices abruptly reversed course and revoked the cert grant, leaving the Second Circuit's decision intact.

But it's the group's trial experience that tends to make headlines. It was on display last year when the firm's attorneys defeated federal prosecutors in a criminal securities fraud case against a former vice president of corporate finance for China North East Petroleum Holdings Ltd. in the first-of-its-kind trial stemming from investigations by the U.S. Department of Justice and the U.S. Securities and Exchange Commission over Chinese reverse mergers.

The Gibson Dunn team in April secured an acquittal on two securities fraud counts against Chao Jiang, while the jury deadlocked on the remaining counts and the judge declared a mistrial. Jiang later agreed to plead guilty to one count of failing to implement internal controls, and received no jail time.

But the crown jewel of the securities group’s victories in 2014 came when Gibson Dunn closed the deal on the SEC’s case against Nelson Obus of Wynnefield Capital Inc., with a jury finding him and two other defendants not liable for an alleged insider trading scheme.

Clocking in at 14 years, from the investigation's beginning to the verdict, it was a marathon of a case.

“As far as I know, and I’ve spent a lot of time working on insider trading cases both on the government and defense sides, it was the longest-ever insider trading investigation,” Obus’ lead counsel Joel M. Cohen, said. "I’m not aware of another one that had a life of 13 years, nor is anyone else I’ve talked to.”

The 10-member jury took less than a full day to find Obus, a co-founder of Wynnefield Capital, not liable for fraud.

Following over four years of probing, the SEC filed suit against Obus and others in 2006, alleging he illegally purchased shares of industrial products supplier SunSource Inc. before it was acquired by Allied Capital Corp. in June 2001. The SEC claimed Obus was tipped by Wynnefield employee Peter Black, who in turn had learned about the deal from Thomas Bradley Strickland, an analyst at underwriter GE Capital.

Cohen and his team got the case thrown out at the summary judgment stage in 2010, only to see it resurrected by the Second Circuit, which found the SEC’s evidence created issues of fact as to Obus’ liability under the misappropriation theory.

Despite the time and expense, Obus and Wynnefield stuck to their guns, determined to see the case through, Cohen said.

“I think the SEC assumed we would just settle, because that’s what most people do, they bring cases and the parties settle,” he said. “But they didn’t understand that we were serious when we kept telling them that our clients were innocent and would not settle."

At trial, Cohen set about poking holes in the SEC’s theory of the case, noting that Obus had waited two weeks to trade after the alleged tip and later turned down an offer to buy more shares.

If you believe the SEC’s version of events, Cohen told the jury, Obus was “the lamest insider trader in history.”

"With a jury, you don’t want to be making highfalutin legal arguments, you want to make arguments that resonate on a common sense, factual basis,” Cohen said. “At the end when I was summing up, demonstrating that the SEC hadn’t met their burden, you could see some were nodding their heads, they were following me. It took them two weeks to get there, but they got there."

--Additional reporting by Max Stendahl. Editing by Chris Yates.
