

White Collar Group Of The Year: Gibson Dunn

By **Andrew Scurria**



Law360, New York (February 05, 2015, 6:00 PM ET) -- Gibson Dunn solidified in 2014 an already sterling reputation for criminal defense work and earned a spot among Law360's White Collar Groups of the Year by securing acquittals and settlements at the forefront of the government's efforts to push the limits on liability for securities fraud, insider trading and foreign bribery violations.

Known in the white collar universe for sporting a Murderers' Row of some 45 former U.S. Department of Justice lawyers, Gibson Dunn's defense group turned heads in 2014 for its role in winning two jury verdicts in landmark government trials and for its handling of several corporate corruption investigations that ended in favorable settlements.

The firm prides itself not just on its corporate exploits but also as a voice for the criminal defense bar, tracking new prosecutions, publishing a widely cited foreign corruption report each year, and encouraging lawyers to speak publicly and shape the discourse.

"We pride ourselves on thinking about the trends in law and how they're moving and to write about them, unrelated to a given client matter," said Joseph Warin, the co-chairman of the practice. "We believe that we need to be thought leaders, and all of our lawyers contribute to that."

Gibson Dunn boasts some 125 lawyers devoted to white collar defense work, who can tap another 100 for backup while operating from the firm's eight U.S. offices and from outposts in Europe and the Far East, according to Warin.

Always known as major player, Gibson Dunn vaulted into the financial headlines in May, when a federal jury in New York returned a verdict clearing client Nelson Obus of insider trading in a long-running civil lawsuit. While much of a white collar defense group's work unfolds within internal investigations, it has been the firm's trial work that nabs the most attention.

Obus, an outspoken critic of the U.S. Securities and Exchange Commission's enforcement tactics and a co-founder of Wynnefield Capital Inc., had been sued in connection with a well-timed purchase of shares in SunSource Inc. before the industrial products supplier was acquired by Allied Capital Corp. in 2001.

After an investigation spanning four years, the SEC in 2006 claimed Obus was tipped off about the

impending deal by Wynnefield employee Peter Black, who in turn had gleaned insider information from an analyst friend at General Electric Capital Corp.

The 10-member jury took less than a full day to find Obus and his co-defendants not liable for fraud.

Clocking in at 14 years from the beginning of the investigation to the verdict, it was a marathon affair. With lead counsel Joel Cohen at the helm, Gibson Dunn won a dismissal at the summary judgment stage in 2010, only to see the case resurrected by the Second Circuit, which changed the standard for a civil misappropriation claim and found the SEC's evidence too strong to dispense with on the pleadings.

All too often in criminal cases, Warin said, defendants lose the will to endure the time and expense of taking on the government, and cop to charges for reasons "totally unrelated to the evidence."

Throughout the entirety of what Warin called a "Jean Valjean scenario," Obus stayed committed to clearing his name and resolute that he had never possessed any inside information.

"That takes enormous fortitude and strength of purpose and a desire to say, 'I'm not guilty, I didn't do anything wrong, and I want to be exonerated,'" Warin said. "It's really a credit to the client who was willing to go through this for as long as he did."

It didn't take nearly as long, but the firm also beat back the government in another securities case, this one a first-of-its-kind criminal prosecution tied to an investigation into reverse mergers of Chinese companies. Chao Jiang, a former executive of China North East Petroleum Holdings Ltd., was charged with fraud related to \$32 million in capital offerings, the culmination of a probe that began as a civil SEC matter.

After a six-week trial in Washington, D.C., the jury acquitted Jiang on two counts of securities violations while deadlocking on the balance of the indictment, on which the judge declared a mistrial.

Outside of a courtroom, Gibson Dunn guided two multinational corporations through government settlements related to bribery of foreign government officials by officers at international subsidiaries. In September, the firm finalized a \$108 million Foreign Corrupt Practices Act settlement between the government and Hewlett-Packard Co. notable for a relatively unusual structure that kept the parent company safe from the worst of the fallout.

Unlike other major FCPA accords, HP, which counts on foreign sales for 80 percent of its revenue, did not have to plead guilty to bribery itself and was excused from instituting a compliance monitor.

The investigation centered on HP units in Russia, Poland and Mexico, but rather than accept a blanket settlement covering all the alleged misconduct, Gibson Dunn convinced the government to punish each instance of wrongdoing separately. HP's Russian unit pled guilty, its Polish unit entered into a deferred prosecution agreement, and its Mexican business escaped with a nonprosecution accord.

Warin said the varying severity of the deals let the company take its medicine for the Russian misconduct while still receiving proper credit for self-reporting potential violations in Mexico.

"You saw the whole constellation of various vehicles to settle complicated criminal cases all embedded in one matter, and that's what makes it unique," he said. "That's the argument that we made, and we were able to persuade the government of that."

The firm likewise struck a deal for Weatherford International Ltd. to resolve an investigation dating to 2006 surrounding potential breaches of trade sanctions and export control laws. Like HP, the parent company was spared from pleading guilty and escaped the case with a \$250 million payment and a promise to beef up internal controls.

“It shouldn’t be one size fits all,” Warin said.

--Editing by Edrienne Su.

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