

## Rising Star: Gibson Dunn's Brian Lutz

By **Carmen Germaine**

*Law360, New York (April 20, 2016, 7:29 PM ET)* -- As a partner at Gibson Dunn, Brian Lutz has successfully fought off shareholder suits challenging high-profile mergers while scoring a major victory for Depomed by halting a hostile takeover, work that saw him named on Law360's list of the top securities lawyers under 40.

Lutz, 39, said the highlight of a busy year was working on the Depomed Inc. case, in which he led the team challenging a hostile takeover attempt by rival pharmaceutical company Horizon Pharma PLC, a case that helped him land on the Rising Stars list a second time after being named in 2013.

"It was a unique case and ended up quite fantastically for our client," Lutz said. "And we were able to develop a really novel strategy that ultimately carried the day."

Horizon launched its takeover bid shortly after both Depomed and Horizon entered the bidding process for blockbuster pain medication Nucynta, which Depomed won and paid more than \$1 billion for the drug.

Lutz and his team quickly filed a challenge to the takeover bid in Santa Clara, California, court, arguing that Horizon was using confidential information acquired from the Nucynta bidding process as part of its takeover attempt in violation of a confidentiality agreement it signed during the process.

According to Lutz, while the case was at the core a breach of contract case, it presented unique challenges because Depomed wasn't actually a signatory to the confidentiality agreement Horizon had signed.

After an expedited discovery schedule, the judge issued a tentative ruling ahead of a big hearing on Depomed's preliminary injunction motion. Lutz recalled "opening up [the tentative ruling] on our computer and saying to each other, 'What's the punch line?'"

The punch line, Lutz said, was an "enormous victory" as the judge agreed to grant a preliminary injunction halting the takeover bid.

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Brian Lutz  
Gibson Dunn

“It stopped Horizon’s hostile takeover attempt in its tracks until trial,” he said.

Lutz said the Gibson Dunn team was celebrating the decision after the hearing with their client when they received even more good news: Less than an hour after the ruling, Horizon had issued a press release announcing it was abandoning the hostile takeover attempt altogether.

On the other side of merger litigation, Lutz earned another win as lead counsel for Eminence Capital, representing the hedge fund as it brought a shareholder suit in Delaware court against Jos. A. Bank Clothiers Inc. that helped propel the men’s clothing company into a \$1.8 billion merger with Men’s Wearhouse.

But Lutz has also achieved success defending shareholder suits. In 2014, he represented a syndicate of underwriters including Citigroup Global Markets Inc., Barclays Capital Inc. and Credit Suisse Securities LLC as they battled a shareholder class action over the initial public offering of oil and gas company Kosmos Energy Ltd. Lutz said he “developed some novel arguments” in the case that ultimately persuaded U.S. District Judge Jane J. Boyle to deny class certification to the investors.

“That was a pretty unusual ruling,” he recalled.

A month after the cert denial, the case was settled in a deal that required Kosmos to pay \$10.2 million; the syndicate paid nothing and had no obligations other than the ordinary obligations required of any settling party, Lutz said.

The Rising Star focuses much of his practice on cases, often shareholder litigation, concerning mergers and acquisitions and has reached favorable resolutions while representing Matson Inc. in a challenge to its \$469 million acquisition of Horizon Lines Inc., Berkshire Energy in litigation over its \$10 billion buy of NV Energy and Tenet Healthcare Corp. in a suit over its \$4.3 billion purchase of Vanguard Health Systems Inc. He also helped Tenet fend off a hostile takeover bid from Community Health Systems Inc. by filing a successful securities fraud suit, work that saw him named a Rising Star in 2013.

Lutz said merger litigation has a special appeal because of the opportunity to advance a client’s case through “smart lawyering.”

“They tend to be very high-profile and important cases to our clients because oftentimes, the result of a litigation can mean the life or death of a company,” Lutz explained.

But his experience also extends to other shareholder litigation. In January, for example, he solidified another victory when the Delaware Supreme Court affirmed a decision dismissing a shareholder suit against the independent directors of J.P. Morgan in litigation over the \$6 billion London Whale trading catastrophe.

Lutz credits his success as lead and co-lead counsel on many impressive cases to the support of Gibson Dunn and his colleagues. He explained that when he came to the firm as an associate, he didn’t even know what securities litigation was but was given support to learn on the job and to pursue exciting opportunities as he realized his interest in the field.

“Gibson Dunn is a firm where if you demonstrate that you have the interest and capacity to take on leadership roles, the firm and our clients are very supportive of encouraging that kind of leadership,” Lutz said.

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