

## Class Action Group Of The Year: Gibson Dunn

By **Alex Wolf**

*Law360, New York (January 23, 2017, 11:38 PM EST)* -- By helping big-name clients like Uber, Toyota and PepsiCo either clip class action suits, limit their exposure to class claims or reach favorable group settlements, Gibson Dunn has once again earned a spot on Law360's Practice Groups of the Year.

For the seventh time in a row, Gibson Dunn's class action lawyers are being recognized for obtaining significant wins for high-profile clientele.

Over the past year, the practice group helped Uber Technologies Inc. overturn a district court's finding that hundreds of thousands of its arbitration agreements with drivers were unenforceable, defeated three distinct class actions against Toyota Motor Sales USA Inc. and reached a "low value" settlement with consumers who alleged PepsiCo Inc. soft drinks contained elevated levels of a potential carcinogen, among other achievements.

Perhaps most notably, the firm successfully urged the Ninth Circuit to reverse a California district court's finding that invalidated hundreds of thousands of Uber's arbitration agreements and paved the way for several high-profile class and putative class actions to proceed. In the suits, drivers accuse the ride-hailing company of misclassifying them as independent contractors and performing unauthorized background checks.

The appellate panel found that the enforceability of the agreements is for an arbitrator to decide and rejected an earlier conclusion that the delegation clauses are unconscionable.

"It was the first appellate decision involving Uber's arbitration agreements and there have been several cases involving those agreements, so this was an important decision and it will impact a number of cases," said practice group co-chair Theane Evangelis.

The Ninth Circuit ruling may serve as a shield against other cases brought by California drivers and lead to the decertification of a class suit over employment status and expense reimbursement currently on interlocutory appeal in the Ninth Circuit, according to Gibson Dunn.

In a similar case, the firm recently secured a preemptive denial of certification for a proposed class of GrubHub Inc. delivery drivers after arguing that the named plaintiff was not typical of the class,



because while most other drivers signed arbitration agreements with class action waivers, he opted out.

Gibson Dunn's nationwide team of 190 class action attorneys has additionally achieved significant victories for Toyota in a trio of cases.

With the help of Gibson Dunn, Toyota won dismissal of a putative class action alleging that its vehicles, as well as those made by other manufacturers, are "defective" because they are allegedly vulnerable to hackers. In that case, which is currently on appeal in the Ninth Circuit, the lower court ruled that the speculative risk of being hacked in the future couldn't be considered an "injury in fact."

In another consumer class action, accusing Toyota of installing faulty brakes in its second-generation Prius models, firm attorneys guided the company to a pretrial win and recent affirmation in the Ninth Circuit by arguing that the plaintiff's "anecdotal evidence" and "flawed expert testimony" did not establish the existence of a common defect, the firm said.

Gibson Dunn's attorneys also earned credit for recently freeing Toyota's U.S. subsidiary from claims that it helped the Japanese government force Korean women into sex slavery during World War II. Counsel successfully established that the suit was barred by the political question doctrine and all applicable statutes of limitations.

Gibson Dunn's class action attorneys have been trusted to handle a great deal of Toyota's litigation based on its representative track record and because a number of partners have formed strong relationships with the company, class action group co-chair Chris Chorba said.

"Like many of our clients, they turn to us when they have very either cutting-edge issues or significant liability issues," he said.

A big part of Gibson Dunn's class action work over the past year has included finding ways to limit clients' exposure to class claims without outright defeating them. In August, firm attorneys helped PepsiCo obtain final approval of a settlement resolving claims that it is required to warn consumers that certain soda products contain 4-methylimidazole in excess of levels permitted by California law.

Chorba said the outcome was favorable because defense counsel was able to knock out personal injury claims before agreeing to settlement terms.

"It was a noncontroversial, very low value settlement that our client was very happy with because it was able to bring all of these challenges to a successful resolution," he said.

Currently, the firm is in the midst of defending Facebook against class action claims that it intercepted private messages in violation of state and federal law. At the outset of the case, the social network was able to get two of four claims dismissed, including an unfair competition claim, Chorba said.

Though a California federal court recently certified a class for injunctive relief, it denied certification on claims for monetary relief and adopted Facebook's "aggressive summary judgment schedule," the firm said. The court also recently confirmed that the remaining discovery is limited to establishing that the historical practices ceased many years ago.

The parties have been engaged in settlement talks, according to the firm.

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