

Class Action Group Of The Year: Gibson Dunn

By **Carolina Bolado**

Law360, Miami (January 09, 2014, 4:52 PM ET) -- Gibson Dunn's class action group's win in *Standard Fire Insurance Co. v. Knowles* before the U.S. Supreme Court, which restored the Class Action Fairness Act's removal power, helped shape class action jurisprudence and is already reverberating in lower court cases, earning the group a spot on Law360's list of Class Action Groups of 2013.

In the March 19 ruling, the nation's highest court sided with Standard Fire and said that plaintiffs bringing class actions cannot escape federal jurisdiction by promising to seek less than \$5 million in damages — the amount of damages that kicks class actions from state court to federal court.

Gibson Dunn's Ted Boutros successfully convinced the Supreme Court that a ruling in favor of the plaintiff would allow plaintiffs to easily subdivide large class actions and subvert the CAFA's objective of ensuring that interstate cases of national importance are in federal court.

The key to Gibson Dunn's success, according to Andrew Tulumello, a co-chair of the firm's class action group, was being able to demonstrate what was happening on the ground in class actions being fought in jurisdictions around the country.

“It didn't look like it was good for the civil justice system to have this rule in place, and I think being able to tell that story to the Supreme Court is what ultimately got them to take it,” Tulumello said. “And what put us over the top was arguing valuable first principles from the Supreme Court's class action precedent.”

A week after the Standard Fire opinion came down, the Gibson Dunn group scored another big win when the Supreme Court reversed an order certifying a class of more than 2 million current and former Comcast Corp. subscribers alleging that Comcast had increased prices in the Philadelphia area through anti-competitive conduct.

The Supreme Court said that the class had been improperly certified because the plaintiffs had not offered a methodology for measuring damages on a classwide basis.

The case was an antitrust one, but because the decision hinged on Federal Rule of Civil Procedure 23(b)(3), which governs class actions, the ruling will affect every class action.

“We're seeing lots of cases now that are basically implementing Comcast and really holding plaintiffs' experts to a very high bar in terms of showing that their model fits the liability case and can actually

prove damages on a classwide basis,” Tulumello said.

Tulumello says the group's competitive advantage stems from its strong set of appellate and constitutional lawyers who have in the past few years argued the most important class action cases before the nation's biggest forums.

“We have a group of very talented lawyers who really have gone back to first principles in class action law and thought very deeply about how to shape the law in these cases,” Tulumello said.

In addition, the group has a deep bench of attorneys with copious trial experience, including more than 20 former assistant U.S. attorneys general, according to Tulumello. Having attorneys with trial experience who are not afraid to take a case to a jury if necessary can give the group a leg up on the competition, Tulumello said.

He added that trial experience is especially important now with the way the law is evolving with respect to class certification requirements.

“It's becoming increasingly frequent that class certification is not just a paper exercise but a live hearing exercise, with experts and witnesses and cross-examination,” Tulumello said.

In 2013, Gibson Dunn also won a key victory for BP Exploration & Production Inc. in the Fifth Circuit over the interpretation of a class action settlement stemming from the Deepwater Horizon oil spill. The appeals court held that the settlement isn't lawful if the class includes individuals who didn't sustain any losses in the oil spill.

“There's been all kinds of mischief in terms of how the settlement fund is being dispersed,” Tulumello said. “Awards are going to people who weren't harmed, and it's not the way the settlement agreement was supposed to be interpreted.”

Other victories for the group include a September ruling in the Northern District of California that denied certification of two putative classes of patients challenging Aetna Inc.'s method for making coverage determinations for mental health benefits involving residential treatment facilities.

And in September, Gibson Dunn successfully defended the National Football League Players Association in the Eighth Circuit, which affirmed the dismissal of a suit brought by a putative class of retired NFL players who claimed that the settlement of the NFL lockout dispute with active players interfered with the retirees' ability to achieve a favorable settlement on their own claims against the league.

--Additional reporting by Bibeka Shrestha. Editing by Stephen Berg.