

## Class Action Group Of The Year: Gibson Dunn

By **Django Gold**

*Law360, New York (January 25, 2012)* -- Being on the winning team in the Wal-Mart v. Dukes ruling would have been enough to secure Gibson Dunn & Crutcher LLP's position among last year's elite law firms, but it was just one of many decisive victories that earned the firm a place among Law360's Class Action Groups of 2011.

Gibson Dunn's work for Wal-Mart Stores Inc. in successfully petitioning the U.S. Supreme Court to overturn the certification of 1.5 million female employees who said they were subject to discrimination while on the job led to a game-changing decision in the field of class action law that will resonate for years to come.

The high court's 5-4 ruling that the class plaintiffs had failed to allege claims common to each member of the largest employment discrimination class action in history represented the culmination of years of work on the case that began when Gibson Dunn was brought on as defense counsel in 2004.

At that stage, when Wal-Mart was attempting to have a California federal court's certification order reversed in the Ninth Circuit, Gibson Dunn's attorneys were already looking ahead, firm class action practice chair Gail Lees said.

"From the outside, it was obvious that this case, because of its magnitude, was one where no matter what happened in the Ninth Circuit, it would likely be taken to the Supreme Court," Lees said.

"Gibson Dunn's approach was to look to the arguments that would be made before the Supreme Court, specifically the fairness issues that are raised when you have so many people with disparate issues across the country," Lees said.

After the Ninth Circuit refused to decertify the class, both in its initial 2007 determination and in a later en banc rehearing in 2010, Gibson Dunn was ready with its appeal, ultimately prevailing in June of this year, when the high court found that the plaintiffs had not alleged a company-wide policy of discrimination that linked the legions of individual store employees.

The decision sent shock waves through the plaintiffs' bar, which since the ruling has been forced to react to the ramifications of the court's more stringent commonality requirements, Lees said.

"In the wake of Dukes, we're seeing decertification arguments in a lot of cases where classes were certified before the Supreme Court ruling," Lees said. "Since June, many courts are being asked to revisit their pre-Dukes decisions."

Though Gibson Dunn has always maintained a class action practice, the firm has in recent years built upon its successes in this area in leaps and bounds, said Lees, a 30-year defense counsel veteran who manages the firm's class action practice out of its Los Angeles office.

By devoting itself to a more factual approach, Gibson Dunn's corps of more than 100 class action attorneys has worked out high-profile wins in every type of venue, Lees said.

"We have a very intensive, fact-based focus that's different from that of other law firms," the practice chair said. "We don't tend to talk in generalities and legal principles."

Lees said that her firm's class action practice had also distinguished itself by its commitment to providing thought leadership and helping to shape the law of class actions.

"It's allowed us to have had a role in many groundbreaking decisions," she said.

One of those decisions was the Seventh Circuit's decision last January to decertify what had until then been the largest Earned Retirement Income Security Act class ever certified.

Serving as counsel for Boeing Co., Gibson Dunn convinced the appellate court to decertify a class of nearly 200,000 of the aerospace company's employees who sought \$4 billion in damages in connection with allegations that Boeing had allowed their 401(k) assets to dwindle under unreasonable investment costs and expenses.

"In that case, the court focused on the importance of the facts," Lees said, namely that many of the plan participants hadn't even participated in the investment options that were being challenged.

Boeing has since moved for summary judgment in the suit.

Gibson Dunn's class action team also successfully fended off a suit against online business review forum Yelp Inc., which in March won dismissal of a class action consolidated in California federal court in which a group of businesses accused Yelp of commissioning negative write-ups and deleting positive reviews of those companies that had refused to advertise on the website.

But Gibson Dunn's defense team convinced the court that the businesses' claims were blocked by the Communications Decency Act, which shields online services such as Yelp from liability for content produced by their users.

The businesses in May took a second pass at Yelp, which was equally ineffective. "Their amended complaint wasn't really much different, essentially a rehash of their original arguments," Lees said. "We didn't expect a different outcome."

Since the second dismissal order in October, the businesses have appealed the case to the Ninth Circuit.

Though these cases and others yielded big rewards for Gibson Dunn in 2011, the firm doesn't expect to see its class action caseload slow down any time soon, Lees said.

"With our success rate, we've been attracting a lot of class action work, and we don't really see an end in sight despite the significant developments of last year," she said.

“The plaintiffs’ bar has a lot of attorneys who for decades have brought cases, and we expect them to keep doing so,” Lees said.

Lees predicted that the fallout from Dukes, as well as growing concerns over consumer privacy protection, would continue to play a significant part in the 2012 class action landscape.

The Gibson Dunn partner pointed in particular to an onslaught of cases against mobile device software company Carrier IQ Inc. that merited attention.

“These cases give rise to issues about actual injury or injury to property and the requirement that in order to have standing, you must demonstrate damages,” Lees said. “A plaintiff can say, ‘somebody knows something about my activity,’ but the courts are requiring that you connect that to some actual injury that results.”

For Gibson Dunn, Lees said that the firm’s class action practice would continue to incorporate its broad attorney assets to adapt to new issues as they arose in the field.

“Our focus has always been that we work seamlessly across offices, so that when a client comes to us with a problem,” Lees said, “we bring together the people who have the most relevant expertise, so we can be cost effective and bring to bear our experiences for our clients.”

*Methodology: In November, Law360 solicited submissions from over 500 law firms for its practice group of the year series. The more than 550 submissions received were reviewed by a committee of Law360 editors. Winners were selected based on the significance of the litigation wins or deals worked on; the size and complexity of the litigation wins or deals worked on; and the number of significant, large or complex deals the firms worked on or lawsuits the firm had wins in. Only accomplishments from Dec. 1, 2010, to Dec. 1, 2011, were considered.*

--Editing by Cara Salvatore.

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