

Employment Group Of The Year: Gibson Dunn

By **Dani Kass**

Law360, New York (January 23, 2017, 2:13 PM EST) -- Gibson Dunn scored a major victory for Uber Technologies Inc. when the Ninth Circuit in September said drivers fighting background checks the company ran must arbitrate their cases and cannot act as a class, helping the firm's employment group once again earn a spot as one of Law360's Employment Practice Groups of 2016.

For the sixth year in a row, Gibson Dunn's labor and employment group has made it onto the list by proving its prowess in management-side litigation, this time with wins on behalf of companies including consulting firm AlixPartners, Comcast and Catastrophe Management Solutions.

"Labor and employment is small but important in the bigger Gibson Dunn picture," co-chair Jason Schwartz said of the group, which has some 80 attorneys in New York and Washington, D.C., and across California, Denver, London, Paris, Munich and elsewhere.

And even though the group is strong on its own, it regularly teams up with other attorneys in the firm.

"The practice group barriers are practically nonexistent at the firm," Schwartz said.

Practice group co-chair Cathy Conway added that "we often work hand in hand in our cases with the appellate team. It's a team effort because we want to make sure we have an eye on the appellate issues from the very beginning of the case."

In the Uber case, the Ninth Circuit unanimously overturned a California federal court's decision that the drivers' arbitration agreements were invalid and that they may proceed in their Fair Credit Reporting Act fight in court. The suit alleged that Uber violated the act and various state statutes by running background checks on them without authorization and then using their consumer credit reports against them.

The appellate panel found in September that the arbitration language was clear and that U.S. District Judge Edward M. Chen overstepped his authority in rejecting its enforceability.

In the AlixPartners case, an employee wanted to bring a class action discrimination suit, but was bound



to arbitration under his employment agreement. While the agreement didn't say whether class actions were permitted, a court found they weren't allowed, and the Sixth Circuit agreed.

"Particularly in a year where arbitration agreements with any sort of class action waiver or individual claim requirement are under some pretty significant scrutiny, we were pretty pleased with that victory," Schwartz said.

The firm also helped Comcast Corp. beat a \$20 billion racial discrimination suit filed by television producer Byron Allen's company and the National Association of African American Owned Media, alleging that Comcast was conspiring with the Federal Communications Commission and the NAACP to keep African-American-owned channels off the air.

A California federal judge said in October that an amended complaint didn't show how there was bias involved in Comcast's decision not to carry the stations instead of "legitimate business reasons."

The month before, the Eleventh Circuit upheld a victory for Catastrophe Management Solutions in another racial bias suit, this time brought by the U.S. Equal Employment Opportunity Commission. That case was about whether refusing to hire someone because they had dreadlocks constitutes racial bias.

The appeals court said, "discrimination on the basis of black hair texture, an immutable characteristic, is prohibited by Title VII, while adverse action on the basis of black hairstyle, a mutable choice, is not."

Gibson Dunn is also representing the U.S. Chamber of Commerce in fighting the U.S. Department of Labor's April rule imposing a fiduciary duty on broker-dealers who advise retirement savers. The September suit claims that under the Employee Retirement Income Security Act, the DOL only has the authority to regulate the retirement savings of those with employee-sponsored plans.

However, in November, a D.C. federal judge found the rule to be legal in a separate challenge, which the DOL has since argued should lead the court to a similar decision in this case.

The firm's 2016 successes also include getting Cablevision a win before the National Labor Relations Board in a suit over nine alleged unfair labor practices brought by the Communication Workers of America, AFL-CIO. After a 21-day trial, the company was able to prove its firing of a union leader wasn't retaliation for union-based activity, but rather for a history of misconduct, including blasting music out of his car to disturb company events.

The case was high-profile, having gone in front of the New York City Council and bringing up questions about Cablevision and its owner Jim Dolan's relationship with the union, Schwartz said.

"Often times we're brought in on high-profile cases that have a lot of publicity attached to them because we also have a strong media relations approach to cases," Conway said, saying they can resolve cases in court while also being "attuned to press coverage."

--Additional reporting by Linda Chiem, Bonnie Eslinger, Ed Beeson, Suevon Lee and John Kennedy.
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