

Employment Group Of The Year: Gibson Dunn

By **Ben James**

Law360, New York (January 27, 2014, 6:20 PM ET) -- Gibson Dunn & Crutcher LLP's labor and employment team recently defeated a bid to certify a class of around 150,000 women in Betty Dukes' gender bias case against Wal-Mart Stores Inc. and convinced the Nevada Supreme Court to permit a Wynn Casino Las Vegas tip-sharing policy, landing the firm among Law360's Employment Practice Groups of the Year for the third time running.

Gibson Dunn's 60-member employment practice earned noteworthy wins for clients in high-stakes cases in 2013 that touched on an array of different subjects, including discrimination, trade secrets, wage claims, efforts to compel arbitration and the propriety of class certification.

"There are so many employment law firms, but even in that company, we believe that Gibson Dunn has cultivated a reputation that stands out," said Eugene Scalia, a Washington, DC-based partner who co-chairs the firm's labor and employment practice. "We pride ourselves on the craftsmanship we put into our cases."

Though Gibson Dunn's labor and employment group may be formidable on its own, that strength is multiplied when its employment lawyers team with the firm's high-powered litigators and seasoned appellate attorneys, noted Scalia and Cathy Conway, the practice group's co-leader.

"The appellate group was been key in many of the results on the wage and hour front," Conway said. "It is a great advantage for the employment group to work hand in hand with a premiere appellate group."

Scalia pointed out that many high-profile legal battles between employers and workers progress beyond the trial court level.

"A lot of the most important employment cases end up getting resolved in courts of appeals," he said. "It's important to be able to craft the case from that perspective, from the start."

The Gibson Dunn team's achievements last year included a class certification win in Betty Dukes' gender discrimination case against Wal-Mart. The firm won accolades when it convinced the U.S. Supreme Court to issue a landmark 5-4 decision in 2011 that struck down a nationwide class of roughly 1.5 million women.

In the wake of that ruling, women covered by the disbanded Dukes class started pursuing smaller suits covering narrower geographic areas. Dukes amended her claims and in April sought class certification

again, asking a California federal judge to certify three regional classes.

But in August, Judge Charles Breyer rejected the renewed class certification bid, saying that though proposed class was 10 times as small as the one the high court took issue with, the plaintiffs had presented him with what was “essentially a scaled-down version of the same case with new labels on old arguments.”

In addition to the original Dukes case in California, regional follow-on actions against Wal-Mart were filed in Texas, Tennessee, Florida and Wisconsin after the Supreme Court's ruling. Gibson Dunn is involved in defending all of those, and though appeals are pending, has managed to convince district courts to throw out the class claims in each of those four suits by arguing that the class allegations are either time-barred or not viable in the wake of the U.S. Supreme Court's ruling.

Conway said she was confident that the rulings in the follow-on cases—interlocutory appeals in the Florida, Texas and Tennessee suits have made their way to circuit court—would stand up on to appellate scrutiny.

“Dukes laid out a clear path and we believe that the cases will not be certified,” she said.

In the Wynn Casino Las Vegas suit, Gibson Dunn secured a victory not only for a Wynn Resorts Ltd. unit, but also for the Nevada entertainment industry in general. In October, Nevada's highest court reversed a lower court decision and ruled that state law allows an employer to mandate a tip-sharing policy that pools tips with employees of different ranks.

Tipping cases are an emerging area, Conway said, adding that the Wynn case was an “important, defining case in reference to this issue.”

Also in October, Gibson Dunn attorneys notched a win in a trade secrets case brought on behalf of Dow Corning Corp. and Hemlock Semiconductor Corp., who claimed that a former employee and his partner misappropriated Dow's secret formula for materials used in solar panel production.

The companies claimed a former employee and his partner misappropriated Dow's secret formula for materials used in solar panel production. The two formed a company called LXEng LLC and proceeded to sell Dow's processes to Chinese companies for as much as \$18.4 million per contract, Dow and Hemlock claimed.

The case led to Oct. 23 default judgments against three defendants that didn't file for bankruptcy protection and an injunction barring those defendants from promoting the technology at issue. Those judgments were preceded by “intense litigation,” Scalia said.

“The case that we were able to bring against them was so damning that, eventually, they abandoned the field,” he said.

Gibson Dunn also helped UBS Financial Services Inc. obtain Fifth Circuit decision in November that reversed a district court's bid to compel arbitration in two related Employee Retirement Income Security Act class actions seeking an estimated \$200 million in deferred compensation.

“Obviously, the alleged exposure here was significant, and it reflects our capabilities in an area where some firms aren't as strong, which is ERISA,” Scalia said.

Other noteworthy wins for the firm include a Seventh Circuit ruling upholding the denial of class certification in a minimum wage and overtime suit brought on behalf of a technician against satellite installations and repair company DirectSat, and a preliminary injunction blocking the state of Georgia from enforcing a law requiring health plans to pay claims within 15 days or face steep penalties.

Conway and Scalia pointed the various different types of cases in which the Gibson Dunn's employment practice had success last year as a testament to the firm's versatility. Not only do Gibson Dunn's lawyers make it a priority to work seamlessly across practice areas and geographic locations, but its employment lawyers are well-versed in the full gamut of workplace issues clients might encounter.

Gibson Dunn labor and employment lawyers have a broad focus, and the group is not subdivided into groups that limit themselves to narrow topics, Scalia said.

“That variety becomes an advantage at times, and we see lines of defense that might not be apparent to someone whose employment law experience is more narrow,” he said.

--Editing by Edrienne Su.