

Securities Group Of The Year: Gibson Dunn

By **Jessica Corso**

Law360 (February 28, 2024, 5:36 PM EST) -- The securities litigation team at Gibson Dunn & Crutcher LLP played a central role in winning a unanimous U.S. Supreme Court decision in favor of Slack Technologies LLC, putting in place new barriers to shareholder suits against companies that go public via direct listings, winning it a spot on Law360's 2023 Securities Practice Groups of the Year.

The firm's securities litigation practice group is so big and geographically dispersed it is helmed by three co-chairs: Brian Lutz, Monica Loseman and Craig Varnen.

"We are very much a national practice group, and I think it makes sense for us to have leaders from different geographies bringing different kinds of expertise and perspective," Lutz said. "So that was the three of us: Craig is resident in our L.A. office, Monica is in Denver, and I'm in San Francisco."

The team racked up several high-profile victories last year, perhaps none of which was more impactful than the high court's ruling in *Slack v. Pirani*, according to Lutz.

Slack was sued in 2020 based on allegations it deceived prospective investors by failing to alert them to vulnerabilities that led to service disruptions and a subsequent \$8.2 million credit payout to customers.

While the Supreme Court doesn't agree to hear many securities disputes, Gibson Dunn was able to identify the uniqueness of the Slack case from the get-go, Lutz said.

"We told the client in the pitch: This is a very interesting issue. It's not really resolved. It needs clarity. This is a case that could make it [to the Supreme Court]. And we were prescient," according to Lutz.

The high court's ruling called into question some of the claims against the company because of the unique way in which Slack went public — through a direct listing. Unless investors can demonstrate they purchased shares registered by a company and not those belonging to former employees or other stockholders, they cannot sue under a provision of the securities laws known as Section 11, the court ruled.

Slack insists lead investor Fiyaz Pirani cannot sue, saying both registered and unregistered shares in a directly listed company become available on the first day of trading, unlike in a traditional initial public offering. But the justices said the parties could argue that point in a lower court.



Still, the Gibson Dunn team was able to lean on the Slack ruling to win dismissal last year of a proposed shareholder class action filed against Danimer Scientific Inc., a bioplastics company whose claims of environmental friendliness were challenged in media reports.

Relying in part on language from the Supreme Court's Slack decision, U.S. District Court Judge Hector Gonzalez in September dismissed the case against Danimer, which also took a less traditional route to going public by merging with a special-purpose acquisition company.

That ruling is on appeal in the Second Circuit.

Another pivotal victory for the Gibson Dunn securities litigators came when a Delaware Chancery Court issued a ruling that reduced the amount of money a hedge fund would have made off a merger between Pivotal Software Inc. and VMware Inc.

Gibson Dunn represented VMware in the case and also guided it through a \$42.5 million settlement with a class of Pivotal stockholders in 2022. The firm also worked with a special committee of VMware's board of directors on structuring the underlying deal that the Delaware court found was more than fair, demonstrating Gibson Dunn's "soup to nuts" approach when it comes to representing clients, Varnen said.

A case that Loseman said she was excited about is one that could determine the course of shareholder proposals involving environmental, social and governance issues. The firm is leading the charge on behalf of Exxon Mobil Corp. in its lawsuit challenging an investor proposal to speed up the timeline for reducing the company's greenhouse gas emissions.

The case is seen as an indirect challenge to the U.S. Securities and Exchange Commission, which has been more permissive in recent years in allowing proposals on environmental and social issues to move forward to shareholder votes.

The case has "garnered quite a bit of attention in terms of its uniqueness and skipping the SEC comment-letter process on activist investor proposals," Loseman said. "We are very excited to see how that litigation proceeds."

--Editing by Philip Shea.
