

## White Collar MVP: Gibson Dunn's Joel Cohen

By **Max Stendahl**

*Law360, New York (December 02, 2014, 5:07 PM ET) --*



Gibson Dunn's Joel Cohen convinced a jury to reject the U.S. Securities and Exchange Commission's insider trading suit against hedge fund manager Nelson Obus following a 14-year legal battle, handing the agency a stinging loss and earning himself a spot on Law360's list of White Collar MVPs.

Cohen, a partner at Gibson Dunn since 2009, represented Obus in an SEC suit claiming the Wynnefield Capital Inc. manager illegally bought stock in an industrial products supplier after hearing that it was about to be acquired. A New York federal jury found Obus and two other defendants not liable on May 30 following a two-week trial, marking a high-profile setback for the SEC, which has also lost trials to Dallas Mavericks owner Mark Cuban and former Citigroup Inc. employee Brian Stoker in recent years.



Joel Cohen

Cohen said the Obus verdict shows that defense attorneys shouldn't hesitate to put the SEC to its burden of proof at trial when necessary.

"If you have the right client who has the stomach and the wherewithal to fight, you can fight and win," Cohen said.

Obus was that rare defendant. He maintained his innocence throughout the case, which began in 2001 with an investigation into a \$1.3 million stock-trading profit. Obus had the personal resources to fight the SEC through a district court judgment, a Second Circuit appeal and ultimately, the jury trial.

The suit stemmed from private equity firm Allied Capital Corp.'s acquisition of SunSource Inc. in June 2001. The SEC claimed that Thomas Bradley Strickland, an analyst for deal underwriter GE Capital, had tipped off Wynnefield employee Peter Black about the merger. Black then allegedly passed the information to his boss Obus, who purchased 287,000 shares of SunSource and reaped a profit when the deal was publicly announced.

During the trial, Cohen argued that jurors couldn't trust the recollections of SEC witnesses regarding

events more than a decade in the past. Cohen also noted that Obus had waited two weeks to trade after the alleged tip and negotiated a discount for the shares. Under the SEC's version of events, according to Cohen, Obus was "the lamest insider trader in history."

The arguments appeared to resonate with jurors, who rejected the SEC's case against all three defendants after less than a full day of deliberations. As the verdict was read, Obus gave Cohen a bear hug, slapping him on the back several times. Obus later accused the SEC of "systematic regulatory overreach without accountability."

The verdict began a difficult week for the SEC. On June 6, the agency lost another insider trading trial in California, this time to an executive at computer storage device maker STEC Inc.

Then, on June 11, the SEC announced that it planned to bring in-house administrative proceedings against some insider trader defendants rather than take those cases to federal court. An SEC official insisted that the policy change was not a reaction to the trial losses, but the move was nonetheless widely criticized by the defense bar.

Cohen said defendants in federal court cases may begin to take more matters to trial as the SEC imposes increasingly large penalties.

"You're going to see more counsel who are willing to respectfully but vigorously challenge the government," he said.

Cohen began his career as a prosecutor in Brooklyn, New York, in the late 1990s, bringing down brokerage firm Stratton Oakmont and its co-founder Jordan Belfort, the corrupt stockbroker who was the focus of Martin Scorsese's 2013 film "The Wolf of Wall Street."

Cohen practiced with Greenberg Traurig LLP between 1999 and 2004 and then served as head of U.S. litigation at Clifford Chance before joining Gibson Dunn in 2009.

He currently represents investment adviser Och-Ziff Capital Management Group LLC in a Foreign Corrupt Practices Act investigation launched by the SEC and U.S. Department of Justice. The case comes amid heightened FCPA scrutiny of the financial services sector and could provide guidance for the industry at large.

Cohen's other recent successes include his representation of U.K. oil and gas company Expro in a six-year FCPA investigation that ended in May 2014 without any charges. Cohen also concluded a three-year stint as outside compliance monitor for Alliance One International Inc. in September 2013 after reviewing the leaf tobacco merchant's anti-corruption controls.

With the Obus trial in the rearview mirror, Cohen said his current focus includes helping corporate clients navigate a maze of U.S. and European regulations to avoid facing charges under the FCPA and other laws. The Gibson Dunn star's practice requires frequent travel to foreign countries, where he often encounters peers.

"You get off a plane in Paris or Munich or Geneva, and you run into five or six other white collar lawyers who are getting on or off the same plane," Cohen said. "It's a cottage industry."

--Editing by Christine Chun. All Content © 2003-2014, Portfolio Media, Inc.