

# GIBSON DUNN



Shireen A. Barday

Partner

## CONTACT INFO

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[sbarday@gibsondunn.com](mailto:sbarday@gibsondunn.com)

TEL: +1 212.351.2621

FAX: +1 212.817.9421

New York

200 Park Avenue, New York, NY 10166-0193 USA

## PRACTICE

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Litigation

Business Restructuring and Reorganization

Class Actions

Energy, Regulation and Litigation

Mergers and Acquisitions

Oil and Gas

Private Equity

Securities Enforcement

Securities Litigation

Securities Regulation and Corporate Governance

Sports Law

## BIOGRAPHY

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Shireen A. Barday is a litigation partner in the New York office of Gibson, Dunn & Crutcher.

Ms. Barday has served as a principal in a wide range of complex commercial litigation matters, ranging from fiduciary duties to fraud. Ms. Barday has extensive experience litigating solvency as well as matters involving one or more controlling shareholders. Ms. Barday regularly appears in Delaware and other courts around the country where she has represented directors, officers and issuers in class action and other litigation arising from mergers and other corporate transactions.

Ms. Barday earned her Bachelor of Arts in Political Science from Barnard College, her Master of Arts in Political Science from the City University of New York and her Juris Doctor from Stanford Law School, where both her Note and Comment were selected for publication by the *Stanford Law Review*.

Following her graduation from Stanford Law School, Ms. Barday clerked for the Honorable Colleen McMahon of the United States District Court for the Southern District of New York and then for the Honorable Rosemary S. Pooler of the United States Court of Appeals for the Second Circuit.

### Recent highlights include\*

- *World Award Foundation v. Anbang Insurance Group Co., Ltd.* (Del. Ch., Del. Super.): Represent Anbang in connection with expedited proceedings successfully obtaining vacatur of six fraudulently obtained judgments issued in connection with sham arbitrations awarding more than \$900 billion.
- *inVentiv Health Clinical, LLC v. Odonate Therapeutics, Inc.* (Del. Super.): Represent Odonate in connection with dispute under master services agreement.
- *Mulderrig v. Amyris, Inc.* (N.D. Cal): Represent Amyris, certain executives and directors in connection with putative class action and two related derivative actions alleging misrepresentations under the federal securities laws relating to accounting and financial reporting at the Company.
- *TMCC v. CTE 1 LLC et al.* (D.N.J.): Represent Toyota Motor Credit Corporation in connection with litigation arising under credit agreements and guaranties.
- *Knight Capital Partners Corp. v. Henkel AG & Co. KGaA* (E.D. Mich.): Represented Henkel AG & Co. KGaA in connection with litigation seeking upwards of \$1 billion in damages for a claim arising from a “busted deal” relating to refinery cleaning technology. In granting summary judgment for defendants, the Court relied extensively on admissions obtained during Ms. Barday’s examination of plaintiff’s CEO, noting that the undisputed material facts established that there was not even “an agreement to agree,” foreclosing plaintiff’s claims.

- *North American Soccer League LLC v. Gulati et al.* (N.Y. Comm. Div.): Represented certain directors of United States Soccer Federation in connection with action alleging breach of fiduciary duties arising from the Board's denial of a Division II sanction for North American Soccer League. The Court granted the directors' motions to dismiss in their entirety and awarded costs.
- *Mountain High Pinebrooke II v. Westport et al.* (N.Y. Supreme Ct.): Represent Travelpro in connection with commercial lease dispute.

#### Other Shareholder Matters\*

- *NRG v. Exelon* (S.D.N.Y.): Represented NRG in a Williams Act bench trial challenging the truthfulness of Exelon's disclosures about Exelon's then-pending hostile tender offer to NRG. Following conclusion of litigation, Exelon's tender offer was rejected by NRG stockholders.
- *In re Tribune Publishing Co. Stockholder Litigation* (Del. Ch. Ct.): Obtained dismissal of stockholder derivative action against Tribune and its Board alleging breaches of fiduciary duty in connection with evaluation of hostile Gannett bid for Tribune Publishing.
- *In re Legacy Reserves LP Preferred Unitholder Litigation* (Del. Ch.): Represented Legacy in connection with class action by preferred unitholders challenging an out of court restructuring transaction whereby the MLP would convert into a C-Corporation. The matter was resolved by favorable settlement, which did not involve the payment of any additional cash consideration.
- *Cedarview Opportunities Master Fund, L.P. et al. v. Spanish Broadcasting System, Inc.* (Del. Ch.): Represented an ad hoc group of preferred stockholders in connection with actions by Spanish Broadcasting purporting to suspend all rights of Spanish Broadcasting's Series B Preferred Stockholders in violation of the governing Certificate of Designations and the Company's Corporate Charter.
- *In re Honeywell International Inc. Derivative Litigation* (Del. Ch. Ct.): Obtained dismissal of derivative action against Honeywell, its Board and certain current and former officers asserting claims that senior management had been awarded options beyond level permitted by Incentive Plan.
- *Cline v. BioScrip, Inc.* (Del. Ch. Ct.): Represented BioScrip and its directors in connection with class action challenging terms of a private investment in public equity.
- *McCormack v. BioScrip, Inc.* (Del. Ch. Ct.): Represented BioScrip and its directors in connection with class action challenging alleged "proxy put" in credit agreement.
- *Schmidt v. Pate* (Del. Ch.): Represented directors of BioScrip, Inc. in connection with putative class action alleging breach of fiduciary duties by the BioScrip board in connection with the proposed merger between BioScrip and Option Care.
- *In re Tibco Software Inc. Stockholders Litigation* (Del. Ch. Ct. and Cal.): Represented Vista Equity Partners in connection with class actions challenging acquisition of Tibco based on alleged error in merger agreement regarding the per share merger price to be paid for the outstanding common stock in the company, which plaintiffs alleged had been misstated.
- *The Men's Wearhouse, Inc. v. Wildrick* (Del. Ch. Ct.): Represented Golden Gate Private Equity in connection with lawsuit challenging the proposed acquisition of Eddie Bauer by JoS. A. Bank.
- *In re Duff & Phelps Shareholder Litigation* (N.Y. Comm. Div. and Del. Ch. Ct.): Represented Duff & Phelps in litigation challenging its sale to a consortium of private equity firms led by Carlyle.

- *In re Zipcar Shareholder Litigation* (Del. Ch. Ct. and Mass.): Represented Avis-Budget Group in class actions challenging acquisition of Zipcar.
- *In re Rochester Medical Corp. Shareholder Litigation* (Minn.): Represented C.R. Bard resolving class action challenging its acquisition of Rochester Medical Corporation.
- *In re Collective Brands Shareholder Litigation* (Del. Ch. Ct. and Kan.): Represented Blum Capital Partners and Golden Gate in class action challenging the \$2 billion acquisition of Collective Brands, Inc.
- *In re FX Alliance Inc. Shareholder Litigation* (Del. Ch. Ct. and N.Y. Comm. Div.): Obtained dismissal of New York action and favorable settlement for FX Alliance and its Board resolving class action challenging sale of FX Alliance to Thompson-Reuters.
- *Rauscher v. Benihana Inc.* (Del. Ch. Ct. and Fl.): Obtained dismissal of class actions against Benihana and its Board challenging acquisition of Benihana by Angelo Gordon.

#### **Other Restructuring and Bankruptcy Matters\***

- *In re Fuse, LLC* (Bankr. D. Del.): Representation of Fuse Creditors' Committee.
- *In re Avaya Inc.* (Bankr. S.D.N.Y.): Represented Debtors in connection with various contested matters, including contested DIP.
- *In re Lehman Brothers Holdings Inc.* (Bankr. S.D.N.Y.): Represented Debtors in connection with appeal from denial of applications to subordinate securities claims relating to mortgage backed securities.
- *In re DBSD North America, Inc.* (Bankr. S.D.N.Y.): Represented Debtors in contested plan confirmation and obtained favorable ruling "designating" creditor's vote.
- *In re GSC Group, Inc.* (Bankr. S.D.N.Y.): Represented Black Diamond in connection with application to designate the hedge fund's vote.
- *In re Sherwin Alumina Co., LLC* (Bankr. S.D. Tex.): Represented Sherwin Alumina in connection with a variety of contested issues in restructuring. First chaired four-day bench trial in adversary proceeding.
- *In re rue21, inc.* (Bankr. W.D. Penn.): Represented debtors in connection with various contested matters, including contested DIP.
- *In re United Retail Group* (Bankr. S.D.N.Y.): Represented debtors in connection with contested bidding procedures.

#### **Other Representative Matters\***

- *Kingsland Holdings Ltd. v. Synergy Aerospace* (N.Y. Comm. Div.): Represented United Airlines in commercial litigation between Avianca and investor. Successfully defeated two separate attempts by Kingsland to enjoin a proposed deal between Avianca and the investor, which ultimately resulted in Kingsland's voluntary dismissal of the case.
- *Campton v. Ignite Restaurant Group, Inc.* (S.D. Tex.): Represented Ignite Restaurant Group (owner of Joe's Crab Shack) and certain officers in putative class action alleging violation of federal

securities laws arising from accounting restatement. Motion to dismiss granted in its entirety as to all defendants; favorable settlement reached following filing of amended complaint.

- *In re BioScrip, Inc. Securities Litigation* (S.D.N.Y.): Represented BioScrip and officers and directors in stock drop case alleging securities fraud. Motion to dismiss granted as to the majority of plaintiffs' claims; remainder of claims resolved by favorable settlement.
- *Park Employees v. BioScrip, Inc.* (Del. Ch. Ct. and Del. Sup. Ct.): Represented BioScrip and certain of its officers and directors in derivative action alleging breaches of fiduciary duty by the BioScrip Board in connection with the Company's distribution of a black box warning drug. Motion to dismiss granted as to all claims against all defendants; affirmed by the Delaware Supreme Court on appeal.
- *Walgreens Co. v. BioScrip, Inc.* (Del. Ch. Ct.): Represented BioScrip and certain of its affiliates in litigation alleging violation of non-compete in asset purchase agreement. Motion to compel arbitration of all claims was granted; favorable settlement reached following arbitration.
- *NGC Network Asia, L.L.C. v. PAC Pacific Group Int'l, Inc.* (2d Cir.): Represented NGC Network Asia in connection with successful appeal denying vacatur of arbitration award relating to date and timing restrictions on airtime for television show.
- *Conway v. C.R. Bard* (D. Minn.): Represented C.R. Bard in litigation seeking to void non-compete agreements with former executives of a portfolio company, on the ground that the non-competes failed for lack of consideration because they had been issued incident to a merger without any additional, independent consideration for the agreements. Motion to dismiss granted as to all claims.

Ms. Barday is also committed to pro bono work. Every year she has been in private practice, Ms. Barday has been awarded The Legal Aid Society's Pro Bono Publico Award for her work in the area of post-conviction relief. She has also been recognized by the Mississippi Center for Justice for her success in obtaining relief for a group of homeowners in post-Katrina Mississippi, who were challenging discriminatory zoning laws that prevented them from rebuilding their homes after the storm. Ms. Barday serves on the board of directors of the New York Center for Law & Economic Justice, Consilio's Advisory Panel for Diversity & Inclusion and *Law360's* Editorial Advisory Board for Legal Ethics.

Ms. Barday is admitted to practice in the courts of the State of New York, the United States District Courts for the Southern and Eastern Districts of New York, the Eastern District of Michigan, and the United States Courts of Appeals for the Second, Third and Ninth Circuits.

*\*Includes matters handled prior to Ms. Barday joining Gibson, Dunn & Crutcher.*

## EDUCATION

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Stanford University - 2008 Juris Doctor

City University of New York (CUNY) - 2003 Master of Arts

Barnard College - 2001 Bachelor of Arts

**ADMISSIONS**

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New York Bar