

 [Click to Print](#) or Select 'Print' in your browser menu to print this document.

Page printed from: </sites/almstaff/2016/10/12/gibson-dunn-takes-on-theranos-as-gc-returns-to-boies-schiller/>

Gibson Dunn Takes On Theranos as GC Returns to Boies Schiller

By Scott Flaherty

Published: Oct 12, 2016



With [accusations piling up](#) that Theranos Inc. duped investors about its much-vaunted blood testing technology, Gibson, Dunn & Crutcher finds itself in the unlikely position of representing the first investor plaintiff to sue the [embattled startup](#). At Theranos, meanwhile, changes in top management now include general counsel Heather King, who quietly left the company to rejoin her former partners at Boies, Schiller & Flexner.

Backed by Gibson Dunn partners Reed Brodsky and Winston Chan, Partner Fund Management LP, a hedge fund that invested nearly \$100 million in Theranos, lodged a sealed complaint on Monday alleging securities fraud in the Delaware Court of Chancery.

The suit puts Theranos on a collision course with two formidable ex-prosecutors. Brodsky, a [former assistant U.S. attorney](#) in Manhattan, is well-known for securing insider trading convictions against Galleon Group hedge fund founder Raj Rajaratnam in 2011 and former Goldman Sachs director Rajat Gupta in 2012. Chan, now based in Gibson Dunn's San Francisco office, previously spent about eight years as a federal prosecutor in Brooklyn.

The firm's hedge fund client accuses Theranos and its principals of misleading investors while the company was trying to drum up a round of funding. The defendants include founder and CEO Elizabeth Holmes and former president and chief operating officer Ramesh Balwani, who resigned in May amid an [executive shakeup](#).

Brodsky referred a request for comment to PFM. "Theranos and its principals knowingly and repeatedly lied that they had developed proprietary technologies that worked, were on the cusp of receiving all necessary regulatory clearances and approvals, and concealed the truth about the commercial viability of their technologies and methods," a company spokesman said.

Theranos, for its part, blasted the hedge fund in a statement for "engaging in revisionist history" and making "baseless" assertions.

"Most of the company statements the plaintiff has cited in its suit were made after the time the plaintiff invested, and could not possibly have been the original basis for investment," Theranos' statement said. "This wholesale reliance on post-investment statements, therefore, negates the claim that the plaintiff was misled."

A handful of traditional plaintiffs firms announced earlier this year that they were looking into possible investor claims against Theranos, which has come under scrutiny after Wall Street Journal articles [raised doubts](#) about the effectiveness of its blood testing advances.

By filing first, Gibson Dunn—normally a defense-side powerhouse—puts itself among the vanguard of firms lined up to represent investor plaintiffs with an axe to grind against Theranos.

The lawsuit comes amid a tumultuous period for the company. In July, federal officials banned chief executive Holmes from running labs for at least two years, and Theranos is also [reportedly facing investigations](#) by the U.S. Department of Justice and Securities and Exchange Commission. Holmes [announced on Oct. 5](#) that Theranos would close its labs and lay off 340 employees in Arizona, California and Pennsylvania.

Theranos didn't respond on Wednesday to an inquiry about its defense counsel in the investor litigation. The blood-testing startup has [attracted media attention](#) in the past over its ties to Boies Schiller and its chairman, David Boies, who sits on Theranos' board of directors. The Wall Street Journal [reported in July](#) that Theranos has also brought on Wilmer Cutler Pickering Hale & Dorr to advise on the Justice Department and SEC probes.

In 2015, Theranos hired King from Boies Schiller to serve as the company's general counsel. On Wednesday, however, a Boies Schiller spokesman confirmed that King is now back at the firm. According to her [LinkedIn page](#), King left Theranos and rejoined Boies Schiller in September. [David Taylor](#), a former Munger, Tolles & Olson lawyer brought on to Theranos in May as senior litigation counsel, currently serves as the company's acting general counsel.

Contact Scott Flaherty at sflaherty@alm.com. On Twitter: @sflaherty18.

© Copyright 2016. ALM Media Properties, LLC. All rights reserved.