Daniel J. Thomasch

Partner

dthomasch@gibsondunn.com

T: +1 212.351.3800

New York



Daniel J. Thomasch, a litigation partner in Gibson Dunn's New York office, represents clients in complex, high- value cases across a broad range of practice areas and industries.

Dan is a Fellow of the American College of Trial Lawyers, and is a past chair of the College's Federal Rules of Evidence Committee. He has tried cases to verdict in federal and state courts in California, Colorado, Delaware, Florida, Maryland, Nebraska, New York, Tennessee, Texas, and Virginia, and has argued appeals in the United States Courts of Appeal for the Second, Third, Sixth, Ninth, Eleventh and Federal Circuits, and in the highest courts of New York, Georgia and Maryland. Dan is regularly asked to assume lead responsibility for ongoing matters after unfavorable pre-trial rulings or other developments have increased the stakes of the litigation and/or diminished the likelihood of success at trial. He has a record of consistent success in those situations.

Lawdragon has ranked Dan as among the "Top 500 Lawyers" and as one of the "500 Leading Litigators." *Chambers USA: America's Leading Lawyers for Business* has repeatedly ranked Dan nationally for Product Liability and Mass Torts, and in New York for Intellectual Property. *Chambers* notes that he "is an outstanding litigator," and "very strategic, very smart and extremely good on his feet in court." *Managing Intellectual Property* consistently names Dan as a "Patent Star," and he was designated a "Life Sciences Star" in the inaugural publication of *LMG Life* Sciences 2012 and in each subsequent issue. Dan is also ranked by *IAM Patent 1000* in patent litigation, and "Life Sciences: Product Liability" in *PLC's Which Lawyer?*, *Benchmark Litigation: The Definitive Guide to America's Leading Litigation Firms and Attorneys* named Dan a "Litigation Star" in New York and nationally for Product Liability and Commercial Litigation. *The Best Lawyers in America®* named Dan a leading attorney for Product Liability Litigation, and *Law & Politics* has named him "a Super Lawyer" every year since 2006 for intellectual property litigation, product liability defense, or business litigation.

Dan? is a member of the American Bar Association, the American Intellectual Property Law Association, the New York Intellectual Property Law Association, the Federal Bar Council and The Association of the Bar of the City of New York (Thurgood Marshall Award, 1998).

Dan received his J.D. from Columbia University School of Law, where he was a Harlan Fiske Stone Scholar and recipient of the Young B. Smith Award. His undergraduate degree is from Northwestern University. After law school, Dan was a law clerk to the Honorable Thomas P. Griesa of the United States District Court for the Southern District of New York.

The following is a representative sample of Dan's cases.*

Patent Litigation

Capabilities

Litigation
Accounting Firm Advisory and Defense
Appellate and Constitutional Law
Crisis Management
Employee Retirement Income Security Act (ERISA) Litigation
Environmental
Intellectual Property
Life Sciences
Trials

Credentials

Education

Columbia University - 1981 Juris Doctor
Northwestern University - 1978 Bachelor of Arts

Admissions

New York Bar

Clerkships

USDC, Southern District of New York, Hon. Thomas P. Griesa, 1981 - 1982

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- **Western Digital Technologies, Inc. (WD)**: Lead trial counsel in a patent infringement action tried to verdict in the Central District of California in October 2024. Dan successfully argued WD's Rule 50(a) motion at the close of plaintiff's evidence, striking the patentee's damages theory and evidence. Although the trial court permitted plaintiff to argue for damages under a new and undisclosed theory, WD rested without presenting an affirmative case, and the resulting jury verdict in plaintiff's favor was reduced to $1 nominal damages on WD's Rule 50(b) motion. The case is currently on appeal to the Federal Circuit.
- **U.S. Mobile Phone Carrier**: Trial and appellate counsel in a patent infringement jury trial in the District of Nebraska. After a multi-week trial, the jury returned a complete defense verdict, finding that all five accused networks did not infringe any of the six asserted patent claims. On appeal, the Federal Circuit dismissed Plaintiff's appeal as moot based on its conclusion that the asserted patents recited patent-ineligible subject matter under 35 U.S.C. § 101, as argued by Dan on the carrier's cross-appeal.
- **U.S. Mobile Phone Carrier**: Obtained a defense verdict of non-infringement and invalidity on all asserted claims in a jury trial in the Eastern District of Texas, after obtaining pre-trial *Daubert* rulings dramatically limiting plaintiff's damages claim.
- **Lawson Software**: Lead trial counsel for defendant in a civil contempt case following a plaintiff's verdict of patent infringement and the entry of a permanent injunction by the United States District Court for the Eastern District of Virginia in an action defended by a different law firm. Developed trial and appellate strategies for the contempt proceedings that resulted in a complete victory on the contempt charge and vacatur of the underlying injunction.
- **Dow AgroSciences (DAS)**: Served for more than a decade as lead national trial and appellate counsel on all patent infringement actions against DAS involving patents for making genes and inserting them into plants to make the plants insect-resistant. Devised and implemented a global litigation strategy that successfully defended (through trial verdicts, summary judgment rulings, voluntary dismissals and appellate rulings) DAS's core business in multiple interrelated patent litigations throughout the United States. He won a *qui tam* suit against DAS in which plaintiff alleged false marking under 35 U.S.C. § 292. Dan also argued appeals before the Federal Circuit in multiple cases involving patents asserted by and against DAS, and DAS prevailed in each such appeal.*
- **Dow AgroSciences (DAS)**: Dan first-chaired and won a bet-the-company jury trial in the District of Delaware in which DAS prevailed against a competitor asserting patent claims that were alleged to cover all transgenic corn products, both commercial and pre-market, in the United States.
- **Alcon Laboratories**: Successfully defended Alcon in multiple patent litigations involving prescription drugs used for lowering intraocular pressure in patients suffering from glaucoma, including summary judgment in a case of first impression involving method claims and alleged off-label uses of prescription drugs; argued and won appeal of that ruling in the Federal Circuit.*
- **Storz Ophthalmics Company**: Obtained dismissal of multiple patent infringement actions involving the design of intraocular lenses and methods for their surgical implantation.*
- **Praxis Biologics, Inc.**: Successfully defended American Cyanamid Company and Praxis Biologics, Inc. at trial in a patent infringement action related to human infant vaccines against bacterial infections such as meningitis. Trial verdict upheld on appeal to the Federal Circuit.*
- **American Cyanamid Company**: Lead trial counsel in two bench trials in the District of Colorado arising out of an inventorship dispute with associated claims for copyright infringement and common law torts.

Business Litigation

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- ***Archer Aviation Inc.*:** Dan represented Archer, an emerging leader in the eVTOL (electric vertical take-off and landing) aircraft industry, in the defense of trade secret claims and the assertion of defamation and unfair competition counterclaims in the Northern District of California; the Archer team defeated plaintiff's motion for a preliminary injunction, obtained dismissal of plaintiff's most important trade secret claims, and defeated multiple attempts to dismiss Archer's counterclaims, leading to a favorable settlement.
- ***Fraud and Breach of Contract*:** From 2015 through 2024, Dan served as lead counsel for PwC and multiple individuals in an action brought in California Superior Court by the City of Los Angeles ("City") alleging fraudulent inducement and breach of contract in the implementation of a new Customer Information System for the City's Department of Water and Power (LADWP). During discovery, Dan and his team uncovered evidence that the City's counsel had perpetrated a massive fraud on the Court in a related case, in order to facilitate the City's efforts to blame PwC falsely for problems with LADWP's new billing system. That evidence forced LADWP's highest ranking employee to resign, and, following a federal investigation prompted by PwC's evidence, that individual was convicted for bribery and sentenced to six years in prison. Pursuant to the same investigation, lead outside counsel for the City in the action against PwC and the supervising attorney within the L.A. City Attorney's office were also convicted of felonies, as was a second employee of the LADWP. Faced with an array of adverse rulings by the trial court, in September 2019, the City dismissed with prejudice all claims against PwC and the individual defendants. In October 2020, the trial court imposed $2.5 million in sanctions against the City and in favor of PwC. That sanctions order ultimately was upheld by the Supreme Court of the State of California in a unanimous decision.
- ***Audit Report Misrepresentation Claims***: Dan recently represented a Big Four accounting firm in a $1.8 billion fraud and misrepresentation case brought by a non-client of the accounting firm in the Superior Court of California, County of Los Angeles. Dan's team obtained dismissal with prejudice of all claims on behalf of investors who allegedly relied on the accounting firm's audit report to purchase debt in a leveraged loan transaction involving that firm's client, which led to settlement on terms favorable to defendant.
- ***ERISA**:* Dan represented PricewaterhouseCoopers LLP ("PwC") in a high-stakes ERISA class action brought in the Southern District of New York in which Plaintiffs sought to compel payment of "whipsaw claims" exceeding $1 billion. The case settled while pre-trial motions brought by PwC were pending before the district court.
- ***Wage and Hour Class Actions:*** As lead trial and appellate counsel for PwC in multiple wage-and-hour class actions, Dan argued and won in the Ninth Circuit an appeal of an issue of first impression under the California Labor Code, obtaining reversal of the District Court's summary adjudication in favor of a class of approximately 2,000 unlicensed accountants, and leading to a favorable class settlement.

Product Liability and Mass Torts

- **Johnson & Johnson**: Co-led product liability team contributing to Gibson Dunn's independent investigation of company conduct involved in the manufacturing and marketing of talc products and the company's defense of those claims at trial and on appeal. Our investigation (in conjunction with a corporate governance team) involved the evaluation of general causation and contamination theories through a deep dive into epidemiological and other scientific studies, the analysis of internal documents spanning six decades, and dozens of interviews of fact and expert witnesses. The results of our 18-month investigation were detailed in a 350+ page Special Investigation Report that was publicly filed in the United States District Court (D. N.J.) overseeing shareholder litigation against J&J based on talc litigation liabilities.
- **Wyeth**: Served as national lead trial and appellate counsel in nearly 400 product

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liability cases involving claims that childhood vaccines containing the preservative thimerosal caused autism in vaccinated children, prevailing in every case (no settlements). Successfully tried a two-week *Frye* hearing in which Wyeth attacked all causation theories purporting to link vaccines to autism, resulting in the exclusion of all of plaintiffs' expert witnesses. Argued the appeal to Maryland's highest court and obtained a unanimous affirmance, which effectively adopted a new standard for the admissibility of expert testimony in civil cases, *Blackwell* v. *Wyeth*, 408 Md. 575, 971 A.2d 235 (2009). That decision resulted in the dismissal of the claims of all of the approximately 300 plaintiffs in cases then-pending against vaccine manufacturers in Maryland. Devised federal preemption strategy that ultimately resulted in the successful conclusion of the national litigation, and argued preemption motions and appeals in state and federal courts, leading to the Supreme Court's decision in *Bruesewitz* v. *Wyeth*, in which the Court held that all design defect claims involving recommended childhood vaccines are preempted by the National Childhood Vaccine Injury Act of 1986.*

- **Breg, Inc**.: As appellate counsel, obtained reversal of intentional concealment verdict in the California Court of Appeal, resulting in vacatur of a significant punitive damages award and a dramatic reduction in compensatory damages.
- **American Home Products Corporation**: First-chaired and won the first jury trial of a case involving alleged neurological injuries from the use of the Norplant System, a contraceptive implant, obtaining a complete defense verdict. Obtained dismissal of numerous cases involving prescription drugs, biologics, medical devices and OTC products, through successful motion practice.*
- **The Dow Chemical Company**: Obtained dismissal of claims brought on behalf of up to thousands of Brazilian citizens seeking damages under the Alien Tort Statute and state law for alleged injuries from environmental contamination. In another case, Dan obtained dismissal of state law claims brought by more than 300 residents of Ecuador alleging personal injuries from exposure to a commercial fungicide used on banana crops.*
- **American Cyanamid Company**: Successfully defended litigation initiated by the City of New York to recover for property damage and personal injuries alleged to have resulted from exposure to lead pigment-in-paint manufactured by a putative predecessor-in-interest to Cyanamid.*
- **Lederle Laboratories**: First-chaired and won three multi-week jury trials of cases involving permanent injuries to infants allegedly resulting from immunization with the whole-cell DTP vaccine. Argued and won the resulting appeals in the United States Courts of Appeal for the Second, Sixth and Eleventh Circuits.*
- **Lederle Laboratories**: Obtained summary judgment prior to class certification of a statewide consumer class action involving a popular multi-vitamin, Caltrate®.*
- **Counseling:** Dan counsels corporate clients on potential product liability risks arising out of the introduction of new products to market or the acquisition of product manufacturers or specific product lines.

Insurance Coverage Litigation

- **Wyeth**: Served as lead counsel in numerous insurance coverage litigations in which the policyholder sought payment of defense costs incurred in the defense of mass tort litigation, and defense and remediation costs for scores of environmental clean-up sites throughout the country. Obtained hundreds of millions of dollars of coverage in highly favorable settlements. Dan has also successfully litigated business interruption claims, claims for coverage under D&O policies and reinsurance disputes.*
- **John Wyeth & Brother**: Served as lead counsel in an insurance coverage action over defense costs incurred by Wyeth in the defense of Benzodiazepine product liability litigation. Worked closely with barrister and instructing solicitors in the successful trial of Wyeth's claims in the Commercial Court of London.*

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Other Litigation

- Dan? has also litigated consumer class actions, and criminal and civil antitrust, securities, RICO, breach of contract, fraud, breach of fiduciary duty, and replevin cases.

**Representations occurred prior to Dan's affiliation with Gibson Dunn.*

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