

MVP: Gibson Dunn's Mark Kirsch

By Dean Seal

Law360 (November 14, 2019, 12:50 PM EST) -- Gibson Dunn & Crutcher LLP's Mark Kirsch picked up five big wins in the last year, scoring trial victories for Investcorp and a Susquehanna fund and defeating proposed class actions against Rio Tinto, Vale SA and AmTrust Financial Services Inc., landing him a spot as one of **Law360's 2019 Securities MVPs**.

WHY HE'S A SECURITIES ATTORNEY:

The first in his family to become an attorney, Kirsch said he was led to the legal profession because it offered him opportunities to write in a style that, "when you're senior enough, is recognizably your own," and to go before a fact-finder to suss out complex problems on behalf of a client who needs help.

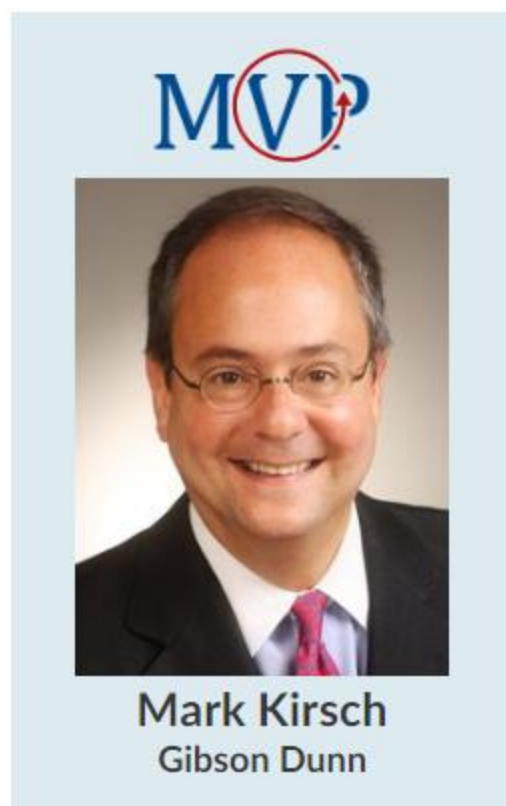
After graduating from Yale Law School and clerking for the U.S. Circuit Judge John M. Walker Jr., Kirsch worked for four years at the U.S. Attorney's Office in New York's Eastern District before joining Clifford Chance LLP, where he spent 14 years.

Soon after Kirsch arrived, Clifford Chance's head of litigation asked him to step up and argue a securities case in court. When that case was ultimately won, the door opened for Kirsch to continue working in a practice area that he found "intellectually challenging."

"Over time, I developed a deeper and deeper passion and appreciation for the complexities of [securities work] and what makes it interesting," Kirsch said. "Plus there was the fact that some of these cases do actually get tried. I did not want to go through my career, having left the U.S. Attorney's Office, never again standing in front of a jury or a judge in a bench trial."

ON TAKING CASES TO TRIAL:

In a practice area where taking cases all the way to trial seems increasingly rare, Kirsch was able to snag two big trial victories in the past year. The first came last December, following a two-week bench trial



in Delaware Chancery Court over fraud claims related to disclosures about the \$115 million purchase of payment-processing company Plimus Inc. in 2012.

A vice chancellor rejected claims that Kirsch's clients, major Plimus shareholder Susquehanna Growth Equity LLC and two senior Susquehanna executives on Plimus' board, aided and abetted a scheme carried out by Plimus' former CEO, who was found liable for fraud.

In August, Kirsch found himself in another two-week bench trial, this time in New York federal court, to defend alternative investments manager Investcorp from claims that it broke a capital "seeding" agreement with a hedge fund complex. Kirsch was able to get four of the hedge fund complex's five claims dismissed before trial, leaving only a negligent misrepresentation claim, and after the trial, a federal judge issued an order that found no liability and no damages against Investcorp.

While going to trial twice in one year is relatively unusual, Kirsch said he and his team are always working with the mindset that a case might go all the way.

"Obviously, if you can help a client by getting a case dismissed on motion, that's terrific, but if it's not possible, then the client needs to know that you could take it all the way through to a verdict and win," Kirsch said.

HIS BIGGEST CHALLENGES OF THE LAST YEAR:

He was able to secure dismissals of shareholder class actions like the one that AmTrust faced until September over financial restatements, or one Rio Tinto faced over a Mozambican mining project until it was nixed in June. However, Kirsch said, the biggest challenges are "always in trials."

"Trial requires a lot of very challenging skills, and that includes being able to react quickly in the moment when something unexpected happens, as it so frequently does," he said.

With so many split-second decisions popping up so frequently, Kirsch said the best strategy for taking on a trial is to get a sense that time is passing slower for you than for your opponent, so that things don't feel like they're happening "too quickly for you to react."

WHAT HE'S MOST PROUD OF THIS YEAR:

Kirsch said he's genuinely proud of all of the big victories he's overseen this year, but not because of any personal triumphs. The success he's seen in the past 12 months came from working with a good team of attorneys — "people you rely on, people you can delegate to, people who really care and know what they're doing," he said.

"None of [the cases] were easy, and I'm proud of them all because of the outstanding teams of which I was a part," Kirsch said. "Just working among talented, committed people — that makes you proud."

— *As told to Dean Seal*

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