

## Appellate Practice Group Of The Year: Gibson Dunn

By **Andrew Kragie**

*Law360 (January 27, 2020, 4:32 PM EST)* -- After victories in 2019, including a unanimous U.S. Supreme Court ruling that defined "full costs" in patent litigation, a trailblazing win for a company whose property Venezuela nationalized, and a rapid response for Facebook after a subpoena in a murder case, Gibson Dunn & Crutcher LLP has extended its streak as a Law360 2019 Appellate Group of the Year.

The group's appellate leaders credited the firm's success to a deep bench, geographic diversity and integration with trial teams. Co-chair Mark A. Perry said more than 20 partners spend at least half their time on appeals along with 50 other attorneys working out of California, Texas, Colorado and Washington, D.C. That enabled Gibson Dunn to handle well over 100 appeals in 2019, including five Supreme Court arguments presented by four partners.

At many firms, Perry said, "They've got one person who does everything. We've got many appellate lawyers."

"We're not just eggheaded appellate specialists," added co-chair Allyson N. Ho, who said team members work with trial teams inside and outside the firm to identify promising issues for appeals.

Long before Perry went to the high court for Rimini Street Inc., he represented the technical support service company before a magistrate judge during a discovery dispute in its fight with software giant Oracle Corp. Last year's Supreme Court case centered on the meaning of the term "full costs" in the Copyright Act.

"We had lots of hypotheticals about 'full plates' and 'full moons,'" Perry said. "It was an interesting exercise in the use of the English language."

The justices' unanimous decision in March resolved a circuit split in favor of Rimini Street by overturning a Ninth Circuit decision, nixed a nearly \$13 million award to Oracle, and established that copyright case winners can only recoup the litigation costs normally allowed by federal rules.

In another case, a Third Circuit win for Canadian mining company Crystallex International Corp. established a new strategy for companies seeking compensation after Venezuela's socialist government seized their assets in that country. The circuit judges agreed in July that the company can pursue more than \$1.2 billion of shares in Citgo, the U.S. subsidiary of Venezuela's state-owned oil company, although U.S. sanctions have



complicated plans for a judicial sale.

"Venezuela is a notorious deadbeat," said Gibson Dunn partner Miguel A. Estrada, who argued the appeal. "No other creditor ... has been able to get this close to U.S.-based assets of Venezuela, where they may finally be able to collect and get paid for an injustice that was committed years and years ago.

"Other people are now trying to come after us and copy our strategy, but they are behind in the queue, so to speak," he added.

Over four hours of oral arguments, Estrada faced counsel for three opposing parties: the national oil company, the alternative Venezuelan president recognized by the U.S., and bondholders led by BlackRock Financial Management Inc.

"Given the ability of our opponents, it was difficult to get up to speed on all the arguments that could conceivably come up," Estrada said, adding that it was not apparent until arriving in the courtroom that the hearing would continue "until the cows came home."

While most of the firm's appellate work plays out in federal courts, a sizable minority happens in state courts. For instance, after previously representing Facebook in a similar case at the California Supreme Court, partner Joshua S. Lipshutz secured another victory before the D.C. Court of Appeals, the highest local court in Washington.

In a quadruple-murder case, D.C. public defenders sought private communications from Facebook. The trial judge held the company in contempt, launching an emergency briefing schedule that condensed what Lipshutz said would normally take at least a year into less than a month.

The D.C. appellate judges agreed that the Stored Communications Act does not allow Facebook to disclose private communications, although defendants have other routes to pursue the data. Their January 2019 opinion set a new precedent for an issue percolating through state and federal courts, one that Lipshutz predicted "may come up for Supreme Court review in the near future."

"These types of criminal subpoena issues, and civil subpoenas, are arising more and more because litigants are looking for information ... to undermine their opponents' cases," he said. "There are so many other ways of getting the information that they're seeking. What the Stored Communications Act does is just cut off one means of getting that information."

Lipshutz represents Facebook on privacy issues in state, federal and overseas forums, especially on cases stemming from the Cambridge Analytica scandal. He helped negotiate the social media giant's \$5 billion penalty last year in a deal that granted a massive liability shield for past behavior. He said Gibson Dunn's large appellate team helps him prepare for cases because he can bounce ideas off several attorneys who regularly argue before high courts, including 24 former U.S. Supreme Court clerks.

In 2019, the practice group added another partner with extensive appellate experience. Kristen Limarzi joined in October after more than a decade at the U.S. Department of Justice, including several years as appellate chief for the DOJ's Antitrust Division.

This marks Gibson Dunn's eighth appearance on Law360's annual list of top appellate groups since 2011.

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