

Trials Group Of The Year: Gibson Dunn

By **Cara Salvatore**

Law360 (January 14, 2020, 1:10 PM EST) -- Gibson Dunn's year of trial wins included fending off a multi-hundred-million-dollar claim against an investment adviser over its withdrawals from a fund and a closely watched \$500 million antitrust trial defending a Korean ramen maker against price-fixing conspiracy claims, making it one of **Law360's 2019 Trials Groups of the Year**.

The trial and litigation function is deeply embedded in the firm's DNA, according to partner Rachel Brass, one of the leaders on the ramen antitrust trial.

"We approach cases from day one as if they will go to trial. The first thing we do is write the jury instructions: What is it that will have to be proven if this case goes to trial?" Brass said. "Everyone is keeping their eye on that end game."

It worked in a major case in December 2018, when a federal jury cleared Gibson client Ottogi Co. Ltd. and another ramen maker represented by a different law firm, finding the noodle purchaser plaintiffs didn't prove a price-fixing conspiracy by the producers.

Brass said a major turning point was a deft cross-examination of plaintiffs' expert witnesses on economic damages. Because the direct-purchaser plaintiffs and indirect-purchaser plaintiffs had to litigate in front of a single jury, and each group had its own damages expert, Ottogi was able to play the two experts against each other.

Those cross-examinations were "devastating to the credibility of their case," Brass said.

"You had two classes, and fundamentally their experts were in conflict ... By the end of the second expert's testimony, he said under cross-examination that there was roughly a 1 in 100 million chance that they were both right. And it was maybe the greatest admission I've ever gotten in a direct examination, much less a cross-examination."

The jury ended up deliberating for only a few hours, finding there was no conspiracy proven.

"They did not reach any of the other questions on the verdict form," Brass said.



Meanwhile, there was no verdict form involved in another major win for the firm, a bench trial by Kortright Capital Partners LP against Investcorp Investment Advisers Ltd. in New York federal court. Gibson's team, representing Investcorp, was able to convince a judge that it had done nothing wrong in pulling client capital from Kortright as Kortright contemplated a tie-up with Man Group PLC.

Kortright said Investcorp defaulted on investment promises and that Investcorp's choices cost Kortright hundreds of millions of dollars. Kortright said Investcorp had committed multiple times to keeping its clients' capital invested with Kortright, and that Kortright went forward with the Man Group effort only with its understanding that the funds would definitely remain in the mix.

Kortright and Investcorp had been investment partners since 2013, but their relationship soured in 2016 after Kortright told Investcorp over a lunch meeting that it intended to go into business with Man Group, according to court documents.

But Investcorp alleged there was no factual basis for Kortright's argument that Investcorp's negligent misrepresentation caused the transaction to implode, because there was no written agreement between the former investment partners.

"I think the court didn't believe that those representations had been made," partner Mark Kirsch said.

For Investcorp to have agreed "to deliver, for an indefinite period of time, client money to an institution where you don't know what terms it's subject to — it doesn't make any sense."

One of the biggest moments, according to Kirsch, was when the judge struck in its entirety the testimony of Kortright's economic damages expert, who used financial assumptions that seemed questionable to the Gibson team — "that the fund would still be in business 50 years from now, that there would be no fund expenses," Kirsch said.

When "the witness says, 'I'm assuming no expenses carried by Kortright, ever, over time,' then the judge understands, well, that's not likely," Kirsch said.

Gibson's might in the courtroom is a product of frequent practice, Kirsch said.

"There's almost never a time in the New York office, for example, where you don't have partners who are on trial at that moment," Kirsch said. When you include the entire U.S., "100% of the time, there are partners on trial in our firm."

--Additional reporting by Reenat Sinay and Matthew Perlman. Editing by Philip Shea.

Correction: A previous version of this story did not identify Mark Kirsch's first name. The error has been corrected.