

Competition Group Of The Year: Gibson Dunn

By **Aaron Vehling**

Law360, New York (January 8, 2016, 6:35 PM ET) -- Gibson Dunn & Crutcher LLP continued to establish itself as a leader in the competition sector by helping guide clients like Time Warner Cable to decisive court victories in large, complex suits and companies like Norbord and Ainsworth to successful mergers, making it one of Law360's Competition Groups of the Year.



The firm's 212-member Antitrust and Competition Group had a big win in the sports and entertainment arena, shepherding Time Warner Cable to victory in a \$6 billion putative class action challenging TV rights agreements with the Los Angeles Dodgers and Los Angeles Lakers. Gibson Dunn is also known for its success in cutting-edge pharmaceutical cases, such as the dismissal of a "product-hopping" class action against Allergan Inc., practice group co-chair Dan Swanson said.

"A lot of what we do is to develop substantive expertise in particular industries, and we don't blink when we get close to trial," Swanson said.

In the TWC case, customers sought \$6 billion in restitution, accusing the cable giant of "forcing" pay-TV subscribers in Southern California to subsidize the cost of new TV rights agreements with the Dodgers and Lakers. They alleged that requiring non-sports fans to pay for unwanted programming violated California's Unfair Competition Law.

"We tried to do what we do, which is cut through and find the arguments most likely to end the case at the earliest possible point," Swanson said.

When the subscribers took the case to the state's appeals court, it ruled that federal preemption principles bar application of state consumer protection laws and tossed the suit. But in doing so, the court, citing Bruce Springsteen, expressed appreciation for "the lament of cable television subscribers who feel that although they now receive 10 times 57 channels or more, mostly nothing's on that they wish to view."

"That's not something I'm typically used to seeing," Swanson said. "I'd rather have the Boss be on my side."

Both the appeals and high court declined to review the decision.

"We basically did the legal equivalent to the karate chop," Swanson said.

The pharmaceutical sector is an active one for antitrust and competition attorneys, and it's an area where Gibson Dunn has developed and continues to develop a stellar reputation.

In August, that expertise was on full display when a Delaware federal court tossed a suit accusing Allergan Inc. of defrauding the U.S. Patent and Trademark Office and engaging in a practice known as product hopping, or alleged efforts by branded drugmakers to snuff out generic entry by introducing new versions of well-known drugs.

The dismissal turned on the court finding that lead plaintiff Hartig Drug Co. lacked standing to sue. Hartig brought its Sherman Act claims by saying that direct purchaser Amerisource assigned its direct purchaser claims to it, but U.S. District Judge Sue L. Robinson determined that the assignment was blocked by Amerisource's distribution contract with Allergan.

One reason that's a significant win is because it came at a time when several other courts reached the opposite outcome, according to Gibson Dunn.

Wins like that one "reflect the strength of our litigation practice in that area," Swanson said.

In the realm of mergers and acquisitions, the company helped shepherd many deals, including private equity-backed Norbord Inc.'s tie-up with Ainsworth Lumber Co., a \$667 million merger **that cleared** the U.S. Department of Justice's review in March, despite the agency refusing to allow a similar tie-up between Ainsworth and rival construction materials supplier Louisiana-Pacific Corp. less than a year earlier.

To achieve the challenging deal, Gibson Dunn employed a strategy "putting the department to its proof."

As opposed to waiting for the DOJ's second request for information and thereby allowing months of information-gathering to occur, Gibson Dunn advised its clients to have all of the information already available to allow for the clock to start ticking right away.

In this instance, it meant a shorter review process that ultimately led to the DOJ approving the deal without conditions.

"If you figure out how all the forces balance together ... it puts pressure [on the regulator] to make a decision soon," Swanson said. However, it doesn't put on so much pressure that the regulator becomes unhappy and the deal falls through, he added.

On the cartel side in 2015, Gibson Dunn helped guide UBS AG through a series of complicated international investigations and litigation surrounding Libor, foreign exchange rates and precious metals commodities. Under the firm's watch, UBS secured immunity from prosecution in the investigations.

UBS has not been charged with any Libor-related violations anywhere, and the European Commission has significantly reduced the bank's potential fine because it was the first applicant to ask for leniency from the Commission, according to the firm. Other banks ended up paying a record €1.71 billion in combined fines, Gibson Dunn said.

And on the forex front, UBS secured full immunity from the DOJ's Antitrust Division while other banks pled guilty and paid a total of \$2.5 billion in fines. UBS also received protection from the Criminal Division relating to precious metals and some forex products, according to the firm.

"There is not another firm that has this many partners who have led government cartel investigations and private damage litigation around the world," practice group co-chair Scott Hammond said.

Gibson Dunn's Antitrust and Competition Group has attorneys firmwide in offices throughout the U.S., along with in Brussels, London, Munich and Hong Kong. The presence of an antitrust partner in Hong Kong is a relatively new development — in December, the firm added Sebastien Evrard to that office, marking the first antitrust practice group partner in Asia.

--Editing by Catherine Sum.

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