

Sports Group Of The Year: Gibson Dunn

By Tom Zanki

Law360, New York (January 19, 2016, 6:29 PM ET) -- From successfully defending Tom Brady in the “Deflategate” drama to tackling fantasy sports litigation, steering franchise relocations and resolving lucrative cable programming disputes, Gibson Dunn's sports law team aggressively defended its turf in 2015, landing it among Law360's Sports Groups of the Year.



Gibson Dunn formally launched its sports law practice group in June, aided by more than 50 attorneys nationwide, but its expertise in the burgeoning field is hardly new. The firm argued in *Toolson v. New York Yankees* before the U.S. Supreme Court in 1953 — representing the Yankees in one of the first cases to uphold Major League Baseball’s antitrust exemption — and has steadily built relationships across the North American and European sports industry since, making it a go-to firm for high-profile cases.

A case in point was the reversal of New England Patriots quarterback Tom Brady’s four-game suspension in Deflategate, a saga in which the star signal-caller, accused of using underinflated balls to help his team secure a Super Bowl berth, hired Gibson Dunn partner Andrew Tulumello and Winston & Strawn LLP’s Jeff Kessler to fight NFL commissioner Roger Goodell’s ruling. After weeks of urging the parties to reach a settlement to no avail, U.S. District Judge Richard Berman in September vacated Goodell’s punishment, freeing Brady to return to his team’s lineup.

Judge Berman blasted the NFL’s process, informed by an investigative report by Ted Wells of Paul Weiss Rifkind Wharton & Garrison LLP, as riddled with “legal deficiencies,” including failing to provide Brady adequate notice of his potential discipline and alleged misconduct and denying his attorneys the chance to interview NFL general counsel Jeff Pash, who participated in the investigation, as well as denying him access to witness interview notes and other files.

Tulumello said it was clear early on that Goodell's attempts to persuade the judge that he acted within his authority were not finding a warm reception in the courtroom.

"It was part of a large pattern of disciplinary decisions by the commissioner that have been completely arbitrary," said Tulumello, who co-heads the firm's sports law practice group. "We felt very comfortable with our legal arguments. The commissioner was grasping to come up with a defensible rationale."

The NFL is appealing to the Second Circuit. Gibson Dunn elsewhere deepened its penetration across a range of high-stakes litigation, notably surrounding the growing phenomenon of daily fantasy sports.

The firm is representing daily fantasy site DraftKings Inc. in dozens of putative class actions nationwide. Most cases accuse DraftKings employees of using material nonpublic information when playing contests on the websites of competitors — namely FanDuel — in a manner akin to insider trading. Other suits challenge the concept of daily fantasy sports in general, alleging it constitutes illegal gambling under certain state laws, a basis on which New York Attorney General Eric Schneiderman gained a preliminary injunction against DraftKings and FanDuel that has since been stayed by an appellate court while both companies continue their legal fight with the state.

Gibson Dunn attorneys argue that fantasy sports is an exciting, skills-based endeavor that should be nourished as it draws fans closer to games. They also challenge attempts to equate fantasy sports with illegal gambling, typically Internet poker.

"There appears to be a mistaken belief by regulators that they are the same, when they are not," said Gibson Dunn partner Maurice Suh, who added that there are many unresolved questions in law surrounding online gaming itself.

Fans are at the center of another dispute in which Gibson Dunn played a role. The firm represented Time Warner Cable Inc., which in 2014 won dismissal in California Superior Court of an \$11 billion class action accusing the company of unfairly bundling sports channels showing the Los Angeles Dodgers and Los Angeles Lakers and passing costs onto subscribers.

Plaintiffs argued such services should be sold a la carte so only subscribers who want those channels pay. After the Superior Court found the company, which previously defeated a federal antitrust lawsuit, did not violate California consumer law, the state Supreme Court in June refused an attempt to revive the lawsuit.

Outside the courtroom, Gibson Dunn lawyers are advising boardrooms in industry-shaking transactions. The firm is lead counsel for Hollywood Park Land Co., a joint venture between Stockbridge Capital Group LLP and the Kroenke Group, in its plan to develop 298 acres in Inglewood, California. The site will be the future home of the NFL's Rams, who are returning to the Los Angeles area after 20 years in St. Louis, and possibly the Chargers or Raiders, who may also mull a move to the new facility as part of a joint arrangement.

To build its sports transactions team, Gibson Dunn in 2014 recruited partner Richard Birns, who previously worked on deals involving stakes in the New Jersey Devils and the New York Yankees' regional television network YES. Birns last September represented Legends Hospitality, the concessions and sports-marketing venture co-owned by the Dallas Cowboys and the New York Yankees, in the buyout of Checketts Partners Investment Fund, one of many deals he has taken on since joining the firm.

“On the transaction side in the sports group, we see significant growth and significant opportunities going forward,” Birns said.

--Additional reporting by Max Stendahl and Zachary Zagger. Editing by Mark Lebetkin.

All Content © 2003-2016, Portfolio Media, Inc.