

## Rising Star: Gibson Dunn's Scott P. Martin

By **David McAfee**

*Law360, Los Angeles (April 14, 2014, 3:50 PM ET)* -- Gibson Dunn & Crutcher LLP's Scott P. Martin has played a crucial part in securing a number of significant appellate victories, including for Comcast Corp. in its recent high court victory over accusations that it monopolized the Philadelphia cable market, making him one of Law360's top five young appellate attorneys.

Martin, a 35-year-old partner in Gibson Dunn's Washington, D.C., office and a member of the firm's appellate and constitutional law practice group, drafted the U.S. Supreme Court briefing for Comcast in a challenge to a Third Circuit decision to affirm certification of the plaintiffs' class. Martin said the Gibson Dunn team was retained by Comcast to get Supreme Court review on the decision, but that it was a "long shot."

"[T]he court grants review in only a small fraction of the cases that come before it," Martin told Law360. "We also had a very lengthy record, which can potentially make it more difficult to obtain review because the Supreme Court prefers cases where the legal issues are presented without distracting disputes over the facts."

But Martin says he and Comcast's other counsel developed a strategy that made the Supreme Court review more likely. They decided to focus on only one issue: whether the Third Circuit erred by failing to consider certain differences among class members because they also relate to the "merits" of the plaintiffs' case.

"This strategy worked: The Supreme Court granted review and ultimately ruled in Comcast's favor, concluding that the lower courts could not grant certification of such a disparate class," Martin said, noting that the Comcast decision, handed down March 27, has changed the way that lower courts consider class certification issues. "Along with the rest of our appellate group, I have briefed several cases arguing that earlier approaches to class certification are no longer sufficiently rigorous following Comcast."

Martin, one of approximately two dozen Gibson Dunn partners whose practice principally focuses on appellate litigation, also played an important role in helping BP Exploration & Production Inc. secure an important victory in its long-running dispute over suits stemming from the 2010 Deepwater oil spill. In the aftermath of the spill, BP entered into a settlement agreement with businesses and individuals claiming that they were injured by the spill, including entities that allegedly suffered economic losses, according to Gibson Dunn.

In October, the Fifth Circuit ruled that a federal judge's interpretation of those settlement terms could be resulting in the payout of fictitious claims. In a divided opinion, the appellate court said the settlement isn't lawful if the class includes individuals who didn't sustain any losses in the oil spill, overturning U.S. District Judge Carl Barbier's refusal to halt the payments and instructed him to craft a narrowly tailored injunction allowing time for reconsideration of BP's allegations.

While Martin said he couldn't comment publicly about the case, BP has said the appellate ruling confirmed what the oil giant was saying for months: that claimants shouldn't be paid for inflated losses under the business economic loss framework of the settlement.

"The Fifth Circuit has now made clear that the settlement agreement could be jeopardized if the Claims Administrator continues to make payments to claimants that did not suffer actual losses due to the Deepwater Horizon accident and oil spill," BP said in a statement at the time.

Martin has argued three times before the United States Court of Appeals, twice before the Fourth Circuit and once before the Ninth Circuit. He has also argued a number of times in federal district courts on dispositive motions, which he says are similar in substance and strategy to appellate briefing and argument.

According to Martin, the appellate practice is based on developing and using a specific set of skills, rather than learning a subject matter.

"You have to be able to explain complicated and specialized areas of law to judges whose backgrounds will often have been in other areas," Martin said. "So, as an appellate lawyer, you are constantly learning new areas of law and trying to make them approachable to generalist lawyers and judges."

According to Martin, because appellate cases involve issues arising from a variety of subject areas, appellate attorneys frequently work with those in other groups.

"Intellectual property is a perfect example: I have routinely benefited from the guidance of our IP colleagues as I have attempted to understand, and then explain to judges, the complicated technical issues that often arise in those cases," Martin said. "I also bring my experience in appellate litigation to bear in cases that are not strictly appellate — in both district court cases and rulemaking proceedings, for example — and work with lawyers outside the appellate group in that setting as well."

--Additional reporting by Melissa Lipman and Kurt Orzeck. Editing by Richard McVay.