

WINNING | A SPECIAL REPORT

Our request was simple: Tell us a story. We asked our readers to nominate litigators who prevailed during 2012 before a bench or jury trial. It helped if they had overcome tough odds and high financial stakes or a principle or precedent was at risk. We hereby share the five tales we liked the best.



Victory in Complex Case Was Years in the Making

But team avoided any civil liability for huge French insurer accused of business chicanery.



ROBERT WEIGEL

| **GIBSON, DUNN & CRUTCHER**

TRIAL TIPS

1. I don't think there are any shortcuts. It is crucial to spend the time to learn all the facts—particularly the documentary evidence—before the clients start speaking from memory alone.
2. Clients need to understand that under the American discovery system, all of the facts will come out and that it is important to know the whole story up-front.
3. I find that once the facts are known, the best approach is for the witnesses to tell the jury what they did and why they did it in a straightforward manner.

GIBSON, DUNN & CRUTCHER

WINNING

BY LISA HOLTON

A defunct California insurer with a pesky junk-bond problem; Salma Hayek's French-speaking billionaire husband; a 13-year lawsuit filed by a state insurance commissioner: These all were elements in a \$4.3 billion case alleging chicanery in the acquisition of that insurer's assets.

Gibson, Dunn & Crutcher partner and international litigation specialist Robert Weigel convinced two federal juries that client Artémis S.A. and its owner François Pinault were not civilly liable for any damages after a long and winding legal battle dating to the 1991 failure of Executive Life Insurance Co., which went down in the Drexel Burnham Lambert junk-bond scandal.

"The single most interesting thing about this case? There was really no prejudice against a very successful individual from France who had made billions of dollars in this transaction and testified in French," Weigel said. That a jury might hold that against the client "wasn't going to fly in L.A. We had done our jury work."

Shortly after Executive Life's failure, Pinault's Artémis bought a \$2 billion portfolio of the company's junk bonds at auction and received approval from California's Department of Insurance to buy nearly 70 percent of the rehabilitated insurer, which Artémis proceeded to operate profitably.

Then a whistleblower emerged with allegations that Artémis and parties including Le Crédit Lyonnais had fraudulently acquired Executive Life's assets. Then-insurance commissioner (now U.S. Representative) John Garamendi filed suit in 1999 alleging that the defendants withheld certain secret agreements during the bidding for those assets.

Related criminal charges settled in 2003, with Artémis paying \$185 million but acknowledging no wrongdoing. The civil action first came to trial in 2005.

The case kept the defense team on its toes. "During the first trial, we were the fourth defendant, so we were just going to sit in the back of the courtroom," Weigel said. Crédit Lyonnais and the other defendants either settled or defaulted on the commissioner's claims and paid almost \$600 million. "Suddenly we had less than a week to try our case," Weigel said. "We got up and told our story and won five out of six counts—the jury hung on the damage theory."

Being the last company standing in court required the team to tell the extended story of the entire bidding process without confusing or alienating the jury—a tough task, given the plodding pace that many restructuring stories take. In an era "when everyone's used to looking at a screen," Weigel said, "I've learned graphics are very important." And the settlements had left his client bearing the weight of news reports concerning the charges that previously it had shared with its fellow plaintiffs.

"We were charged with conspiracy, and we were aware of that going in," Weigel said, "and we were charged with responsibility for what everyone else said and had done.

"The simple point we kept hammering was that these junk bonds were toxic waste at the time. We were taking on risk because these assets didn't belong in an insurance company and selling them for cash was the only prudent thing the insurance company could do."

On appeal, the U.S. Court of Appeals for the Ninth Circuit in 2008 remanded the case for limited retrial of a competing bidder's damages theory. With less than three weeks to go, the judge advanced the trial date by a week "with no prior warning" and imposed strict time limits, allowing each side only 15 hours to present its case, Weigel said.

Putting Pinault on the stand was a "calculated risk," given his wealth and need to communicate through a translator. But he "humanized" the proceedings, Weigel said. "He's a self-made man

and a principled man, and he wanted to defend himself."

Gilles François Pagniez, Artémis' general counsel, heaped credit on Weigel and his team. "We're French and we were facing the disgorgement of \$4 billion in profit," Pagniez said during a telephone interview.

"When you're foreign, it's not your jurisdiction and you need lawyers who can work hand-in-hand and explain everything. It was not easy, and Bob and his team and [New York Gibson Dunn partner] Marshall King were up to the challenge."

Weigel said he didn't "set out to be an international litigator." He holds an undergraduate economics degree from Binghamton University and a J.D. from the University of Chicago Law School and initially started working for an economic consulting firm founded by Seventh Circuit Judge Richard Posner.

"For a lawyer, I am pretty good with numbers," he said. "Basically, I understand complex financial transactions and how money flows. The economy has become increasingly global over the course of my career, and for the last 15 years the bulk of my work has involved complex transactions with an international component."

Weigel described Gibson Dunn as "a place that really values lawyers who can stand up and try a case and an opportunity to work on a trial—despite the hard work and long hours—is always considered a plum assignment. For the Artémis trial, we had lawyers from both the L.A. office and the New York office working side by side throughout the whole case." They included King, partner Chris Chorba and a raft of associates. "When you are trying a \$4 billion case in less than two weeks, it is important to have a great team all pulling the oars in the same direction," he said.

Lisa Holton is a freelance reporter.