

Litigator of the Week: Paul Weiss Partner Makes a \$220M Save in ‘Uncharted Territory’

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Litigator of the Week crown goes to Paul, Weiss, Rifkind, Wharton & Garrison partner Andrew Gordon for his win on behalf of hedge fund administrator the Citco Group, which was hit with a \$220 million suit in federal court in Baton Rouge, Louisiana.

Three state pension funds tried to pin the blame for their losses on Citco when a hedge fund it administered went belly-up in 2012. Litigating a series of novel and wildly complex claims in hostile territory, Gordon succeeded in getting the case dismissed on summary judgment less than two weeks before trial was due to begin.

He discussed the win with Lit Daily.

Lit Daily: Who is your client and what was at stake?

Andrew Gordon: Our client is The Citco Group of Companies, one of the world’s leading hedge fund administrators. In that role, Citco provides a variety of back office services to the hedge fund industry, including fund accounting and net asset value calculations, investor relations services, and anti-money laundering compliance.

In this dispute, Citco served as administrator to certain funds managed by Fletcher Asset Management, the asset management firm run by Alphonse “Buddy” Fletcher Jr., a well-



Andrew Gordon

known equity trader whose firm went bankrupt in 2012.

In 2008, plaintiffs—three Louisiana pension funds—invested in Fletcher’s leveraged fund after Fletcher “guaranteed” high returns of over 12 percent and promised virtually no risk.

After the hedge fund tipped into insolvency, and they couldn’t redeem their investments, they sued Citco, claiming over \$220 million in damages on the ground that Citco, as fund administrator, should have known that Fletcher was insolvent, didn’t inform the investors, and therefore was responsible for their losses.

What were some of the unusual challenges posed by this case?

This case was full of unusual challenges. On the legal side, plaintiffs' claims were novel, having never really been litigated in the State of Louisiana, and we were in uncharted territory.

For example, plaintiffs brought a claim under Louisiana's Securities Act, where there are few, if any, reported decisions on how to interpret that law. They also brought a "holder" claim, arguing that they wouldn't have held onto the investment had Citco told them about certain facts. However, there had never been a case in Louisiana involving a "holder" claim.

The plaintiffs were also advancing a never-before raised legal theory about the duties Citco had as a fund administrator to investors in a fund.

On the factual side, we were dealing with a financial instrument of incredible complexity in an environment where very few people understand what a hedge fund administrator does, let alone how a hedge fund's back office operates. And the plaintiffs—pension funds for firefighters and other municipal employees—were inherently sympathetic.

So, the challenge was how to simplify it all, boil it down so that the court (and ultimately the jury) could understand our legal and factual arguments, and then figure out which of those arguments we should advance on summary judgment because they would resonate.

The federal district court in Baton Rouge was not home turf for you or your client. How did you deal with that?

Being in Baton Rouge, Louisiana, presented enormous challenges for us and our client optically. I won't even get into what people think of New York lawyers outside of New York! And our client is a

foreign offshore company that provides services to billion-dollar hedge funds—not exactly the most sympathetic of defendants. Local press coverage was largely hostile given who the plaintiffs are.

Plus, at the end of the day, the Louisiana taxpayer was going to be on the hook to make up the actuarial "hole" that this investment loss created in the event that the public pension funds lost the case. And we were the only deep-pocketed defendant left.

Given all that, our strategy was to ensure that we were better prepared than our adversaries, to understand the law and the facts better, and devise a game plan that ultimately gave our client a real shot of prevailing on summary judgment.

Who were the lead plaintiffs lawyers and how would you describe their style in litigating the case?

The lead lawyer was a well-known Baton Rouge plaintiff's lawyer, Phillip "Phil" Preis. I would describe Phil's style as aggressive. To his credit, Phil left no stone unturned, came up with novel arguments and frequently presented the court with questions of first impression.

I'd say we were in court just about every month arguing over one dispute or another. It was tough sledding.

What were the key themes of your defense?

This was a case alleging approximately 70 or so misrepresentations and omissions by our client. So our first job was to put the administrator's role in a better context and show just how limited the administrator's role is.

Citco didn't know much, if anything, of what plaintiffs were complaining about. Plaintiffs, for example, were complaining that they weren't told about certain investment decisions Fletcher made. Our goal was to try to show the court, and ultimately the jury if we got there, that administrators

don't have visibility into the precise nature of the investments.

Our other goal, given that this was a disclosure case, was to show what the plaintiffs knew, when they knew it, and what they then did or didn't do with that information. Going into the case, we believed that the plaintiffs knew a lot more than what they were letting on, which was what discovery showed. So a major goal was to show that plaintiffs were well aware of the basis of their claims long before they filed suit.

Before you won on summary judgment, this case was on the verge of going to trial. How were you preparing?

While we were confident in our summary judgment motions, we obviously needed to prepare for the worst case.

With only a little more than a week to go before the scheduled trial date, my partners Julia Wood and Greg Laufer and I were in non-stop motion as we made final preparations for trial. Julia and Greg were flying around the globe to prepare our witnesses, none of whom are based in the U.S. We were set to call six or seven fact witnesses, as well as another six or seven experts. It was a full-court press.

My opening statement was ready. Crosses were being finalized. Had the judge denied our summary judgment motions, we could have started trial the next day.

Instead, U.S. District Chief Judge Shelly Dick on January 14 sided with you and dismissed the case. What were some of the highlights of her summary judgment rulings?

Judge Dick completely agreed with us on our statute of limitations defenses with respect to the negligent misrepresentation and "holder" claims, finding that the plaintiffs were well aware of the basis of those claims long before they filed suit.

The court also agreed with us that under the Louisiana Securities Act, an administrator role was not akin to a statutory seller.

After Citco lost its effort to get several claims under Louisiana Blue Sky and other laws dismissed, you and your client elected to keep going rather than settle. Why?

We had a great deal of faith in our client's case for summary judgment. We felt our legal arguments were pretty water-tight, even if not appropriate for a motion to dismiss, and being in a position to make these arguments informed our discovery strategy, our approach to depositions, and what motions we made.

We believed we could prevail on summary judgment and saw that strategy through. I thought we would get a decision before a week and a half before trial! But, as someone once told me, litigation is not for the faint of heart.