

THE
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Litigators of the Week: A Trial Showdown Between Nike and NFL Wide Receiver Odell Beckham Jr.

By Ross Todd

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Our Litigators of the Week are **Maurice Suh, Jeremy Smith and Poonam Kumar** of **Gibson, Dunn & Crutcher** who represented Nike in its endorsement contract dispute with NFL wide receiver Odell Beckham Jr.

Although Beckham struck a celebratory tone on social media after last week's verdict, he walked away with nothing after initially asking for more than \$20 million from Nike. Beckham posted a picture with his legal team to Instagram with a note playing on Nike's signature slogan telling the company to "JUST DO.....RIGHT".

Jurors did deny Nike any damages on its counterclaims related to Beckham's use of altered Nike gloves during games.

Lit Daily: What was at stake for Nike in this litigation?

Maurice Suh: This litigation was a big deal for Nike because it wrongly called into question Nike's integrity with respect to how it handles its endorsement relationships with athletes, a core part of its overall brand strategy. Nike's business is built on partnerships with athletes, and a core objective of Nike



Courtesy photos

(l-r) Maurice Suh, Jeremy Smith and Poonam Kumar of Gibson, Dunn & Crutcher.

Sports Marketing is to support and serve their athlete endorsers. So it was distressing to have one of those athletes turn around and accuse them of acting capriciously, even though we strongly believed those allegations were unfounded, and the evidence bore that out. So the stakes for Nike were financial, but in a sense they were also personal and went to one of the core principles of Nike's sports marketing—support of the athlete.

Who all was on your team and how did you divide the work?

Jeremy Smith: We had a great core team of five lawyers from Gibson Dunn: Maurice, me, Poonam, **Zach Freund** and **Clay Collier**. That core team was very cohesive and knew the case inside and out. Zach Freund, in particular, gained an encyclopedic knowledge of the documents and the depositions. Our co-counsel, **Stoel Rives**, is one of the best law firms in Portland, and we worked closely with two partners there, **B. John Casey** and **Samantha Sondag**, who were terrific resources. As we got closer to trial, we also relied on another Gibson Dunn colleague, **Shannon Mader**, who drafted some critical briefs before and during trial.

Poonam Kumar: While each team member was responsible for preparing a different portion of the case for trial, we worked closely together to make sure our trial strategy was cohesive. Maurice presented the opening and closing arguments and cross-examined plaintiffs' witnesses. Jeremy was responsible for the portion of our case-in-chief dealing with Mr. Beckham's allegation that Nike suppressed the sales of products, and I took the lead with the allegations regarding Mr. Beckham's alteration of in-game gloves. We had to stay nimble on our case presentation when the court granted judgment on the pleadings for Nike on plaintiffs' "suppression of products" claim on the first day of trial. That made it unnecessary for us to call several of Jeremy's witnesses, so Jeremy took a lead role in motion practice and jury instructions.

How were you able to narrow Mr. Beckham's case against your client before trial?

Smith: Mr. Beckham brought a long and wide-ranging list of claims, so it wasn't easy to knock everything out in one fell swoop. The three months leading up to trial were a sprint to complete

discovery, whittle down the claims through motion practice, and prepare for trial, all at the same time. We won two motions for partial summary judgment in the weeks leading up to trial, which narrowed the case considerably. And then it was narrowed further on the first day of trial, when we won judgment on the pleadings on another one of Mr. Beckham's key claims. The case was changing under our feet every day: it felt like you could wake up litigating one set of claims and go to bed litigating an entirely different set. But our approach was to integrate the same themes into every aspect of the case, so that motion practice flowed seamlessly into trial strategy.

What were your key trial themes and how did you drive them home with the jury?

Kumar: The central theme was that contracts have meaning and impose obligations on parties to that contract. While simple, this concept of playing by the rules set by the contract was essential to understanding the parties' conduct. In particular, we highlighted throughout trial that Mr. Beckham believed that the rules (and the contract) did not apply to him. This kind of behavior was a recurring pattern throughout the parties' relationship and we tried to paint that picture for the jury. Interestingly, the other side's trial strategy played right into this theme: rather than argue that Mr. Beckham's actions were somehow allowed by the contract, they just offered an array of excuses for his conduct. Their argument was that Nike had no right to enforce the contract, and the jury ultimately disagreed.

Maurice, what did you set out to accomplish with Mr. Beckham's cross? Anything stand out about that examination?

Suh: First, on direct examination Mr. Beckham's testimony was very rehearsed and superficially credible. But much of it was contradicted by the evidence, so I wanted to expose the places where his story didn't hang together. I showed him numerous text messages that did not match his version of events—and when he was confronted with those messages, his responses were inconsistent with the plain language of what he wrote. Second, I wanted to highlight the evidence to show that he did not believe he was bound by the same rules as everyone else. There was a point in the cross, after he offered varied excuses for covering the Nike logo on his gloves, when I finally asked whether he believed he bore any responsibility for complying with the contract. He said, "The phone goes both ways"—by which he apparently meant that Nike should have affirmatively reminded him to comply. But he revealed his frame of mind: the phone goes both ways, but he actually thought of it as going one way. And third, I wanted to demonstrate his lack of effort to understand his contract obligations. Here is this athlete who collected millions of dollars from Nike under a contract that is just a few pages long, and the evidence indicated that he never bothered to read it through. And now he's suing Nike for supposedly breaching that contract.

You had asked for between \$3.79 and \$5.75 million for Mr. Beckham's glove violations, but the jury awarded no damages on those claims. You also asked for between \$4.35 and \$9.44 million for breach of contract via a confidentiality provision, but the jury found that you hadn't proven a breach. How is this verdict a win for Nike?

Suh: Recovering damages was never the primary objective of our counterclaims.

Mr. Beckham was the plaintiff. Nike would never have initiated a lawsuit against him. The purpose of the counterclaims was to put Mr. Beckham's claims in context, and allow us to present the full story of his time with Nike to the court and the jury. We wanted the evidence to show that Mr. Beckham had breached the contract in myriad ways, that Nike enforced its rights in a restrained manner, and that Mr. Beckham sued Nike nonetheless. The bottom line is that this was a complete defense verdict: Mr. Beckham asked for more than \$20 million. Nike won on every claim and does not owe him a dollar.

Kumar: It is important to remember that the court and jury found that Mr. Beckham had breached his contractual obligations on four occasions by wearing non-compliant gloves. The jury didn't award damages on these claims, but that was not a surprise. As trial lawyers we understand that it can be a lot to expect a jury to require an individual to pay a corporation damages. But those findings help to drive home the point that Mr. Beckham's grievances were not grounded in the contract, but rather in his refusal to believe that the contract should apply to him.

What was your reaction to seeing Mr. Beckham strike a celebratory tone on social media post-trial?

Kumar: Surprise. It was unclear why he would celebrate losing on every claim he brought, after engaging two law firms with a large team of lawyers and going through the time and expense of litigation. In the end, though, we believe Mr. Beckham's "celebration" was for his select audience. We didn't have any "audience" for our trial, except to achieve a successful outcome for our

client. And we were thrilled to have the privilege of representing Nike in the wake of these serious but unfounded allegations.

Smith: I think Mr. Beckham's reaction speaks to how effectively we were able to use our counter-claims to put him on the defensive. He litigated this case for almost two years, lost every claim and did not recover a dollar, and then declared that "justice is served" because he did not have to pay Nike. He would have been far better off if he had never filed in the first place.

What can others take from what you were able to accomplish here?

Suh: I think one takeaway is the value of a cohesive and versatile team. At a firm like Gibson Dunn, we have a huge bench of talented lawyers. But we intentionally tried this case with a small team that really knew the case and was constantly in sync—and we could be nimble when we needed to shift responsibility from one lawyer to another. Everyone on the team knew the record; each of us had worked with all of the witnesses; everyone was capable of writing a brief or drafting the closing presentation. Mr. Beckham had more lawyers in the courtroom than we did, and I think having a cohesive, close-knit team with a lot of built-in trust really worked to our advantage.

What will you remember most about this matter?

Suh: I don't think I've ever had a case where the claims were shifting so much right up until

the last minute before trial. Between the late-breaking summary judgment rulings and the motion for judgment on the pleadings, we ended up preparing for trial on a host of claims that eventually fell away. The plaintiffs even filed a last-minute motion to amend their complaint to add three new claims—which they then withdrew the night before trial. We really didn't know, until trial started, which claims would be in and which would be out.

Smith: The trial judge, the Hon. Thomas M. Ryan, was excellent. He was thrown into the case right after his vacation, with no prior knowledge of the case. But he did his homework and got up to speed quickly. He also gave this high-profile case the time it needed. He heard argument on every motion in limine, every pretrial motion, and every motion brought during trial. He even heard argument for three hours on the jury instructions and verdict form. It was impressive how committed Judge Ryan was to giving both sides a full chance to be heard on every issue.

Kumar: Because of the nature of the claims, Nike really did take the case personally. And by extension, so did we. We worked very closely with each other, but also with the witnesses and in-house counsel team, all of whom were rightfully invested in the outcome of the case. As a result of that camaraderie, this was about more than just money. We were proud to stand up each day and represent Nike.