

# Daily Journal

FEBRUARY 19, 2020

## Top Verdicts

The largest and most significant verdicts and appellate reversals in California

### TOP DEFENSE VERDICTS OF 2019

## Trendsettah USA Inc. v. Swisher International Inc.



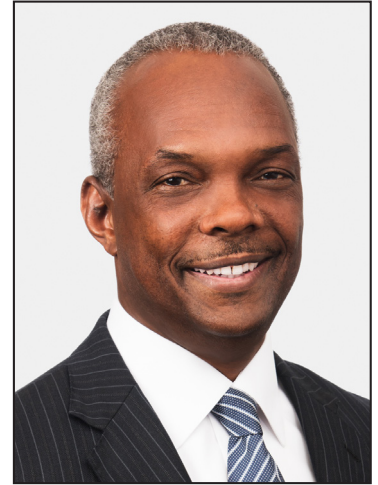
THEODORE J. BOUTROUS JR.



DANIEL G. SWANSON



CYNTHIA E. RICHMAN



MICHAEL C. MARSH

A federal jury found against tobacco manufacturer Swisher International Inc. on plaintiff Trendsettah USA Inc.'s Sherman act claims over an alleged breach of a cigarillo supply agreement. The verdict resulted in a \$44 million trebled damages award. Swisher's appeal proceeded as far as a petition for review before the U.S. Supreme Court.

Meanwhile, the Gibson, Dunn & Crutcher LLP defense team learned about fraud and other misconduct by the plaintiff. The team found that Trendsettah's CEO had conspired to evade millions of dollars in excise taxes on cigarillos imported from the Dominican Republic to illegally lower Trendsettah's costs. The plaintiff concealed the illegal activity from Swisher and presented a falsely inflated picture of the profitability of their cigarillo sales, thereby securing a favorable trial verdict based on a sham theory

of injury and damages.

"There was an eye-opening and ever-expanding criminal conduct record that we read about in the newspaper" when the CEO was indicted on tax charges, said Gibson Dunn co-lead counsel Daniel G. Swanson. "We had no idea."

The news arrived in April 2019 while Swisher's cert petition was pending. Returning to district court, Swanson and his colleagues alerted U.S. District Judge James V. Selna of Santa Ana to the development; Selna, citing fraud on the court, set aside the \$44 million verdict. "TSI's conduct tainted the integrity of the trial and interfered with the judicial process," Selna wrote. *Trendsettah USA Inc. v. Swisher International Inc.*, 8:14-cv-01664 (C.D. Cal., filed Oct. 14, 2014).

Said co-lead counsel Cynthia Richman, "This was certainly my

first experience with a development like this, but having Ted [Boutrous] involved was an aspect of the defense that shows we are equipped to handle anything that comes along." It emerged that this was not the first time that Boutrous, the co-chair of the firm's litigation group, had seen a fraud-on-the-court incident. A 1999 case in Texas had similarities.

"Ted confirmed that he's not aware of anyone else who has handled two cases where big verdicts were set aside for fraud," Swanson said.

Plaintiff's lawyer Mark W. Poe did not reply to a request for comment. He's currently appealing Selna's decision to upend the big verdict, asserting that the CEO acted alone in failing to notify the defense of the emerging criminal case.

"We'll try to keep the disbelief

### case INFO

#### Antitrust

Central District of California  
U.S. District Judge James V. Selna

**Defense lawyers:** Gibson, Dunn & Crutcher LLP, Theodore J. Boutrous Jr., Daniel G. Swanson, Cynthia E. Richman, Minae Yu, Julian W. Kleinbrodt; Akerman LLP, Michael C. Marsh, Ryan A. Roman, Naim S. Surgeon

**Plaintiff's lawyers:** Gaw Poe LLP, Mark W. Poe, Randolph Gaw, Samuel H. Song, Victor Meng

out of our voices as the plaintiffs say it was just the CEO not volunteering this," Swanson said. "We'll let the circuit decide."

— John Roemer