

David Gustman

Litigator with Endurance Who Knows the Ropes

by Amy Hoffman

Focus, preparation and dedication. The qualities that make David C. Gustman a successful litigation attorney also make him a skilled sailor.

Growing up in northern Michigan, Gustman, an avid sailboat racer, began sailing at age 8.

Gustman, a partner at **Freeborn & Peters**, recently participated in his 32nd Race to Mackinac. The Chicago Yacht Club Race to Mackinac is the oldest and most prestigious annual freshwater race in the world.

He led a crew of seven on the 333-mile trip, which begins at the Chicago Lighthouse and ends at Mackinac Island, Mich. The race requires captain and crew to sail nonstop and face potentially dangerous conditions.

You might wonder why someone would do something like that. For Gustman, it is a part of who he is and what makes him a good trial lawyer.

“You have to be prepared to win races, especially the longer ones,” Gustman explains. “You have to have skill and endurance.”

“It’s one thing to go for a day at a time for fun,” he says. “But when storms come through and the wind is blowing 50 to 70 knots, sails are getting ripped up, and people are getting thrown around, to survive that you have to be focused.”

“Those qualities tend to be the same qualities that make a good trial lawyer, especially on big cases that take days, weeks or months to try. You get tired. It’s an endurance contest. You have to have the skill, you have to be prepared.”

Finding a Professional Fit

Gustman completed his undergraduate school at the University of Michigan where he majored in economics. He was interested in antitrust and international business, so he decided to go to law school in hopes of pursuing a career in business.

After taking some litigation classes at George Washington Law School, he realized he enjoyed speaking and presenting points. “It just fit,” he says.

While a student at George Washington, Gustman had the opportunity to watch an attorney argue a case before the United States Supreme Court. He recalls being very impressed and thinking he’d like to practice at the highest levels.

After graduation, he joined the Chicago firm of Rooks, Pitts & Poust, which merged with Dykema in 2004. Early on he was put on an international antitrust case, and so began his career in complex business litigation.

Gustman was with Rooks Pitts until he became the eighth member of Freeborn & Peters in 1983. The firm celebrated 31 years on June 6, 2014.

Since joining Freeborn, the firm has gone from six attorneys to 120. With support staff, it numbers over 200. In that time, he has served in several management roles. He was a managing partner in the high growth years and chairman



of the firm for three terms beginning in 2000. The most recent term ended three years ago when he went back to a full litigation practice.

Two years ago, Gustman helped form the firm’s litigation practice group. He is now head of the firm’s 75-attorney litigation group, the largest practice group at Freeborn & Peters. “I had fun organizing the group and am impressed by its depth and strength,” he says.

“The large litigation practice group gives Freeborn a certain efficiency and strength,” Gustman says. “We have the ability to put one lawyer on a case or as many as 10 to 15.”

Getting Results for His Clients

Gustman points to a recent case involving the Metropolitan Water Reclamation District of Greater Chicago and the developer of the Ritz-Carlton Residences, NM Project Co. The district prevented his client from using an easement over an alley that was necessary to complete the development of a new property on Michigan Avenue. The construction was

delayed more than two years while the parties tried to negotiate a resolution.

That’s when Gustman stepped in and took the case over from another firm. Within two months, the developer had access to the alley and was able to commence building. By that point the damage had already been done. It was 2008, and the building boom was over.

Not only were Gustman and his team successful in defending NM Project Co. against the case brought by the district, but they successfully pursued a counterclaim against the district. In 2013, after a 60-day trial, the court awarded a \$36.5 million judgment in delay damages in favor of Gustman’s client. The judgment was affirmed by a unanimous appellate court in June 2014.

Bruce Schultz, a developer with Ritz-Carlton, recalls the litigation as being long and tedious. “My deposition was taken eight times, I spent 70 days in the courtroom, and David helped me through it all,” Schultz says. “It was difficult litigation, so it was essential to have an

attorney who was aggressive, competent and prepared. And that was David Gustman.”

“David taught me to always be prepared,” says Schultz. “I’ve never met an attorney who prepares like David both in and out of the courtroom.”

“The judge respected David. He is an astute, affable lawyer. He can’t be pushed around. He was very respectful of the client, the court and the other party.”

Robert Clifford, a co-counsel on the appeal of the Ritz-Carlton case, first met Gustman working with a national group of attorneys on a tobacco suit. “David is an extraordinarily hard working and gifted advocate,” Clifford says. “He has an unflappable demeanor.”

“He is a terrific lawyer. He’s organized. He has a great command of the record of a case that has gone on for many years.”

Gustman also recalls a multimillion dollar antitrust case in which he defended a Canadian mining company accused of price fixing sulfuric acid. The case started out as a criminal investigation.

The criminal investigation was closed years ago, but the civil action Gustman and his team worked on continued for 10 years. The plaintiffs sought \$500 million from Gustman’s client. They won the case in the federal district court in 2011 and were later affirmed in the Seventh Circuit. The Supreme Court turned down opposing counsel’s petition for certiorari.

Chaz Ebert, vice president of The Ebert Company, met Gustman 30 years ago when they both were on the board of the Constitutional Rights Foundation. “He is conscientious about doing pro bono work,” Chaz says.

When she retired from litigation and went to work at The Ebert Company, she called upon Gustman when they needed someone to handle bigger litigation work. “We hired him because of his integrity and aggressiveness,” she says. “He is a smart, focused and aggressive litigator.”

Gustman feels fortunate to have been able to work on the cases he has.

“Ultimately, lawyering should be about helping people, whether it’s helping colleagues or clients,” he says. “Even if you are helping a large company, saving them \$500 million is a big deal to the company.”

Gustman fondly remembers a case he handled representing a group of priests at the Congregation of the Passion, Holy Cross Province.

The dispute involved a group of investment advisers who mismanaged the congregation’s finances. After a three-week trial against its accounting firm for negligence, the jury returned in 1½ hours—which included a lunch break—with all it asked for, \$3.9 million.

“The case took over 14 years to litigate. I am very proud of that case,” Gustman says. “Those priests needed their retirement money back and we got it for them.”

Great and Getting Better

When Gustman started practicing law, it was a big growth period, and much of the growth was at the associate level.

“Now clients want work to be done by partners and are less interested in using younger lawyers,” he says. “Thirty-five years ago, older lawyers didn’t work as hard. They still went to trial and talked to clients, but most of the work

was being done by him and his younger colleagues. Now it’s the opposite.”

“I wasn’t expecting to have to work this hard at this point in my career,” Gustman jokes.

He notes that it is a challenging time for lawyers coming out of law school as well as for law firms that need to train young lawyers. He recognizes how important associates and junior partners are to the future of the firm, and so he focuses and trains them by making sure they get put on cases.

Gustman expects the firm will continue to grow in the traditional sense, but also that it continues to take on alternative fee arrangements. “The firm will handle cases under a mixed fee or full contingency basis, which is becoming another big part of our practice,” he says. “And we have had some great success.”

Last year he tried a case almost to verdict that the firm took on a contingency. The actual settlement amount could not be disclosed, but it was for multiple millions of dollars and settled just before closing arguments.

The case, which was set in federal court in the Central District of Illinois, had been going on for seven years. Gustman and Michael Kelly, one of the managing partners at Freeborn, were the lead trial lawyers on the case. “It was a really good result for the client, a 77-year-old, solo entrepreneur who couldn’t afford to

take on a Fortune 100 company,” he says.

“The client had a lot of faith in David,” says Kelly. “I have never met an attorney with a clearer vision of how to get from start to victory—however the client defines victory. He has the unique ability to go from A to B to C without wavering.”

Gustman and Kelly are leading up a group of lawyers who are actively seeking out and evaluating alternative fee arrangement cases. “It is a nice supplement,” says Gustman.

“They don’t all turn out well, but if you manage them well, you can add value to the clients because you are partnered with them,” he says.

“Some clients just simply can’t afford to pay. The larger clients can, but sometimes they choose to do an alternative fee or a mixed fee arrangement.”

Gustman sees this more and more as the future of business litigation. “The whole industry is changing in that regard,” he says. “We started out as an entrepreneurial firm and still are.”

Due to Freeborn’s size and entrepreneurial spirit, it is in a unique position to be able to adapt to changes in the market. “While the legal market is down, Freeborn had its best year last year,” he says. “It’s an exciting time for the firm.”

“When you have been doing it this long, you want to see what you have been working your whole life on result in something that is a good alternative to a large, international practice.”

Blazing a Path for the Future

Gustman loves the courtroom. He loves being a trial lawyer.

“When I step back, when I get really excited is when I am going to try a case—the uncertainty of it, the intensity of it, going in and arguing an appeal. It’s hard to replace that adrenaline.”

“I take what I feel are the best qualities of my opponents and attorneys I work with and incorporate those qualities into what I am,” he says. “You have to do it in your own way. While some lawyers are flamboyant, I am methodical, thoughtful, and some would say an aggressive lawyer, which fits with my personality.”

As he has gotten older, he really enjoys mentoring and teaching the people who work with him. “While I may be considered hard to work with because of my intense personality,” he says, “people I have worked with invariably comment that they are better lawyers as a result of having worked on my teams.”

He feels that one thing the legal profession needs to do is take lawyers who have had success and continue to have success and have them bring up young lawyers who are still learning. “We are all still learning,” Gustman says. “That is why it is called the practice of law.”

His Proudest Achievement

Gustman and his wife have three children, all graduates of the University of Michigan. They have three children who are working: a son in private equity in New York, a son in marketing in Chicago, and a daughter in marketing in Utah.

He jokes that none of them became lawyers because they saw how hard he worked. “But they all ended up working hard nonetheless,” Gustman says.

They learned from the best. ■

