

THE AMERICAN LAWYER

JANUARY 2016

americanlawyer.com

TOP SHOP: GIBSON DUNN

Litigation Department of the Year



LITIGATION

DEPARTMENT OF THE YEAR

★ ★ ★ Winner ★ ★ ★

Aiming High

Gibson Dunn doesn't just like to win. It likes to win big.

By Ginny LaRoe

FOR OUR JUDGES, GIBSON, DUNN & CRUTCHER WAS A tough sell. It had already won top honors in General Litigation twice in the last three contests, and was a runner-up in the third. Could the firm's record in the past two years possibly be good enough for it to win again?

Yes. Time and again, Gibson Dunn litigators set out to win big rather than just escape defeat, and they succeeded. Drawing on its deepening bench, harnessing a collective expertise through a collaborative approach, and viewing the legal landscape through a wide-angle lens, the firm repeatedly delivered when it mattered most.

Gibson Dunn successfully built on earlier wins in a series of turnaround cases for clients such as Chevron Corp., Facebook Inc. and Dole Food Co. It achieved appellate victories that not only got corporate clients out of costly litigation but also reshaped constitutional law in ways that benefit entire industries. At the U.S. Supreme Court, *Daimler v. Bauman* made it harder to sue foreign companies in U.S. courts, while *Alice v. CLS Bank* raised the bar for patent eligibility, a ruling that has become a gamechanger for Silicon Valley tech companies. Laying waste to a suit the Equal Employment Opportunity Commission had brought against Ford Motor Co., Gibson Dunn put new limits on the reach of the Americans with Disabilities Act when an appellate court found that the ADA does not “endow all disabled persons with a job—or job schedule—of their choosing.”

“If there’s a better-managed large law firm in the world, it hadn’t been pointed out to me,” R. Hewitt Pate, general counsel of Chevron, which hired Gibson Dunn when the company was facing a megajudgment over claims of pollution in the Amazon rain forest in Ecuador. If he had to retain counsel for an urgent matter based on a firm alone, and not individual attorneys, Pate says, Gibson Dunn is the one law firm he’d be comfortable hiring. The “strong culture,” Pate says, means a “standard product.”

Gibson Dunn likes to make an impact. When partner Thomas H. Dupree Jr. was arguing for Daimler AG at the Supreme Court, in the case alleging that Mercedes-Benz Argentina collaborated with state security forces to torture and kill civilians during the country’s “Dirty War” in the 1970s, Justice Sonia Sotomayor asked, “Do you care how you win?” Dupree had practiced for that moment. There was certainly a narrow way to get Daimler out of the case, but he had mapped

“a strategic plan to victory” that included asking for a broader ruling, clarifying the limits of U.S. courts’ jurisdictional power over transnational corporations.

“If you don’t swing big when you’re standing at the podium before the justices, when are you going to?” Dupree says. Daimler got a unanimous opinion shutting down the suit, and eight votes abolishing the “doing business” test for general jurisdiction that had prevailed for nearly 70 years, dramatically reducing the number of venues where a company can be sued without a link between injury and forum. The decision is seen as eliminating the U.S. as a venue for hauling foreign companies into court in scenarios like the one Daimler faced—a German company accused of misconduct in Argentina decades ago but sued in federal court in California because it sold cars there.

Likewise, using the model for affirmative litigation developed in the historic Proposition 8 gay marriage case, the firm broke new ground in education law. A team led by Theodore J. Boutros Jr. waged a full-frontal attack on California’s laws governing teacher firing, layoff policies and tenure, arguing that they were responsible for exposing poor and minority students to ineffective teachers. After a nine-week trial, a California Superior Court judge sided with Gibson Dunn and its schoolchildren clients, saying that the evidence of education inequality “shocks the conscience.” (The ruling is on appeal.)

At the Supreme Court, in addition to *Alice* and *Daimler*, the firm flexed its appellate muscle in cases touching on presidential appointment powers (*NLRB v. Noel Canning*), First Amendment protections (*Town of Greece v. Galloway*) and the Foreign Sovereign Immunities Act (*Argentina v. NML Capital*), a long-running case over a hedge fund’s attempts to collect on more than \$1 billion in judgments stemming from Argentina’s 2001 bond default. As if to pre-empt the perennial question of whether its appellate practice revolves solely around longtime star Theodore B. Olson, the former U.S. solicitor general who successfully argued for NML, the firm sent six different partners to argue nine cases at the Supreme Court during the 2013 and 2014 terms, and won five of the nine over the two terms.

“We love this stuff,” says Washington, D.C., partner Mark A. Perry, who was hired by CLS Bank to take the seminal patent infringement case to the Supreme Court. “This is the greatest job in the world, solving the most complicated problems for the most sophisticated clients in the most careful and respectful judicial system in the world.”

With so many first-chair litigators and heavy-hitting appellate advocates, there's the risk of ego-driven infighting. Instead, partners cite a camaraderie and a cooperative approach that reminds many of their days in government. Caitlin J. Halligan, an appellate specialist in New York, describes "a striking absence of sharp elbows" and a "low jerk factor." That means more collaboration, whether formal pairings on cases or impromptu confabs in hallways. Novel tactics and theories get "road-tested" with colleagues, Boutrous says.

"I see this pattern throughout our firm of an optimistic yet realistic approach to litigation, to solving legal problems," says Boutrous. "It's really digging deep, doing our homework, thinking about a problem from all different perspectives, and we really value talking to each other and trying to come to the right

result based on everybody's input."

The team approach extends to relationships with outside counsel. "What really impressed me about them—in addition to that expertise and that great strategy and that flawless execution—is that they were very approachable and easy to talk to," says Craig Rubin, assistant general counsel for CLS Bank. "They're the best litigators in the country, but they don't shove that in your face."

Gibson Dunn lawyers often take a tougher line with opposing counsel. In what is now a well-known turnaround story, Gibson Dunn launched an investigation into the tactics of the plaintiffs lawyers who won a \$19 billion Ecuadorean judgment against Chevron (reduced to \$9 billion on appeal). With partner Andrea E. Neuman overseeing discovery, the firm flipped witnesses, fought First Amendment battles to obtain documentary outtakes related

Department Size and Revenue: Partners 190 Associates 496 Other 34
 Department as Percentage of Firm 59% Percentage of Firm Revenue, 2014 62%



FROM LEFT Thomas H. Dupree Jr., Mark A. Perry, Helgi C. Walker, Theodore J. Boutrous Jr., Randy M. Mastro

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* * * *Winner* * * *

to the case, and overcame attorney-client privilege disputes to gain access to the hard drive belonging to plaintiffs' counsel Steven Donziger. In fall 2013, in a seven-week civil Racketeering Influenced and Corrupt Organizations trial in federal court in Manhattan, partner Randy M. Mastro argued that the plaintiffs had engaged in bribery, witness tampering, extortion and other misdeeds.

U.S. District Judge Lewis Kaplan agreed. In March 2014, he issued a 485-page ruling that found Donziger and his team liable for a racketeering scheme that included bribing an Ecuadorean judge to issue a judgment ghostwritten by the plaintiffs. (Kaplan's decision was on appeal at press time; related actions continue in other courts.)

"I have never dealt with a group of people where everybody at the law firm that you run into has an incredible sense of urgency around everything they are doing," Chevron general counsel Pate says. "It's a different kind of thing."

Gibson Dunn brought the same urgency to the Dole litigation over alleged health problems linked to pesticides used decades ago in Latin America. After Gibson Dunn was brought in and exposed systematic fraud, the 10,000-plus claims have dwindled to a single four-plaintiff case in Hawaii and a lingering appeal in the Third Circuit, where Neuman is hoping to preserve earlier wins.

Then there's the litigation over New York businessman Paul Ceglia's claim to a 84 percent stake in Facebook. Ceglia had based his suit on a contract that he says he inked with Facebook founder Mark Zuckerberg in 2003. But after Facebook replaced Orrick, Herrington & Sutcliffe with Gibson Dunn, an aggressive discovery strategy and forensic experts persuaded a federal district judge to junk the suit in March 2014. In April 2015 an appeals court upheld the dismissal, noting the "overwhelming forensic evidence."

Corporate defense? With results like that, it almost seems a misnomer.

How We Select the Litigation Department of the Year

This year's contest covers litigation matters between Aug. 1, 2013, and July 31, 2015. Last April, we contacted all Am Law 200 firms and some smaller firms, soliciting entries in this year's general litigation contest, as well as practice-specific contests in intellectual property, white-collar/regulatory work and product liability.

Firms were asked to provide, among other things, lists of and details about their 12 most notable results, a description of their two biggest losses, details of new matters, references and information about the size and financial performance of their practices or departments. They were also asked to submit an essay, arguing for their selection as Litigation Department of the Year.

We received 64 submissions in the general litigation contest, 25 in the intellectual property contest, 10 in the white-collar/regulatory contest and nine in the product liability contest. Teams of American Lawyer reporters and editors evaluated all of the submissions on the basis of reporting and conversations with clients and colleagues at rival firms, among other things. The general litigation category was evaluated by David Bario, Emily Barker, Michael Goldhaber, Jennifer Henderson and Ginny

LaRoe. This team also selected the Litigators of the Year and the Honorable Mentions. The IP category was evaluated by Scott Flaherty, Nell Gluckman and Lisa Shuchman. White-collar/regulatory was evaluated by Jenna Greene, James Schroeder and Julie Triedman, while product liability was evaluated by Susan Beck, Kim Kleman and MP McQueen.

On the basis of their reporting, the teams pared the submissions to a short list of finalists: six in general litigation, four in IP, three in product liability and two in white-collar/regulatory.

A three-person panel from each finalist firm then met with the reporter teams in their category in two-hour question-and-answer sessions in our office. The purpose of the sessions was to elaborate on and clarify the submissions. After the sessions, each reporting team then embarked on a final round of reporting and interviews before meeting to select the winner in its respective categories.

Our next Litigation Department of the Year contest will be published in January 2018 and will cover matters from Aug. 1, 2015, to July 31, 2017. Solicitations and instructions for submissions will be sent out in the spring of 2017.