

THE **RECORDER**

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LEGAL AWARDS
2023



Tech Industry Litigation Department of the Year Finalist:

GIBSON, DUNN & CRUTCHER



Elizabeth McCloskey, Partner

Gibson, Dunn & Crutcher is a finalist for the California Legal Awards' Tech Industry Litigation Department of the Year.

Elizabeth McCloskey, a partner in the firm's San Francisco office, spoke to The Recorder about the litigation team's latest wins and how the business of litigation is evolving.

What do you see as your team's most significant achievements over the past year?

Our California litigation team has enjoyed incredible success in significant matters across the technology industry. On behalf of the gig economy, we raised the first successful Constitutional challenge to California's Assembly Bill 5. Representing



Uber, Postmates and individual drivers, Gibson Dunn filed a suit against the State of California, explaining that A.B. 5 arbitrarily discriminated between similarly-situated companies and occupations in violation of the Equal Protection Clause. The district court dismissed the complaint under the forgiving “rational basis” test governing constitutional challenges to economic legislation, and denied a motion for a preliminary injunction to enjoin enforcement of the statute. Then, in a unanimous opinion, the Ninth Circuit reversed. The court found that, not only were A.B. 5’s exemptions “starkly inconsistent with the bill’s stated purpose of affording workers the ‘basic rights and protections they deserve,’” but those exemptions also arbitrarily discriminated between similarly situated companies and occupations.

Another significant achievement for our team was the successful defense of our historic 2021 victory for Apple against antitrust attacks by Epic Games. The second round of this “battle royale” took place before the Ninth Circuit, with Gibson Dunn leading the extensive briefing. We opposed not only Epic Games, but also its many amici, including the U.S. Department of Justice, the State of California, and 35 other State Attorneys General. In April 2023, the Court affirmed Apple’s victory on all state and federal antitrust claims—even ordering the district court to grant Apple its attorney fees.

What does your firm look for when hiring a litigator?

We look for litigators who will strengthen our team in areas that are important to our clients

and in their industries. The technology landscape and law is rapidly evolving—as a result, it’s more important than ever for lawyers to remain at the forefront of legal developments in the industry so that they can respond to and anticipate potential challenges. We also place value on hiring team players who can work collaboratively with other practice areas, so that we can be most effective in handling complex and multi-disciplinary technology-related matters.

What do you see as your firm’s competitive advantage compared to other firms when a client considers you for representation on a piece of litigation?

In the technology industry, Gibson Dunn has the resources, experience and knowledge to handle any technology-related legal issue that our clients face. We pride ourselves on the breadth and depth of our work. Our litigation stars have argued cases before the U.S. Supreme Court and Courts of Appeal, and tried cases in federal and state trial courts across the country.

How is the business of litigation changing, and how are you adapting to those changes?

It’s critical for lawyers to stay up to date with the developments of their clients’ industries, and especially so in the fast-paced technology industry. Lawyers need to understand their clients’ business models in the same way a business partner would. We view our job as helping clients advance their business and legal objectives efficiently, and in turn, to protect them from potential vulnerabilities that can arise as the law is rapidly evolving.