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‘They Kind of Find You’: How Gibson Dunn’s Harris Mufson Built a Niche in Litigation Over Noncompetes

By Charles Toutant

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Quick question: What do California, North Dakota, Oklahoma, Minnesota and Montana have in common? To Gibson, Dunn & Crutcher employment litigation partner Harris Mufson, the common denominator in that seemingly random list is this: Those states tend to have hostility towards the enforcement of non-compete agreements.

“It’s one of the most interesting parts of ... this practice,” Mufson said. “They are so dramatically different, where they are, what their weather is, what their political leanings are.”

“I find it to be a fascinating area to practice in, because there are these tremendously disparate perspectives from different states, in terms of the enforceability of these restrictive covenants,” he said.

With battles between employers over talent growing, enforcement of noncompete clauses and other restrictions on employee mobility frequently are coming under scrutiny from courts. Despite the challenges of securing relief in restrictive covenant and trade secret cases, Mufson has repeatedly been able to win temporary restraining orders and preliminary injunctions for clients in disputes over departing employees and alleged theft of confidential information. On the flipside, he’s also helped companies on the hiring side of

disputes involving non-compete agreements to avoid those sorts of injunctions.

Mufson said he never planned to focus his practice on employee mobility disputes, but found that after earning injunctions in a handful of those cases, he kept getting more cases of that type.

“It’s funny how careers develop. I’ve just seen such a huge wave of these cases, and I’ve probably handled more of them than anyone in the country over the past couple years,” Mufson said. “So they kind of find you, I guess.”

Mufson’s recent victories include one in September 2025, when he secured a preliminary injunction for Marsh McLennan in the Southern District of New York in connection with a 140-employee defection to a competitor. U.S. District Judge George Daniels granted the injunction, finding that Marsh had a likelihood of success on its claims that defendants breached their employment contracts with Marsh by violating non-solicitation and confidentiality agreements. The court also



Courtesy photo

Harris M. Mufson of Gibson, Dunn & Crutcher.

found Marsh would suffer irreparable harm that could not be fully remedied by money damages alone if the injunction was not issued, particularly from loss of employees and clients and potential misuse of confidential information.

Mufson previously also obtained a favorable ruling for HSBC in a \$1 billion suit brought in the Northern District of California by First Citizens Bank in July 2024. First Citizens alleged that following its acquisition of certain assets and liabilities of Silicon Valley Bank, a group of former employees at the bank worked with HSBC to gain control of SVB's innovation banking group. After First Citizens sued HSBC over its hiring of 41 former employees, Mufson secured dismissal of nearly all First Citizens' claims against HSBC and individual defendants. Trade secrets and breach-of-contract claims against HSBC are still in play.

And in April 2024, Mufson and his team helped client DraftKings steer clear of a new California law, SB699, designed to give a broader reach to the state's ban on noncompetes. That law prohibits employers from attempting to enforce non-competition agreements "regardless of whether the contract was signed and the employment was maintained outside of California." Michael Hermalyn left his job as a top executive of Massachusetts-based DraftKings to join California-based competitor Fanatics, even though he had one year left on a noncompete agreement with DraftKings.

Shortly before he quit his old job, Hermalyn allegedly leased an apartment, obtained a driver's license, bought a car, registered to vote and scheduled appointments with health care providers, all in California.

Fanatics filed suit in Los Angeles Superior Court, seeking to invalidate Hermalyn's non-compete agreements. A few days later, Mufson and his team at Gibson Dunn sued Hermalyn on behalf of DraftKings in Massachusetts federal court, seeking an injunction enforcing his non-competition agreement under Massachusetts

law. U.S. District Judge Julia E. Kobick held that a Massachusetts choice-of-law provision was enforceable and that California had "only a minimal connection" to the dispute because Hermalyn never worked in California for DraftKings and only became a California resident a few days before his resignation.

The First Circuit affirmed the district court's preliminary injunction in September 2024, ruling that California's public policy doesn't eclipse the parties' clear and unambiguous agreement to apply Massachusetts law.

"Out-of-state employers can expect that former employees will continue to push the boundaries of the new law's application by emphasizing or even manufacturing California-based connections," Mufson said.

Mufson's run of victories underscores the current state of non-compete litigation: Even amid heightened scrutiny, courts are still willing to intervene when companies present compelling facts and reasonably tailored restrictions. Mufson explains to clients that courts carefully examine noncompete agreements to ensure that they are appropriately tailored to protect legitimate business interests.

Mufson discerns a gradual movement by the states to impose more restrictions on restrictive covenants, although Florida went in the other direction in 2024 with the enactment of a law facilitating noncompete clauses. The varying climates for laws restricting employee mobility bring a challenge to his nationwide practice.

Mufson doesn't anticipate any change to the current, high level of demand for employment litigators. Helping people with their problems is "fascinating, because we deal with interpersonal interactions amongst people and real-life, tangible issues."

"I view us as problem solvers," he said. "There's always going to be value in lawyers who can solve problems and serve as strategic partners to clients."