

LITIGATION DEPARTMENTS OF THE YEAR

IN-HOUSE IMPACT AWARDS

GAME CHANGERS

GIANT SLAYERS

GROUND BREAKERS

WEEK OF APRIL 27, 2015

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Gibson, Dunn & Crutcher LLP

For a firm called in when corporate clients stand accused of the most serious wrongdoing, photo opportunities with smiling school children don't come often.

Gibson, Dunn & Crutcher is well known for mounting aggressive courtroom defenses for corporations including BP PLC, Chevron Corp. and Wal-Mart Stores Inc. At the same time, the firm has found a winning formula

for groundbreaking constitutional challenges, most notably the case that toppled California's ban on same-sex marriage.

About the time that litigation was coming to an end—complete with client weddings—things started heating up in yet another case that would put Gibson Dunn's lawyers before



Left to right: Marcellus McRae, Gail Lees, Theodore Boutrous, Catherine Conway and Daniel Swanson.

cameras, this time flanked by cute kids.

The target: California's teacher tenure laws. The clients: nine public school children.

Vergara v. California is a constitutional challenge to California laws governing teacher hiring and firing that now serves as a model for an expected multistate education reform effort

fiercely opposed by teachers unions.

"Everyone felt so passionately about it," said L.A. partner Theodore Boutrous, who led the effort funded by Silicon Valley entrepreneur David Welch, founder of education policy nonprofit Students Matter.

Boutrous hand-picked fellow Los Angeles

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partner Marcellus McRae to lead the trial strategy. McRae, who for nearly two decades has handled complex business disputes and white-collar cases, was on the attack in the courtroom, cross-examining defense witnesses and making an impassioned closing.

The subject area—public K-to-12 education—may have been somewhat new territory for the global firm, but the execution was classic Gibson Dunn. There were carefully orchestrated press conferences with the students and their parents, a slick website featuring video clips from the trial, and a legal strategy formed with the expectation that the case would make it to the California Supreme Court.

The firm argued five provisions were responsible for exposing students, especially poor and minority students, to ineffective teachers. After a nine-week trial, Los Angeles Superior Court Judge Rolf Treu issued a landmark finding that the laws deprived students of their right to a quality education.

“Evidence has been elicited in this trial of the specific effect of grossly ineffective teachers on students,” Treu wrote. “The evidence is compelling. Indeed, it shocks the conscience.”

Working on behalf of children provided “an energizing effect,” said Boutrous, who is co-chair of Gibson Dunn’s elite appellate

and constitutional law group, its transnational litigation group, and a member of its “crisis management” group. “People were coming in early, staying all night if they had to. And they were doing it with a smile. That carries over into everything you are doing in other cases.”

The opposition was formidable, with attorneys from the California Attorney General’s Office working alongside the teacher’s union legal team led by James Finburg of San Francisco’s venerable Altshuler Berzon.

While *Vergara* was the firm’s most high-profile courtroom victory in 2014, there were a string of other definitive wins for longtime clients in suits across practice areas.

Jeffrey Thomas, an Orange County partner, kept his perfect record for pharmaceutical client Allergan, now part of Actavis PLC, when a judge rejected patent-invalidity claims by generic drugmakers that were hoping to get their versions of lucrative glaucoma drug Lumigan X on the market.

Thomas, teamed with Fish & Richardson, successfully argued at a four-day bench trial that Allergan’s patents for the eye drops were valid, even though they were for a reformulation of an existing drug and not an entirely new product. A Texas judge’s ruling siding entirely with Allergan protects its \$500 million-a-year drug and further solid-

ifies Gibson Dunn’s 30-year relationship with the pharmaceutical client.

“We’ve settled some cases, but every case that’s been decided, whether trial or summary judgment, we’ve never lost for Allergan,” Thomas said.

Gibson lawyers also continued to fend off gender-bias complaints for Wal-Mart, years after dismantling a nationwide class action in a case that went to the U.S. Supreme Court. And in another high-dollar employment case, the firm won a unanimous reversal of a \$94 million judgment against ABM Industries Inc., one of the largest providers of facility services. The wage-and-hour suit centered on claims that ABM violated California law by requiring security guards carry radios on rest breaks.

On appeal, Gibson Dunn persuaded the California Second District Court of Appeal that carrying a radio and being “on call” during a rest break is permissible under California law.

“One of the things we always say to our clients is we try to look for a way to end the case as soon as possible, if they are the defendant,” Boutrous said.

It may not have been the biggest case of the year, but it was, as Boutrous put it, “a hallmark of how we handle appeals.”

— Ginny LaRoe