

WASHINGTON LITIGATION DEPARTMENTS OF THE YEAR

A SPECIAL REPORT

In this special report, *The National Law Journal* takes the measure of litigation shops in our nation's capital. We asked litigation practices there to tell us about their operations—headcounts and revenues, their biggest wins, even their losses. Our staff in Washington and elsewhere in the country scrutinized these data and selected the six firms you'll read about in these pages.

GIBSON, DUNN & CRUTCHER

LEGAL DEPARTMENT OF THE YEAR



F. JOSEPH WARIN

If Gibson, Dunn & Crutcher's Washington litigators were a sports team, they'd be the legal equivalent to the 1989 San Francisco 49ers or 1996 Chicago Bulls or the 1998 New York Yankees. That is, they win big, they win decisively and they win often.

The firm took top honors in *The National Law Journal's* Washington Litigation Department of the Year for its deep

bench of lawyers, who delivered clutch performances when the stakes were highest.

Whether arguing that gay and lesbian couples have the right to marry, saving corporations from massive class actions, challenging agency regulations or brokering settlements in some of the biggest cases of the year, Gibson's dream team of Washington-based litigators has delivered results for a range of clients.

"'Bet the company' is a trite phrase, but that's really the world we thrive in," said F. Joseph Warin, who heads the firm's litigation practice in Washington. "We constantly go back to first principles: What is it that's going to be successful? What's the route out of this quagmire?"

The highest-profile matter of the year—what the firm terms "the most important civil rights issue of our time"—has been the battle over California's Proposition 8, a 2008 ballot measure that banned gay marriage in the state. In the first federal constitutional challenge to the law, D.C.-based partners Theodore Olson, Matthew McGill and Amir Tayrani, along with co-counsel David Boies of Boies, Schiller & Flexner, represented two same-sex California couples who sought to marry but were refused.

Olson's team in *Perry v. Brown* prevailed before the district

court and the U.S. Court of Appeals for the Ninth Circuit in early 2012. Olson went on to argue the case in March before the U.S. Supreme Court, where a decision is pending.

A former U.S. solicitor general who has argued 60 cases before the high court, Olson is the firm's best-known litigator. He's "a terrific advocate," said Bancroft partner Paul Clement, a former solicitor general who has gone toe-to-toe against Olson and other firm lawyers. "The whole Gibson litigation team is absolutely first-rate," he said. "Simply put, they know their stuff."

The firm's Washington litigators have scored a series of recent victories for corporate clients. In November, partner Miguel Estrada represented Comcast Corp. before the Supreme Court, persuading the justices to reverse a grant of class certification involving more than 2 million current and former cable subscribers in the Philadelphia area. The argument built on the firm's success in *Wal-Mart v. Dukes*, when the high court in 2011 tossed the largest-ever class action.

With Comcast, half the battle was winning certiorari. The court tends to avoid cases with lengthy factual records, and this one had more than 7,000 pages of appendices. Estrada focused on a single legal issue: To what extent must courts consider how the merits of the plaintiffs' case bear on the requirements for class certification? Here, the plaintiffs paid different rates for cable, and the court found that "individual damage calculations will inevitably overwhelm questions common to the class."

Gibson Dunn represented PepsiCo Inc. in another putative class action in which narrowing the focus was key to victory. Plaintiffs in *Hairston v. South Beach Beverage Co. Inc.* argued that Pepsi's flavored vitamin water SoBe Lifewater was deceptively labeled as "all natural with vitamins" but actually contained synthetic vitamins and flavors.

The case, filed in Los Angeles federal court, was one of a recent wave of suits going after big food and beverage companies over labeling claims. Gibson Dunn partners Daniel Nelson and Andrew Tulumello won the first complete dismissal with prejudice of such an action by focusing on pre-emption under the Federal Food, Drug, and Cosmetic Act. "The decision has been extremely valuable to other food and beverage companies," Nelson said. PepsiCo deputy general counsel Kelly Tullier described Gibson litigators as "true partners," adding: "I value their incredible insight and expertise from both a strategic and a tactical perspective."

Gibson Dunn lawyers excel in a classic Washington niche: challenging the government's rulemaking authority. Partner Eugene Scalia in 2012 successfully argued on behalf of two industry groups that the Commodity Futures Trading Commission's rule on position limits was improper—a ruling with far-reaching implications for the multitrillion-dollar commodities markets.

Gibson's Washington litigators were key players in the biggest settlements of the year. Warin and partner John Olson, along with co-counsel from Kirkland & Ellis, represented BP PLC's board of directors in reaching a \$4 billion criminal plea with the U.S. Justice Department.

Partners Jarrett Arp, David Burns and Thomas Hungar represented UBS A.G. in its \$1.5 billion settlement with U.S. and U.K. authorities over allegations that the Swiss bank attempted to rig the Libor interest-rate benchmark.

—JENNA GREENE

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FIRM BIO

Litigation partners	164.2
Litigation partners in D.C.	35.8
Litigation associates	319.9
Litigation associates in D.C.	88.2
Other attorneys	22.8
Other attorneys in D.C.	8.8
Litigators as percentage of firm	59%
Litigators as percentage in D.C.	not disclosed
Percentage of firm revenue	58.9%
Percentage of D.C. revenue	not disclosed

All figures represent full time equivalents.

KEYS TO SUCCESS

- ▶ "Although something of a cliché (and one of the first things I learned as a young lawyer), there is absolutely no substitute for preparation. The lawyer who has the most complete understanding of the facts and the law is most often the lawyer who wins."
- ▶ "Large complex cases frequently have key inflexion points, such as class certification and summary judgment, where they are effectively won or lost because so few go to trial. The big cases are most

often won by lawyers who identify the best inflection point, develop a thematic strategy early in the case to effectively advocate their position at that inflection point, and then methodically execute that strategy."

- ▶ "One key to a successful client relationship is to fully understand and realistically assess the client's litigation and business objectives at the outset of a matter, and to collaboratively reassess those objectives with the client throughout the litigation."

—DANIEL NELSON, CO-PARTNER IN CHARGE OF THE D.C. OFFICE