

## Appellate Group Of The Year: Gibson Dunn

By **Nadia Dreid**

*Law360 (January 31, 2024, 4:40 PM EST)* -- Gibson Dunn & Crutcher LLP convinced the U.S. Supreme Court to make it harder for shareholders to sue companies that went public via direct listing and got the Ninth Circuit to side with Uber and Postmates on a California worker classification law, earning the firm a spot among Law360's 2023 Appellate Groups of the Year.

The borders of Gibson Dunn's appellate practice aren't easily defined, since the firm doesn't generally assign people to a single practice group. But the 50 or so attorneys who spend most of their time on appellate work pack a sizable punch at the firm, considering they make up around 2.6% of Gibson Dunn's roughly 1,900 attorneys.

According to partner Thomas Dupree, the firm's success on the appellate front has a lot to do with its "strong appellate presence coast to coast."

"We are not kind of siloed in D.C.," Dupree told Law360. "To the contrary, we have practitioners throughout the nation, in Dallas, California. We have many appellate partners throughout the Gibson Dunn system."

One of the firm's more recent and perhaps more unusual appellate hires was Gregg Costa, who is now a partner at Gibson Dunn but spent more than eight years on the Fifth Circuit before trading in his robes for private practice. He's now working with the firm in Houston, Dupree said.

But there's no "star system" where one or two big shots do all the important arguments, Dupree said — all the appellate partners are "well-known, well-recognized practitioners in their own right."

"We truly are a nationwide appellate practice, and that really, I think, enables us to put the best team on the field when it comes to handling a particular matter anywhere in the country," the attorney said.

One of the biggest cases the appellate attorneys at Gibson Dunn have handled in the last year was a victory at the Supreme Court on behalf of Slack Technologies, the company behind the popular work communication platform.

The unanimous decision limited the ability of investors to go after companies that went public by direct listing, a relatively new option. The justices did this by endorsing an interpretation of Section 11 of the



Securities Act of 1933 that says investors who want to sue must prove that the shares they bought were the ones that were registered by the company.

That's because with direct listing, the company that's going public doesn't use a bank as a middleman and just registers the new shares when listing the company. This also allows current investors to start selling their stake in the company on the stock exchange at the same time the company goes public.

With traditional initial public offerings, unregistered shares belonging to those early investors can't be traded right away, usually not for a couple of months.

According to Slack and Gibson Dunn, the Slack investor suing over a dip in share prices — alleging that the company didn't disclose relevant information on its registration statement — would need to prove that the shares he bought were new shares that were created upon going public and not old ones held by early investors.

At the risk of using a "hackneyed metaphor," Gibson Dunn partner Julian Poon said having the ability to leverage the best lawyers for any possible case is part of the firm's "secret sauce."

"Slack is a really good example of that," Poon said. "Really being able to leverage the best subject matter experience, wherever they are, across our 21 different offices, to get the best possible brief and present the best possible argument to secure the best possible result for our clients."

Another one of the firm's big wins came when its lawyers convinced the Ninth Circuit to revive part of a legal battle waged by delivery company Postmates and ride-hailing business Uber against California's Assembly Bill 5, which they said targeted their businesses unfairly when trying to reshape who can and cannot be classified as an independent contractor.

After hearing the arguments posed by Gibson Dunn, the Ninth Circuit overturned a lower court's ruling and said the law was rooted in "animus rather than reason" when defining who it would apply to.

Partner Theane Evangelis pulled "the rabbit out of the hat" with that one, Poon said.

"She got the panel to unanimously agree that we had stated a valid claim under the equal protection clause of being arbitrarily discriminated against," Poon said. "And I should also note that the Ninth Circuit has granted en banc review of that case and Theane and the team are all chomping at the bit to take it to the full en banc court."

Looking back at Gibson Dunn's year in appellate law, Dupree said he was amazed by the "breadth and diversity" of the firm's victories.

"Whether you look at it geographically or by subject matter," he said. "Civil rights, bankruptcy, employment, on and on. We do it all, we do it well, and we win."

--Editing by Karin Roberts.