

## Class Action Group Of The Year: Mayer Brown

By **Ben James**

*Law360, New York (January 27, 2012, 6:00 PM ET)* -- Mayer Brown LLP persuaded the U.S. Supreme Court to issue a game-changing decision in favor of AT&T Mobility LLC in a closely watched case over class action waivers in arbitration agreements and got a nationwide class decertified in a case against American Honda Motor Co. — just two of several cases that landed Mayer Brown a place among Law360's Class Action Groups of 2011.

Mayer Brown's class action group is widely dispersed throughout the firm's U.S. offices, but the team is set up to cooperate with one another regardless of geographic boundaries, as well as leverage the expertise of Mayer Brown attorneys who work in other areas, like members of the firm's appellate practice.

"The ability of our group to work across offices exceeds that of many, if not most of our competitors. We truly are able to put the best resources in play for each matter, regardless of where it happens to be centered geographically," said John Nadolenco, one of three co-leaders of Mayer Brown's class action group.

"The class action group is built around our ability to reach out and find the subject matter experts, and work with our appellate team closely. It really gives our clients a one-stop-shop," he added.

Lucia Nale, who also co-leads the class action group, said Mayer Brown's interdisciplinary strategy of involving attorneys from multiple practice groups to ensure the team understands the client's business realities in addition to having a trenchant understanding of legal issues not only helps clients win big-ticket cases, but it also helps companies stay out of the plaintiffs' bars' cross-hairs in the first place.

"Cross-collaboration on the cases we handle and the distinct legal issues they raise enables us to spot and anticipate trends and thus help our clients plan for them before they happen," Nale said.

In the *AT&T Mobility v. Concepcion* case, the nation's highest court ruled 5-4 in April that a California rule holding that class action waivers in arbitration agreements were unconscionable was preempted by the Federal Arbitration Act, meaning that AT&T could enforce an arbitration provision in a cellphone contract that barred classwide arbitration proceedings.

That decision has been interpreted as a business-friendly ruling that protects companies' ability to force consumers to arbitrate disputes on an individual basis, and a severe, or even fatal, blow to class arbitration.

Mayer Brown worked with AT&T to put together the arbitration clause at issue in the Concepcion case and shepherded the matter all way up from district court to the U.S. Supreme Court. That allowed the firm to hem in the issues in the case so that there were no distractions from the question of the enforceability of the class waiver when the matter reached the Supreme Court, noted Mayer Brown partner Donald Falk.

“We worked to really position the case so that it became just about the class waiver,” Falk said.

Even though the arbitration agreement at issue in Concepcion was initially found to be unconscionable by a federal district and appeals courts in California, one judge said it contained “perhaps the most fair and consumer-friendly provisions this court has ever seen,” AT&T pointed out in a brief to the Supreme Court.

“Sometimes you make progress incrementally, and then you are able to build on what you've achieved here and there, to really focus on your presentation as you go further up because you've disposed of the lesser issues,” Falk explained.

“No one counts on a win in the Supreme Court, but as a strategic matter, we knew that both the state and federal courts in California were hostile to arbitration agreements, and arbitration agreements that preclude class actions,” added Archis Parasharami, co-leader of Mayer Brown's class action practice.

“Supreme Court review was part of our strategy from many years back. We certainly expected to be in the Supreme Court if we could develop a case that was the right vehicle,” Parasharami said.

Mayer Brown also filed amicus briefs in other Supreme Court cases last year. For example, the firm lodged a Jan. 27, 2011, brief on behalf of the Association of Global Automakers Inc. in support of Wal-Mart Stores Inc. in the landmark Betty Dukes gender discrimination lawsuit, in which the Supreme Court struck down a 1.5 million woman class in June.

More recently, Mayer Brown helped score a win for American Honda Motor Co. On Jan. 12, the Ninth Circuit dissolved a nationwide class action accusing the company of misleading consumers about the benefits of a specialized braking system on Acura RL cars and ruled that a lower court erred in granting class certification.

In a split opinion, the Ninth Circuit ruled that the class previously certified by a California federal court lacked key commonality and choice of law requirements.

The plaintiffs alleged Honda omitted from marketing materials important details about its so-called Collision Brake Mitigation System, like the fact that the system shuts down in bad weather. The district court in December 2008 certified a nationwide class including anyone who bought or leased Acura RLs with the system over the previous three years, with California consumer law applying to the entire class.

Citing the Supreme Court's decision on class certification in Wal-Mart Stores Inc. v. Dukes, the Ninth Circuit held that the plaintiffs should litigate their claims individually in the states in which they bought the cars.

Mayer Brown's class action lawyers also achieved significant wins, as well as settlements on favorable terms, in district court cases in 2011.

For example, in September a judge in California threw out a would-be class action brought under the Fair Credit Reporting Act against Spokeo Inc., which Mayer Brown represented. And in August, Mayer Brown persuaded a New York federal judge to throw out a putative class action over a Citigroup Inc. mortgage unit's loan modification policy.

Contrary to the plaintiff's claims, Spokeo, which bills itself as a "people search engine" didn't qualify as a consumer reporting agency under the FCRA, and the plaintiff wasn't actually harmed by Spokeo, Mayer Brown argued.

The firm also managed to get a putative class action accused Google Inc. of unfair competition and breaking its agreement with AdWords-enrolled advertisers over pricing discounts dismissed in August, though the plaintiff in that case later filed an amended complaint.

In September, a California federal judge approved a deal in which Mayer Brown-represented TD Ameritrade Inc. agreed to shell out up to \$6.5 million to settle claims brought on behalf of a putative class of about 6 million people over a 2007 data breach.

Mayer Brown represented AT&T Mobility in multidistrict litigation in Illinois, in which the company was accused of collecting more than \$1 billion in improper sales taxes from \$32 million customers. The settlement in that MDL won U.S. District Judge Amy St. Eve's approval in June.

Mayer Brown also represented Cypress Semiconductor Corp. in multidistrict litigation over an alleged price-fixing conspiracy in the static random access memory market. Cypress struck a \$6.25 million deal with the direct purchasers and settled with the indirect purchasers for \$1 million. Both settlements were approved last year.

*Methodology: In November, Law360 solicited submissions from over 500 law firms for its practice group of the year series. The more than 550 submissions received were reviewed by a committee of Law360 editors. Winners were selected based on the significance of the litigation wins or deals worked on; the size and complexity of the litigation wins or deals worked on; and the number of significant, large or complex deals the firms worked on or lawsuits the firm had wins in. Only accomplishments from Dec. 1, 2010, to Dec. 1, 2011, were considered.*

--Editing by Lindsay Naylor.