

Appellate MVP: Mayer Brown's Andrew Pincus

By **Melissa Daniels**

Law360, Los Angeles (December 7, 2016, 11:29 AM EST) -- Already one of the country's top appellate litigators, Mayer Brown LLP's Andy Pincus had a banner year, arguing the blockbuster Spokeo case in front of the U.S. Supreme Court, landing him a spot on Law360's 2016 Appellate MVP list.

Pincus keeps a busy schedule, juggling appellate cases from the Ninth Circuit to the Federal Circuit while adding to his nearly two-dozen Supreme Court appearances and lecturing at Yale Law School. But in the career of this prominent litigator, what will make 2016 stand out?

"There's nothing like arguing before the Supreme Court and winning," he says.

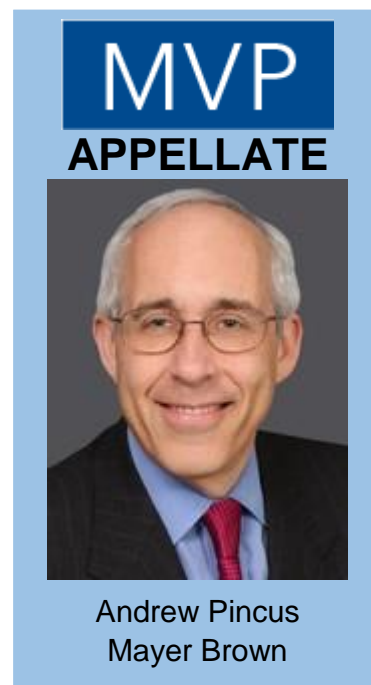
Pincus represented Spokeo Inc. in front of the Supreme Court in a case that has had wide ramifications over standing issues in statutory class actions, with the court finding that a consumer couldn't sue Spokeo for technical violations of the Fair Credit Reporting Act.

"We knew the issue was important, we knew it was still coming up all over the place, so we were excited to see what would happen," Pincus told Law360. "We thought we had a very good candidate to bring this issue back before the Supreme Court."

The high court found in a 6-2 decision that in order to maintain Article III standing, a plaintiff must allege a tangible or intangible concrete injury and cannot rely solely on a mere statutory violation. The ruling had an immediate ripple effect on privacy and business litigation and class actions; by mid-July, the case had been cited in nearly 50 other cases, 60 documents in appellate courts and 24 in trial courts.

Despite the obvious significance, Pincus said the true meaning of Spokeo remains to be seen as appellate court decisions begin to shake out, and often in contrasting ways. Since May, Pincus has worked on several related cases in the post-Spokeo world, he said.

"I think we're going to get a body of appellate law developing," he said. "It wouldn't surprise me in a year or two to see some post-Spokeo issues, how you decide what kind of intangible harm constitutes injury ... It's going to take a while for it to be sorted out."



Beyond the world of Spokeo, Pincus is also representing Impression Products Inc. in a “very significant” patent exhaustion standards case stemming from infringement accusations brought by Lexmark International Inc. Just last week, the Supreme Court granted Impression's petition and agreed to hear the case, which raises questions over Federal Circuit standards about overseas sales and whether patent owners can place restrictions on buyers.

Though Pincus is five years removed from the landmark high court decision in *AT&T Mobility LLC v. Concepcion*, which found federal laws trumped state laws when deciding if certain class action waivers are enforceable, he’s maintained a foothold in cases sorting out its aftermath, such as representing the American Health Care Association and Ritz-Carlton Development Co. in arbitration provision disputes.

He’s also keenly involved in personal jurisdiction matters since the Supreme Court’s 2014 *Damlier* ruling, which turned up a host of questions in lower courts over forum-shopping.

“The issues are very obvious to the business community,” when it comes to understanding where they might be sued, he said.

Other highlights of 2016 include another patent case in which Pincus successfully argued in front of the Federal Circuit over reinstating patent claims for an innovative cell material used for testing toxicity levels of new compounds. He also defended Google against patent infringement claims brought by a Tennessee computer company over a software patent.

Looking ahead to 2017, Pincus hopes to see the Supreme Court take up an International Trade Commission case over the extraterritorial application of U.S. law particular to trade secrets. And like the rest of the legal community, he’s waiting to see how the new presidential administration will respond to the vacancy created by the death of Justice Antonin Scalia.

“Anytime the court membership changes, it’s not just a new justice, it’s a new court,” he said. “There are new dynamics among those people because of the new person that’s been added.”

In addition to his appellate practice, Pincus is a visiting lecturer at Yale, where he teaches classes and helps students write briefs at a clinic. Imparting his knowledge becomes a self-reflection of sorts, where he breaks down the instincts and intuitions developed from thousands of hours of practice.

“If you’re teaching, you’ve got to be able to step back and take those things apart and say, ‘OK, what am I doing here, how do I explain it to a student so they can begin to do it themselves?’” he said. “You have to unpack all that intuition you’ve built up over the years and explain it first to yourself, and then the students.”

--Additional reporting by Allison Grande and Matthew Bultman. Editing by Jack Karp.

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