

Appellate Group Of The Year: Mayer Brown

By **Michelle Casady**

Law360, Houston (February 7, 2017, 11:26 AM EST) -- Mayer Brown LLP's appellate group went undefeated in the four cases it argued before the U.S. Supreme Court last term, including a big win for businesses fighting statutory class action claims with the high court's Spokeo ruling, cementing its spot as one of Law360's Practice Groups of the Year.

The case, *Spokeo Inc. v. Thomas Robins*, hinged on whether an allegation of a violation of statutory rights sufficiently satisfies Article III's injury-in-fact requirement for standing. The U.S. Supreme Court in May said in a 6-2 decision that a consumer could not sue Spokeo for technical violations of the Fair Credit Reporting Act, but it left the door open for plaintiffs in other cases to use statutory violations to establish standing. It held the Ninth Circuit's February 2014 ruling used an incomplete analysis when it ruled consumers can sue companies without alleging actual injury.

Robins had accused the self-proclaimed people search engine Spokeo of violating the FCRA by falsely reporting that he was wealthy and married and had a graduate degree when in fact he was struggling to find work.

The practice group, which boasts nearly 50 lawyers including five alumni from the Solicitor General's Office, also nabbed a victory on behalf of client Lockheed Martin in a dispute with the U.S. government when the D.C. Circuit unanimously held in August 2016 that collecting the government's share of cleanup costs under the Comprehensive Environmental Response Compensation and Liability Act, and passing environmental cleanup costs along to consumers in the prices of goods and services does not constitute "double recovery."

It also got a \$10.1 billion class action award against Phillip Morris thrown out by the Illinois Supreme Court in November 2015.

Brian Netter, co-leader of the firm's Supreme Court and appellate practice group, pointed out that four different attorneys argued Mayer Brown's Supreme Court cases last term. Two of those attorneys were in their 30s, which he told Law360 was indicative of the "new generation of lawyers preparing to take up the mantle in the future."

Andy Pincus, who argued on behalf of Spokeo, told Law360 that the case was one of many in which the



firms' appellate lawyers were involved from the very beginning, because of the potential it had to go before the Supreme Court.

“Firms have different models but ours has always been to have a number of different lawyers who take the lead on cases, going back to the very beginning of the practice in the 1980s,” Pincus said. “We've never focused on one person. We believe collaboration among a lot of people is the best way to handle these cases and we have a lot of talented lawyers.”

In *Shapiro v. McManus*, the high court in December 2015 unanimously ruled in Mayer Brown's clients favor, siding with eight Maryland voters challenging the state's 2011 redistricting and holding that claims of partisan redistricting have a right to be heard before a special three-judge district court panel. The ruling revived the suit and reversed a Fourth Circuit determination that had affirmed its dismissal.

Michael Kimberly, who argued on behalf of Stephen Shapiro, said while he didn't have much experience in the subject matter involved in the case, his experience with the fundamental principals of statutory interpretation and analysis were key.

“There are certain competencies that appellate lawyers pick up that really translate across cases,” he said. “Most of the sort of appeals that we become involved with implicate the same kind of questions, the same kind of tools that are necessary to make the right arguments. So when you couple that expertise with how best to approach a general question of statutory interpretation ... it really creates a combination that we're very proud of.”

The firm notched another win in *Birchfield v. North Dakota*, a case dealing with warrantless blood draws for suspected drunken drivers in North Dakota and Minnesota, when the high court released its 7-1 June 2016 opinion — notably the only Fourth Amendment case where the Supreme Court found for a criminal defendant last term. The court held that compelled blood tests are substantial intrusions of personal privacy for which a warrant is required by the Fourth Amendment. It also established that the government may not “deem” a person to have surrendered a constitutional right in return for a driver's license or other essential state benefit.

That same month, the firm also convinced the high court to rule in favor of its client, Shaidon Blake, in *Ross v. Blake*. That decision was also a unanimous 8-0 vote in favor of Blake. In the case, Maryland had claimed that Blake, a prisoner, had failed to exhaust administrative remedies in his challenge of prison conditions, but the firm successfully argued that the grievance policy was so confusing it was effectively unavailable.

--Additional reporting by Allison Grande and Daniel Siegal. Editing by Emily Kokoll.