

MVP: Mayer Brown's Andrew Pincus

Law360, New York (December 11, 2017, 1:45 PM EST) -- Mayer Brown LLP partner Andrew Pincus has argued 27 cases before the U.S. Supreme Court, including two successful appeals this past year that had major impacts on patent exhaustion and the enforceability of arbitration agreements, earning him a spot among Law360's 2017 Appellate MVPs.

HIS BIGGEST ACCOMPLISHMENT THIS YEAR:

Pincus said he considers the favorable decision he secured from the Supreme Court in *Impression Products v. Lexmark International* to be his biggest accomplishment this past year. In that case, the court decided in favor of Pincus' client, Impression Products, limiting the ability of patent owners to control the use of patented products once they are sold, throwing out two Federal Circuit rules that kept some patent rights in place even after sales.

The justices held that the doctrine of patent exhaustion, a defense to infringement that holds that patent owners lose their rights after an authorized sale, means that post-sale restrictions are not allowed and that patent rights are exhausted once a product is sold anywhere in the world. The decision allowed West Virginia-based Impression Products to continue operating its business refilling used Lexmark printer cartridges and reselling them.

"It was especially rewarding to represent a small business in West Virginia that had really built something with hiring people in the community and that really faced an existential threat if we lost the case," Pincus said. "So it was great to be able to win it for them and for their employees."

FIGHTING THE 'ASSAULTS ON ARBITRATION':

In another win at the Supreme Court in 2017, Pincus secured a favorable decision in *Kindred Nursing Centers LP v. Clark et al.* The justices ruled in May that the Kentucky high court's refusal to send to

The MVP logo features the letters 'MVP' in a blue, serif font. The letter 'V' is partially enclosed by a red circle with an upward-pointing arrow, suggesting a 'winner' or 'top performer'.

Andrew Pincus
Mayer Brown

arbitration two wrongful death suits against a nursing home ran afoul of the Federal Arbitration Act, saying arbitration agreements should be handled no differently from other contracts.

And, the attorney said he is involved in other matters — both litigation and public policy — that involve legal work to fight back against “the assaults on arbitration,” including a petition for certiorari he’s planning to file with the Supreme Court in a case that disputes the constitutionality of the Federal Arbitration Act.

“The work on arbitration is particularly satisfying because I’ve been involved in it so long, it’s an area of the law I know well and can be helpful I think, [and] particularly effective in figuring out both on the policy side and litigation side what the most effective arguments are,” he said.

WHY PRO BONO PLAYS A BIG PART IN HIS PRACTICE:

According to Pincus, one of his biggest challenges during the past year was figuring out how he could best put his skills to use to protect vulnerable people who “faced horrible consequences” as a result of Trump administration policies on health care and immigration.

He’s provided legal advice defending the Affordable Care Act against efforts to dismantle it and, along with colleagues, brought litigation on behalf of those impacted by the travel ban implemented by the administration in January.

“My feeling was that especially in these two areas, immigration and access to affordable health care, you have very vulnerable people. So I think it’s an important area to do what I can, using the skills I have to push back against forces that would hurt them,” Pincus said.

HIS ADVICE FOR UP-AND-COMING APPELLATE ATTORNEYS:

The most important thing to remember as an appellate attorney, according to Pincus, is that when an appeals court is looking at a case, it’s not only interested in how the position being argued impacts the plaintiff and defendant in the immediate case, but also how it will impact a range of future cases and the law more generally.

“It’s critical not just in preparing for argument, but in really starting to think about your case and think about the principles you’re going to advocate for, how those principles fit into a range of cases and how they fit generally into the law in the area in which your case arises, because those are going to be front of mind for any appellate judge,” Pincus said.

“An appellate court knows that the legal rules it announces and the rationale it applies to get there is going to apply to a whole range of cases, and making sure that those range of cases and that bigger picture are going to come out in a sensible way,” he added.

— *As told to Aebra Coe*

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through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2017 MVP winners after reviewing more than 1,000 submissions.

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