

## Class Action Group Of The Year: Mayer Brown

By **Hannah Meisel**

*Law360, Springfield (January 18, 2018, 5:47 PM EST)* -- Capitalizing on recent landmark victories at the U.S. Supreme Court, Mayer Brown's class action practice proved itself a leader in the arena once again in 2017, fending off class actions for some of the most recognizable brands in the world and advancing case law to prevent frivolous class actions under the Fair Credit Reporting Act, earning it yet another spot as one of Law360's Practice Groups of the Year.

Mayer Brown's class action group boasts 40 attorneys who regularly team up to collaborate on cases at every stage of litigation. In fact, the firm's class action strategy often includes appellate attorneys from the very beginning, partner and class action practice co-chair Debra Bogó-Ernst told Law360.

"One thing that sets Mayer Brown apart from other firms is our great appellate group," Bogó-Ernst said. "When we get class cases in the door, we typically sit down and think about how the case could impact other law in the future and the laws cited in our case, and we do often get an appellate litigator involved right from the outset to sort of brainstorm and collaborate on ways to approach the litigation to get to the best outcome."

That approach has served the firm well, as many high-profile class actions Mayer Brown has worked on have gone on to appellate courts — including May 2016's blockbuster *Spokeo Inc. v. Robins*, in which the Supreme Court held that a lawsuit claiming a bare statutory violation does not satisfy the injury-in-fact requirement of Article III of the Constitution for standing to sue in federal court without allegations of concrete harm.

The Supreme Court is expected to announce later this month whether it will hear *Spokeo* again, after a Ninth Circuit panel issued an opinion on remand testing the waters of the post-*Spokeo* world. Mayer Brown is arguing the court should further clarify its decision and help clear up any circuit splits that have occurred in the past year and a half.

Consumer litigation and class action practice co-chair Archis Parasharami — an appellate litigator who focuses on class actions — was heavily involved in the *Spokeo* case and said the work Mayer Brown completed has helped to shape case law, and should merit the firm a reputation as a leader in the area.

"The renewed focus on whether plaintiffs have genuinely been injured post-*Spokeo* — these are major



changes," Parasharami said. "We've been honored to be at the forefront of them. Those cutting-edge issues are issues that our teams litigate every day."

Mayer Brown has pushed to expand Spokeo's impact in industries like financial services, including in a triumph for CitiMortgage in May, when the full Eleventh Circuit denied a petition for an en banc rehearing of CitiMortgage's 2015 victory in a putative class action alleging the bank violated a New York statute by recording the satisfaction of the plaintiff's mortgage more than 30 days after the satisfaction occurred.

After successfully shaking off the suit in district court, based on grounds that the plaintiff had not suffered any concrete injury and therefore lacked standing, the full Eleventh Circuit denied the plaintiff's petition for an en banc rehearing and reaffirmed the district court's ruling in favor of CitiMortgage.

Lucia Nale, who heads the firm's consumer class action practice, told Law360 that she and her colleagues have effectively limited the plaintiffs bar from exploiting the Fair Credit Reporting Act at issue in Spokeo, as well as many cases before and after it, especially as the FCRA's statutory damages provision could mean up to \$1,500 per "willful and knowing" violation.

"We always are looking for ways to put a halt on what I call lawyer-manufactured class action litigation," Nale said. "I believe that these statutory damages no-harm cases are clearly within that province. ... It has been a sweet spot of plaintiffs bar for years."

Mayer Brown has also drawn upon Spokeo in cases as varied as protecting ride-hailing tech company Lyft from an FCRA class action brought by a driver angered by the background check process to Spokeo itself, which in August escaped a bid to certify four proposed class actions alleging that the company violated Illinois' Right of Privacy Act by using individuals' names in ads generated by search engines.

Some of the firm's larger class action victories last year drew upon a 2011 triumph at the Supreme Court in which the justices held that the Federal Arbitration Act preempts state law rules that would refuse to enforce arbitration agreements solely because they waive class actions. The *AT&T Mobility LLC v. Concepcion* decision was the basis of Mayer Brown's victory for Kentucky-based nursing home chain Kindred Nursing Centers in May.

In *Kindred Nursing Centers LP v. Clark*, the Supreme Court held that the Federal Arbitration Act preempts a Kentucky state Supreme Court rule that requires a power of attorney to expressly refer to arbitration agreements before an attorney-in-fact can bind their principal to an arbitration agreement. The high court also ruled for the first time that the Federal Arbitration Act's requirement that arbitration agreements be placed on "equal footing" with other contracts applies to their formation as well as to their enforcement. Kindred's significance will not only be applied to arbitration cases in years to come, but in class action matters, Mayer Brown believes.

The firm was also at the center of suits last year defending household names like Campbell Soup Co., Nestle Purina's Beneful dog food, pharmaceutical giant Bristol-Myers Squibb, social media juggernaut Facebook, retail stalwart Sears and real estate website Zillow. The cases — though varying from product liability to Telephone Consumer Protection Act suits — were by and large thrown out at early stages, which Parasharami said is a big goal of the firm's.

"The best appeal is one that never has to be filed," Parasharami said. "If you can win for your client in

the trial court by applying important legal principles or changes in the law, that can be outcome-determinative in the early stage. It both saves clients money and gets them great results."

He added, "That's the idea behind our practice: making sophisticated legal arguments from the very start of the case because we get that class actions are so consequential for businesses."

--Editing by Catherine Sum.