Appellate Group Of The Year: Mayer Brown

By **Hailey Konnath**

Law360 (January 29, 2020, 4:12 PM EST) -- Mayer Brown LLP's appellate group secured an impressive number of victories for major clients in cases addressing important issues over the last year, including one for Google in the U.S. Supreme Court and another for Facebook in California federal court, as well as a big win for arbitration clauses, earning it a place among Law360's 2019 Appellate Groups of the Year.

The success of the group, which includes more than 40 attorneys throughout the U.S., stems from a deep expertise in a wide variety of areas, ranging from employment and environmental to bankruptcy and litigation, according to Nicole Saharsky, co-head of the firm's Supreme Court and appellate practice.

"It's really the breadth and depth across those areas that distinguishes us," she told Law360.

Andrew Pincus, another leader in the group, said the firm is in "a growth mode."

"I've been doing this for a while and our workload in the last year has been pretty incredible," he said.

The key victory for Google came in March, when the Supreme Court remanded an $8.5 million Google privacy class action settlement to a lower court and declined to examine the limits of cy pres awards.

In Frank v. Gaos, the tech giant agreed to pay to resolve claims from 129 million Google users that it unlawfully shared search histories in violation of the Stored Communications Act. Under the deal, the money went to three named plaintiffs, class counsel, and six internet privacy nonprofits. Other class members got no money.

The high court said it couldn't examine the fairness of Google's deal because of questions over whether Google users can plausibly claim to have suffered concrete harm.

In December 2018, Mayer Brown landed a significant win for Facebook in a putative class action over how the social media giant uses health care-related web-browsing data for marketing purposes. The users also sued health care providers, claiming they negligently or intentionally authorized Facebook to collect web browsing activity and track users.

But a California federal judge dismissed the entire complaint without leave to amend, ruling that the users had consented to how Facebook used that data by agreeing to the site's terms of service. The plaintiffs appealed, but the Ninth Circuit later affirmed, holding that a "reasonable person viewing [Facebook's terms] would understand that Facebook maintains" those practices.

It was the first appellate decision addressing the sufficiency of Facebook's disclosures about data collection, according to Mayer Brown.

And the appellate group has been involved in litigation at all levels to defend arbitration clauses, which Pincus characterized as "a very important tool for avoiding the high cost and delays of the court system."

Arbitration benefits "not just companies but employees and consumers," he said.

In April, the Mayer Brown team convinced the Supreme Court to rule in favor of client Lamps Plus Inc. in a case over classwide arbitration claims.

In Lamps Plus v. Varela, the Ninth Circuit had held that an employee whose tax information was hacked could bring classwide arbitration claims. Because the arbitration agreement was ambiguous, it could be construed against the drafter, the appellate court said.

But the high court disagreed, ultimately ruling that classwide arbitration claims cannot be brought unless provided for in the underlying arbitration contract.

"One of the things we've tried to do and been successful in doing is trying to move the law in the areas we're working in," Pincus said. "And that's certainly true in the arbitration space."

Saharsky and Pincus said the practice group is working more at the trial court level as discovery costs go up and clients are increasingly looking to definitively shut down cases at earlier stages.

"From our perspective, wherever our clients need us and think that our expertise can be brought to bear, we'll go there and offer our help," Saharsky said.

--Editing by Adam LoBelia.