

USWNT Adds Mayer Brown Appellate Attys In Equal Pay Suit

By **Zachary Zagger**

Law360 (July 6, 2020, 8:25 PM EDT) -- U.S. women's national team soccer players added a pair of Mayer Brown LLP appellate experts, including a prolific U.S. Supreme Court advocate, to their legal team in a pay discrimination lawsuit against the U.S. Soccer Federation, gearing up for what could be a long legal fight after a federal judge gutted their claims.

Mayer Brown Washington, D.C., partners Nicole Saharsky, a former assistant U.S. solicitor general mostly under the Obama administration, and appellate specialist Brian Netter were added to the players' legal team Thursday as the players look to tee up a Ninth Circuit appeal. They join a legal team currently being led by Winston & Strawn LLP.

"We are honored to join the team representing these champions in their tireless work for equal pay," Saharsky and Netter said in a statement Thursday. "Paying women at lower rates simply because of their gender is not legal and is not right. We look forward to presenting this case to the Ninth Circuit."

Saharsky, one of the most prolific female Supreme Court attorneys of the past decade, argued 29 cases before the high court during tenure in the Office of the Solicitor General before moving to private practice in 2017. She first joined Gibson Dunn & Crutcher LLP before moving to Mayer Brown in 2018.

Netter, named a 2019 Law360 MVP for Benefits law, has further defended universities in litigation over the administration of their retirement plans and helped lead a case that budget autonomy for the District of Columbia in *Council of the District of Columbia v. Gray*.

The two are part of an appellate practice at Mayer Brown named as one of Law360's practice groups of the year in 2019.

"We are delighted to have the Mayer Brown appellate team join this equal pay effort," Winston & Strawn partner Jeffrey Kessler said in a statement.

U.S. District Judge R. Gary Klausner in May tore the spine out of the women's team players' Equal Pay Act and Title VII case, leaving only claims they received worse travel and personnel accommodations than the men's team.

But the women's team players may have to wait until after a September trial to appeal that ruling. Judge Klausner in June denied the women's players' request to be allowed to immediately appeal to the Ninth

Circuit, rejecting arguments that the ongoing COVID-19 pandemic could mean they will have to wait "an extremely prolonged time."

The trial was initially scheduled for June, before being bumped to September because of the COVID-19 pandemic.

The women's players' case hinged on the bonus structure of their collective bargaining agreement relative to the men's collective bargaining agreement. If the women were now paid according to the terms in the men's CBA, they'd be making millions of dollars more than they actually are, the women's players said.

But Judge Klausner sided with the federation, calling those arguments a distraction. When the total average amount actually made by the women per game is added up and compared to the men's earnings, the women actually earn slightly more per game than the men, Judge Klausner said. Given that, he said there's no way the women can claim they're paid less than the men.

Before that decision. U.S. Soccer changed up its legal team, dropping Seyfarth Shaw LLP after the firm made controversial legal arguments that the male players are paid more because the men's game requires more skill. U.S. Soccer brought in Latham & Watkins LLP to lead its defense.

The women's team players filed suit against U.S. Soccer on International Women's Day in March 2019, following a public battle over pay and working conditions that included a 2016 complaint a group of players filed with the U.S. Equal Employment Opportunity Commission.

The case followed a similar pay-gap action filed in 2018 by Hope Solo, the team's well-known former goalkeeper.

U.S. Soccer declined to comment Monday.

The players are represented by Jeffrey Kessler, David Feher, Cardelle Spangler, Diana Hughes Leiden, Lev Tsukerman and Jeanifer Parsigian of Winston & Strawn LLP and Nicole Saharsky and Brian Netter of Mayer Brown.

U.S. Soccer is represented by Jamie Wine, Michele Johnson, Kuan Huang and Sarah M. Gragert of Latham & Watkins LLP.

The case is Morgan et al. v. U.S. Soccer Federation Inc., case number 2:19-cv-01717, in the U.S. District Court for the Central District of California.

--Additional reporting by Ryan Boysen. Editing by Amy Rowe.