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SPECIAL ISSUE

Litigation Department of the Year

Mayer Brown

WHEN WE STARTED our Litigation Department of the Year competition ten years ago, we weren't sure if it would catch on. We knew we were asking a lot from firms—requiring them to sift through their litigation matters, choose the best results, and summarize complex cases succinctly. But a decade later, here we are presenting the results of our sixth biennial competition.

As usual, the task of picking winners and finalists involved some excruciating decisions. The submissions—which covered the two-year period ending July 31, 2011—were impressive, and stand as a testament to the excellent work done by the firms of The Am Law 200.

For the first time since we started this project, we changed the format for all four competition categories: general litigation, product liability, labor and employment, and intellectual property. We gave firms more flexibility to select the cases they wanted to present, and we asked each firm to submit an essay on why it should be a finalist. We also invited firms to nominate a partner as Litigator of the Year.

After months of reading, vetting, and interviewing, we arrived at four law firm winners, 11 runners-up, and 14 honorable mentions. We also chose three lawyers for Litigator of the Year, and five as finalists. Congratulations to all of these firms and individuals, and our thanks and appreciation to all the firms that participated in the 2012 contest.

PHOTOGRAPHY BY MIKE McGREGOR

The **Big Picture**

MAYER BROWN uses its early warning system—bringing its appellate lawyers into cases at the outset—to win high-profiles suits for clients ranging from AT&T Mobility to YouTube to Rahm Emanuel.

By **SUSAN BECK**

WE'VE SEEN SOME SWEEPING pro-business U.S. Supreme Court rulings of late, but there's a good argument that no decision will have more impact on the business community than Mayer Brown's victory last year in *AT&T* v. *Concepcion*. The court's 5-to-4 ruling, which allowed AT&T Mobility LLC to enforce an arbitration contract with its customers, paves the way for companies to avoid class actions in a range of contractual situations, from consumer matters to employment disputes.

"We feel pretty passionately that this decision will be felt broadly across our litigation system and will be positive for the litigation system," says Mayer Brown partner Andrew Pincus, who made the Supreme Court argument (and has 21 other high court appearances under his belt).

As a first-time finalist, Mayer Brown impressed us with its range of far-reaching victories. Along with its win for AT&T, the firm successfully defended Google's YouTube in a critical Internet copyright case, won a crucial preemption appellate ruling for medical device maker Medtronic, Inc., helped win the largest Fair Labor Standards Act case ever tried to verdict for Quicken Loans Inc., litigated the largest NAFTA award ever for Cargill Inc. ($77 million), and beat back challenges to permit Rahm Emanuel to be elected mayor of Chicago.

"Our secret weapon is our exceptional group of appellate lawyers," says partner Steven Wolowitz, one of the litigation group's practice leaders. "We have argued more Supreme Court cases than any other litigation department, and we have the most lawyers from the solicitor general's office. The real key to our approach is that appellate lawyers get involved in our cases from the outset."

AT&T v. *Concepcion* stands as a textbook example of that approach. The court's ruling last April—which *The Wall Street Journal* called a "body blow to consumer class actions"—was the culmination of a nine-year collaboration between Mayer Brown and AT&T to craft a strategy to resolve consumer disputes through arbitrations. The Mayer Brown team, led by partner Evan Tager, was hired in 2002 after a beauty contest. Part of the firm's appeal was its Supreme Court expertise, says Neal Berinhout, associate general counsel–litigation for AT&T Mobility & Consumer Markets. (The original client, Cingular Wireless, was later acquired by AT&T.)

The path to the Supreme Court was a long one. Although most courts upheld AT&T's arbitration clause, the firm expected trouble from the U.S. Court of Appeals for the Ninth Circuit. But before the Ninth Circuit evaluated the agreement, Mayer Brown had to deflect the Supreme Court's attention away from a rival case by T-Mobile USA, Inc., raising similar issues, which it viewed as weaker. The firm filed an amicus brief opposing a certiorari petition by T-Mobile in 2008, arguing that the Court should wait to review a new generation of arbitration agreements, like the one adopted by AT&T. The Court didn't take the T-Mobile case.

Then, in 2009, the Ninth Circuit held that AT&T's ban on class actions was unconscionable under California law, setting up the Concepcion case for high court review. The Supreme Court held that the Federal Arbitration Act preempts California law, thereby upholding AT&T's arbitration agreement. Since then, dozens of companies have reaped the benefits of the ruling: More than 50 federal and state courts have cited *Concepcion* in favorable arbitration rulings for companies.

"The briefs I get from Mayer Brown are uniformly great from the first draft," says AT&T's Berinhout. "Their writing is superb." He notes that while the firm was working on the Concepcion case, it also led a business coalition to defeat the Arbitration Fairness Act, an effort by the plaintiffs bar to rein in arbitration. "That showed its versatility," he says.

Another far-reaching case on Mayer Brown's docket is *Viacom* v. *YouTube*, which tests the limits of copyright law on the Internet. Mayer Brown came into the case nine months after it was filed, replacing Bartlit Beck Herman Palenchar & Scott, and joining Wilson Sonsini Goodrich & Rosati as cocounsel. Viacom claimed that YouTube was violating copyright

Department Size	*Partners:* **178** *Associates:* **245** *Other:* **21**
Department *as Percent of Firm*	**29%**
Percent *of Firm Revenue 2010*	**30%**

FROM LEFT: *Evan Tager, Andrew Marovitz, Lori Lightfoot, Andrew Pincus, Steven Wolowitz*

law when users posted clips from Viacom television shows, such as *South Park*. The company, represented by Jenner & Block, demanded $1 billion, plus equal punitive damages.

In a key early victory, YouTube's lawyers convinced Manhattan federal district court judge Louis Stanton to change his position and find that punitive damages can't be awarded in copyright cases. (He had ruled the other way in a different case.) In June 2010 Judge Stanton granted YouTube summary judgment, finding that it had acted quickly enough to take down infringing material to be entitled to the safe harbor protections of the Digital Millennium Copyright Act. Viacom has appealed. "If the case had gone the other way, the Internet might be a very different place," says Wolowitz.

Catherine Lacavera, Google's director of litigation, calls Mayer Brown's work "terrific," and praises the firm for working so well with Wilson Sonsini. "This was a huge case and required a lot of cooperation," she says. Lacavera uses a company term of art to compliment Mayer Brown, calling them "Googley"—meaning they're nice and cooperative and follow the company's motto to "Do no evil."

In October, however, Mayer Brown lost the lead lawyer on the Google case when Andrew Schapiro joined Quinn Emanuel Urquhart & Sullivan. Mayer Brown partner John Mancini, who is working on this case, says Mayer Brown continues to be involved, working with Schapiro and Wilson Sonsini.

Most appellate cases take years, but Mayer Brown's successful efforts to show that Rahm Emanuel satisfied residency requirements to run for mayor of Chicago were compressed into three months. Led by Pincus, and assisted by election law specialists, the firm researched residency cases dating back to the nineteenth century. In a marathon hearing before the Chicago Board of Elections in December 2010, Pincus focused on the fact that Emanuel had left some possessions, including his wife's wedding dress, in his Chicago residence after he joined the Obama administration in 2009. The argument worked until an appellate court reversed a lower court ruling. With ballots already being printed without Emanuel's name, Pincus filed an emergency appeal with the Illinois Supreme Court, worked all night, and won a 7-to-0 reversal. "It was one of the most satisfying things I've done in 30 years," says Pincus.

And for Mayer Brown, it's been a satisfying run, too.

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Mayer Brown's Litigation practice is the firm's largest practice with more than 450 lawyers globally dedicated to dispute resolution and complex, high-stakes litigation for a wide variety of clients. We are among the largest law firms in the world and have the resources to successfully handle major legal disputes across national borders in a wide array of dispute resolution venues. Our litigation practices include Antitrust & Competition, Banking & Finance, Commercial Litigation, Consumer Litigation & Class Actions, Electronic Discovery & Records Management, Employment & ERISA, Environmental, International Arbitration, Mass Torts & Product Liability, Professional Liability, Securities Litigation & Enforcement, Supreme Court & Appellate, and White Collar Defense & Compliance.

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