

Technology Group Of The Year: Mayer Brown

By Jenna Ebersole

Law360, Washington (January 17, 2017, 5:48 PM EST) -- The U.S. Supreme Court's ruling in *Spokeo v. Thomas Robins et al.* that found consumers must show actual injury to maintain statutory class action claims has already had ripple effects for companies and landed the technology team at Mayer Brown LLP among Law360's Technology Practice Groups of the Year.

The firm's technology group, which also has experience representing Silicon Valley clients Google Inc. and Lyft Inc., functions across practice groups and includes a large portion of attorneys who have technical degrees. The *Spokeo* win has already helped other tech companies, including Lyft.

The firm has experience working for a wide range of companies with a focus on solving business problems, rather than considering legal issues alone, said partner Andrew Pincus, who argued *Spokeo*.

"What we try to bring to bear in all of our cases ... is first of all you've got to start out with an understanding of [the client's business]," Pincus said. "And how the legal problem relates to their business and how it can be solved in a way that works for them."

The litigation strategy in *Spokeo* came down to recognizing the business problem, which was the legal theory of no-harm class actions, then building a strong legal argument, Pincus said.

"We drilled down from the law in medieval England to the present in the brief that we filed," he said.

The argument was so effective that at oral arguments, the premise seemed to be established already that no-injury class actions can't work, he said. And since the decision, the effect of the win is clear.

"The proof has been in the pudding in a whole bunch of cases in which we've finally gotten the court to recognize what's going on — we had a big win for Lyft in a case called *Nokchan*," Pincus said.

In that case, a judge in October dismissed a class action under the Fair Credit Reporting Act for lack of standing. The suit from Lyft driver Michael Nokchan alleged that Lyft failed to comply with the FCRA and other laws in background checks during the application process by not giving him a disclosure of his



rights to request his credit and background report, but the judge found Nokchan didn't meet his requirement to show that his injury was concrete and real under Spokeo.

The firm has also represented Google for years, partner John Mancini said, with the technical background and experience with the company's industry and products to earn a "terrific record" of litigation, including over the past year.

Mayer Brown defended Google in a patent dispute with BE Technology LLC, with the Federal Circuit in August affirming a Patent Trial and Appeals Board decision.

The firm also served as lead counsel for Google in defending a lawsuit filed by the former owner of MySpace, with a California federal judge in September ruling that he was a vexatious litigant.

Lawyers at the firm think of themselves as opinion leaders who aren't afraid to press the envelope even if legal precedent is against them, Mancini said.

"That spirit comes all the way from the top of our appellate group and being a thought leader in this area but overlaid on top of [technical expertise]," and knowledge about clients' products, he said.

Looking to the coming year, Pincus said the firm is representing Impression Products Inc. in a case against Lexmark International Inc. that the Supreme Court has agreed to hear after the Federal Circuit held that foreign sales never exhaust U.S. patent rights and that post-sale restrictions on patented items are permissible.

"Although our client is a company that's in the printer ink cartridge business, a huge number of tech companies are supportive of our position because the issue essentially is whether a patent holder can sell a product but put limits on how that product is used and how it can be resold," he said, adding that the holding would otherwise have "draconian implications."

Going forward more broadly, Mancini said one of the firm's greatest strengths is its tech IP litigation, which it intends to expand dramatically over the next five years as it has over the last five. There will be growth across offices, from Chicago, New York and D.C. to Palo Alto for Silicon Valley clients.

"It's exciting and rewarding to work with tech companies because they're often on the cutting edge of legal issues," Pincus said. "So I think personally, and I think from the firm's perspective, we'd like to continue to do that."

--Additional reporting by Melissa Daniels, Kurt Orzeck, Matthew Bultman and Allison Grande. Editing by Brian Baresch.