

Appellate Group Of The Year: WilmerHale

By **David McAfee**

Law360, Los Angeles (January 09, 2014, 3:39 PM ET) -- In the past year, five Wilmer Cutler Pickering Hale and Dorr LLP attorneys argued a total of seven cases before the U.S. Supreme Court, obtaining substantial appellate victories in areas including ERISA, biotech patent exhaustion and the development of First Amendment law and earning the firm a spot on Law360's Appellate Practice Groups of the Year.

WilmerHale's Supreme Court and appellate practice group is chaired by former U.S. Solicitor General Seth P. Waxman, who has delivered more than 65 Supreme Court oral arguments, and includes more than 10 attorneys who have collectively argued more than 130 cases before the high court. Waxman said the group is about as large as any other law firm's appellate group with at least as many cases, but that they often seek specialists in banking, securities, intellectual property, antitrust and other matters from elsewhere in the firm.

"If you look at the cases that we argued in the Supreme Court in 2013, and look not only at the range of lawyers who argued, but also at the range of subject matter, that speaks to our all-hands approach," Waxman told Law360. "We try to put together a team that reaches broadly throughout the practice group, but also across other practice groups in the firm."

Waxman said he values giving opportunities to other attorneys so much that, when longtime client Hartford Life & Accident Insurance Co. approached him about a specific case, he recommended fellow WilmerHale partner Catherine M.A. Carroll.

"I told the Hartford that I thought the best person to argue this case was not me, but Catherine, a young partner who is a lights-out oral advocate and who is very familiar with the ERISA-related annuity doctrines that were at issue in the case," Waxman said.

On Dec. 16, the U.S. Supreme Court unanimously ruled against a former Wal-Mart Stores Inc. employee in her Employee Retirement Income Security Act suit against the Hartford, saying that the law allows employee benefit plans to contractually set time limits for participants to bring claims.

"They sent down about 10 lawyers from the Hartford to watch the oral argument in the case and she was phenomenal," Waxman added. "These are the kinds of things that I most proud of in this practice, being able to give people their first opportunities."

In another big 2013 win, reported by some as one of the top 10 most important patent law cases ever decided, WilmerHale secured a complete victory on behalf of Monsanto Co. in a suit over enforcement

of biotech patents that relate to recombinant gene technology. On May 13, the Supreme Court ruled unanimously that an Indiana farmer violated Monsanto's patents on herbicide-resistant soybean plants by replanting seeds, striking down his argument that the agribusiness giant had exhausted its control of the genetically modified seeds.

Waxman said the outcome was of very substantial importance not only to biotech companies, but also to companies in high-tech areas because of the replicability of software.

"What was at stake at the case was the entire business model — not only for Monsanto — but for other companies that develop patentable genetic inventions and patentable software-related routines," Waxman said. "It was one of those cases that would have involved a seismic shift in the way business is done and the way innovation is done if we had lost the case."

In June, WilmerHale also achieved an important First Amendment victory for Alliance for Open Society International Inc., Pathfinder International, InterAction and Global Health Council. By a 6-2 vote, the Supreme Court ruled that a statute banning federal anti-AIDS funding to organizations that don't explicitly oppose prostitution violates the First Amendment, saying it unlawfully compels those groups to espouse government beliefs outside the scope of the funding program.

Paul R.Q. Wolfson, vice chair of WilmerHale's appellate and Supreme Court litigation practice group, called the win a "victory against the odds." The respondents challenged the law's requirement that the grantee itself adopt a policy that they were directly opposed to prostitution.

"The grantees, which do mostly AIDS-prevention work, work on a regular basis with sex workers and people who may visit sex workers in developing countries," Wolfson told Law360 in an interview. "They believed this would dramatically impair their ability to interact with people on the ground if they were opposed to something the people they were helping were doing."

Wolfson said the practice group itself has grown in the past year with the hiring of two former Supreme Court clerks who he said added to the quantity of the group — but also to the quality of their work because of their individual experiences. The group continues to add partners on a regular basis, and added a partner both effective Jan. 1, 2013, and Jan. 1, 2014, according to Wolfson.

"In addition, the firm continues to hire former clerks from appellate clerkships who contribute importantly to the work of the appellate group," he said. "The group expects to continue to hire new younger attorneys on a regular basis."

Wolfson further emphasized the practice group's preparation for Supreme Court cases, saying it often has a number of attorneys who aren't working on the case assist in that process.

"We always have at least two and sometimes three moot courts for all of our Supreme Court cases, and usually our other appellate cases as well, in which we gather four to 10 people who have not actually been on the brief on the case to put the oral advocate through a rigorous testing," Wolfson said.

--Additional reporting by Daniel Wilson, Bill Donahue and Abigail Rubenstein. Editing by Chris Yates.