# My Supreme Court Debut: A Birthday I'll Never Forget

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*Catherine Carroll*

*As the end of the year draws near, all eyes are turning to the U.S. Supreme Court and the decisions it will issue during its October 2017 term. In this Expert Analysis, Catherine Carroll reflects on her very first time standing before the justices.*

I argued my first case before the U.S. Supreme Court in 2013. It was my birthday. And I must say, the experience set the bar pretty high for future birthdays.

I had the privilege of representing The Hartford in Heimeshoff v. Hartford Life & Accident Insurance Co., which presented the question whether a contractual limitations provision in a group disability insurance policy is enforceable in an Employee Retirement Income Security Act denial-of-benefits suit.

One of my first assignments when I joined WilmerHale as an associate in 2005 was a complicated reinsurance matter for The Hartford, and I'd worked with them on several other matters since. So when they called my partner and mentor Seth Waxman in early 2013 to ask us to handle the brief in opposition to the petition for certiorari in the Heimeshoff case, Seth brought me in to work on the briefing, along with one of our ace associates, Daniel Winik.

While we didn't like to admit it, the main ERISA question in the petition was the subject of a split in the circuit courts. And circuit splits in ERISA cases are a regular feature of the Supreme Court's merits docket.

What's more, at first glance, the provision we were defending, which the court of appeals had upheld, seemed a little odd: Under the contractual limitations provision, the three-year time limit for commencing a denial-of-benefits suit could begin to run before the claim completed the administrative process and thus before the claimant could actually bring suit.

Although it turns out there are good reasons why the provision is designed that way in insurance policies, that's not how most limitations provisions work. So we knew we faced a challenge in opposing cert. And indeed, although we were able to avoid a grant on two other questions in the petition, the court granted cert to consider the enforceability of the limitations provision.

The next six months were a crash course on disability insurance, ERISA, the U.S. Department of Labor's administration of ERISA's remedial scheme, and treatises on statutes of limitation and repose, among other topics. Daniel Winik left the firm that summer to begin a clerkship with Supreme Court Justice Sonia Sotomayor, so Seth and I worked on the briefing with the help of two other top associates, Weili Shaw and Ari Holtzblatt. (Weili later left us to join the U.S. Department of Justice, and Ari later left to clerk for Supreme Court Justice Ruth Bader Ginsburg; luckily for us, Ari and Daniel have since returned.)

At the same time, Seth began a quiet campaign with the client to let me handle the oral argument — one of countless occasions when Seth and other leaders at the firm have gone out of their way to push for opportunities for the next generation.

I had argued a handful of cases in the federal courts of appeals, including one for The Hartford. But choosing to be represented in the Supreme Court by an untested newbie instead of a former U.S. solicitor general who happens to be the greatest Supreme Court advocate of his generation required our client to take a tremendous leap of faith. And when they agreed to take that leap, they could not have been more supportive and excited for my debut. That's also when the nerves really kicked in.

I began preparing for oral argument by vacuuming up everything I could imagine might be on the justices' minds as they considered the question before them — learning everything they could possibly want to know about ERISA as well as all the adjacent areas of law where the effects of this case might ripple. Fear of humiliation, and of letting down the clients and colleagues who had placed their faith in me, was a motivator like no other.

As the argument approached, I had two moot courts with colleagues at WilmerHale, and a third generously hosted by the U.S. Chamber of Commerce, which had signed an amicus brief supporting our position. If anything, those moots were as much a source of anxiety as the actual argument. WilmerHale moots are vigorous; they never fail to push the advocate to the limit on the most difficult questions and soft spots in the argument.

Moreover, I knew that several of the client's in-house attorneys would be watching — mainly to help hone the arguments, but no doubt also to make sure their trust in me was not misplaced. Thanks to the help of Seth, Weili and Ari — and to my colleagues who gave their time to read the briefs, grill me on the hard questions, and offer their advice and encouragement — the moots went well, and I felt comfortable as argument approached that I was well prepared and that we'd distilled our best themes and best answers to the hard questions.

When the day of argument came, I felt confident. And also terrified. I'd bought a new suit for the occasion, and getting ready that morning took me back to getting into costume and makeup for opening night back in the drama club: You know your part and you're ready to improvise; you're transforming into role; but you're just the slightest bit worried that you'll trip and fall or succumb to nausea on stage. (At the last minute, I even borrowed a little paper bag from Weili to take with me to court. As mortifying as it would have been to use it in the well of the Supreme Court, needing it and not having it would have been even worse.)

To steady my nerves, I went back to a tradition I'd developed before moot court arguments at Michigan Law School, when my moot court partner John Ursu — now a top litigator at Greene Espel PLLP in Minneapolis — would put on the soundtrack from Rocky III. With a little "Eye of the Tiger" and a little "Gonna Fly Now," I was pumped and ready.

And then I had to wait. We were the second argument of the morning, and even when the chief justice called our case, I had to wait my turn behind counsel for the petitioner and an assistant to the solicitor general, who was arguing on behalf of the United States as amicus in support of the petitioner. I often liken that time spent waiting to the slow ride up the chain lift on a roller coaster: Your heart races in anticipation of what's to follow, but no matter how nervous you are, it's really too late to do anything about it. You're strapped in and going down the drop, like it or not.

Luckily, in the Supreme Court, the waiting provides an invaluable window into how the justices are thinking about the case as they question the other advocates. And in my case, the signs appeared positive. We had expected Justice Ginsburg to be one of the more difficult votes to win in the case, and when she opened the argument with a tough line of questions to the petitioner's counsel, a cautious optimism began to grow. For as much as oral argument matters in the Supreme Court, most cases are won or lost in the briefing, and the justices' questions to the other advocates indicated that they had understood the points in our brief and might even be persuaded by them.

As my turn approached, Seth passed me a note: "Have fun." I stepped to the podium with a slender binder — more of a security blanket than anything else — and began my opening points. I was soon interrupted by Justice Antonin Scalia, who posed a couple of friendly questions that seemed, perhaps, intended to test whether this first-timer would be up to the task. But as soon as the questions and answers began, my nerves melted away and the argument became a true conversation — and easily one of the most exhilarating experiences of my professional life.

I've had the privilege to argue other cases since then, but none as exciting as that first turn at the podium. When you know your case, and you have the opportunity to engage in discussion with justices who are extremely well prepared and working hard to solve a difficult problem, there's little else like it.

My terrific mooters and team had anticipated every question, and there was really only one moment when I doubted my preparation. I stated at one point that the court had never previously held that plan provisions could be set aside or overridden in that particular type of ERISA suit. The chief justice — who sits mere feet in front of the podium — came back to that point toward the end of my argument, pressing on whether there really was no other such case. I said "No." And he responded — with doubt in his voice — "No?"

I paused for a moment, which seemed to last approximately 85 minutes as the chief justice's eyes bored into my soul, flipping back in my mind through all of the court's ERISA cases. I knew I had studied them all, I knew my assertion was correct. I repeated a firm "no," and explained what the court's key holdings had been. And a few months after the argument, the court issued a unanimous decision, written by Justice Clarence Thomas, affirming the court of appeals and largely adopting our arguments.

Looking back, one surprise about the argument was the physical challenge of standing so close to the bench where the justices are spread out so widely. Having clerked for Justice David Souter and second-chaired many arguments at the court, I knew the layout and etiquette of the courtroom (a familiarity that no doubt kept my anxiety at least a bit in check).

But until you stand at the podium, you don't appreciate how close you are to the bench and how far apart the justices sit to either side.

Answering a question from a justice seated at one end of the bench without turning your back on the justices seated at the other end, effectively excluding them from the conversation, was hard. It was not something I had prepared for, and I felt awkward at times physically shifting and pivoting like an orchestra conductor in an effort to stay engaged with all nine of them at once.

Among other lessons learned, three stand out that I would recommend to other first-timers. First, work with a great team. In the Supreme Court, the oral advocate often gets all the attention. But the work that goes into the briefing and preparation for argument is a team effort, and I was lucky to be working with the greatest imaginable teammates who made sure that I was ready and that we had already put our best foot forward in the briefing.

Second, prepare, prepare, prepare. When you step to the podium knowing the facts and the law as well as or better than anyone else in the room, and understand what will be helpful to the court, the butterflies in your stomach will quickly vanish.

Finally, invite your family and friends to attend. Walking in that morning and seeing the supportive faces of my parents and family, friends, colleagues, and clients — the people largely responsible for my even being there — meant the world and made the whole experience far less daunting and more enjoyable. It certainly made for a birthday I'll never forget.

*Catherine M.A. Carroll is partner-in-charge at WilmerHale in Washington, D.C. Her practice focuses on appellate litigation in the U.S. Supreme Court and the federal courts of appeals, as well as district court litigation and client counseling in matters raising complex legal questions.*