

## Appellate Group Of The Year: Jenner & Block

By **Nicole Narea**

*Law360, New York (January 18, 2018, 4:35 PM EST)* -- Jenner & Block LLP's appellate group delivered significant U.S. Supreme Court wins in challenges to Securities and Exchange Commission disgorgement in enforcement actions and racial gerrymandering over the last year, earning it a spot as one of Law360's 2017 Appellate Groups of the Year.

In June, a team of attorneys led by firm partner Adam Unikowsky achieved a landmark high court ruling on SEC disgorgement in *Kokesh v. SEC* and succeeded in reducing the liability of their client by at least \$29 million. In the same month, partner Jessica Ring Amunson prevailed in *North Carolina v. Covington*, arguing that North Carolina had created 28 legislative districts through unconstitutional racial gerrymanders.

"The appellate practice has always been one of the premier practices at the firm, and the firm has always promoted it," Ian Gershengorn, chair of the practice, told Law360. "The firm's commitment to the appellate practice is part of what drew me here."

In *Kokesh*, the high court found that, as Unikowsky argued, disgorgement was a "penalty," breaking with the U.S. Department of Justice and the vast majority of lower-court cases to have considered the question. The court ruled that a five-year statute of limitations governing penalties and forfeitures applies to SEC claims seeking disgorgement of illegally obtained profits, which has a significant impact on the SEC's ability to obtain disgorgement in enforcement actions under securities laws and the Foreign Corrupt Practices Act.

And in *Covington*, the high court affirmed a lower court's finding that North Carolina's legislative districts were racial gerrymanders and remanded the case to the district court, leaving open the possibility of special elections to remedy the constitutional violations. In doing so, the court mirrored its decision in another recent voting rights case, *Cooper v. Harris*, in which Jenner had also filed an amicus brief.

The victory builds on a "long history of voting rights and redistricting cases here at Jenner," Amunson told Law360. She is expecting a ruling from the lower court any day now and said she is anticipating that the government will appeal the ruling to the high court yet again.



“What really resonated with the court was the legislature’s focus on using race as a predominant factor in drawing districts and rejecting the idea that legislatures can use race as a proxy for political affiliation,” she said.

The firm has also commanded a number of significant victories on the appellate court level. For example, partner Matthew Hellman argued and obtained the dismissal of nearly a billion dollars in contract claims against mortgage lender, WMC, in New York Supreme Court in September 2016 and is now defending dismissal on appeal in the New York First Department Appellate Court.

That case, Bank of New York Mellon 2006-WMC3 v. WMC Mortgage LLC WMC Corp., is part of a series of lawsuits involving mortgage-backed securities claims, and it exemplifies the firm’s custom of “embedding appellate practitioners in large-scale litigation,” Hellman told Law360.

“We have to think through how the positions we’re taking will affect all of the cases we have,” he said.

Gershengorn said that about 10 partners are in the appellate group and are primarily based in Washington, D.C., and Chicago. They have argued three cases in the 2017 Supreme Court term and an additional 13 over the course of the last three terms, according to the firm.

The core of the appellate practice at the firm has been media and content, but as the group looks to the future, it is eyeing expansion in the areas of regulation, aviation, election law, Native American issues and energy, Gershengorn said.

The group has long represented the Cayuga Nation of Indians in appellate work and is trying to actively broaden its representation of Native American issues, he said, noting that his own first argument at the high court involved Native American law.

Moreover, the firm’s appellate practice has litigated two notable energy cases recently — the Coalition for Competitive Electricity v. Zibelman at the Second Circuit and Village of Old Mill Creek v. Star at the Seventh Circuit — which have tackled the limits of state jurisdiction over energy issues.

“There have been a number of Supreme Court cases defining the boundary between state and federal jurisdiction in the energy space,” he said. “States have tried to address climate change at the state level by incentivizing clean power plants, and the question of their ability to do so is an extraordinarily important issue for them and for the country.”

--Editing by Alyssa Miller.