

## Appellate Group Of The Year: Wilson Sonsini

By Sue Reisinger

*Law360 (February 3, 2022, 2:02 PM EST)* -- It required an argument by phone from a former federal judge in a remote cabin in Utah, but Wilson Sonsini Goodrich & Rosati PC recently won a U.S. Supreme Court decision that preserved important constitutional rules for Delaware state courts, helping land the firm among Law360's 2021 Appellate Groups of the Year.

Wilson Sonsini also successfully argued against a Federal Trade Commission lawsuit in the U.S. Ninth Circuit Court of Appeals, which accused Qualcomm Inc. of anti-competitive monopolistic behavior. And it also won a major "home field advantage" venue case on behalf of generic-drug makers in the U.S. Court of Appeals for the Federal Circuit.

Steffen Johnson, a litigation partner in the firm's Washington, D.C., office, leads Wilson Sonsini's nationwide Supreme Court and appellate practice. Johnson said the wins were important for a growing group that is part of a broader initiative to build out the firm's litigation practice.

He said the national practice has grown to more than 200 litigators, as the Silicon Valley-based firm "focuses on building a destination litigation practice, especially in bet-the-company cases. And this [appellate group] is a strategic part of that."

About 40 to 50 attorneys "self-identify and participate" in appellate issues, Johnson explained, working with a core group that includes himself, Michael McConnell at Stanford University, Fred Rowley Jr. and Mark Yohalem in Los Angeles, Jonathan Jacobson and Brian Willen in New York, and Lauren Gallo White in San Francisco and Palo Alto.

Johnson said the group's future looks bright.

"With the addition of appellate lawyers the firm has added in recent years and top lawyers like [LA partner] Luis Li, we are making the effort to be a destination practice," he said, referring to the addition last November of five litigators from Munger Tolles & Olson LLP, including Li, Rowley, Yohalem, Matthew Macdonald and Eric Tuttle. "We are confident both the trial and appellate sides will continue to grow."

The firm also announced in November that it is opening an office in Salt Lake City, where Utah Supreme Court Justice Deno Himonas will join the litigation and appellate practices when he retires from the bench in March.



One area where the appellate group already stands out, Johnson said, is "we have a particular depth in constitutional issues, and that was at play in the Carney [Supreme Court] case and at play in one pending now involving due process under California law. That's an area where we have particular depth and a great track record of success."

The Carney case, named for Delaware Gov. John Carney who appealed lower court rulings, was significant "not only to the people of Delaware but to businesses across the globe that have long looked to Delaware's courts for stable and nonpartisan decision-making," said Michael McConnell, who argued the case in October 2020 during COVID-19 lockdowns over the phone from his rural Utah cabin. It was decided in December 2020.

"I've argued 16 cases before the Supreme Court," McConnell said, "but this is the first time I did it over the phone. It was fun and challenging."

The plaintiff had challenged parts of Delaware law that limited judges from any one political party from holding more than a bare 5-4 majority and required judges not in the majority to be from a "major political party," as opposed to independent.

But the Supreme Court reversed the lower courts and kept the provisions intact. McConnell, who is also a law professor and director of the Constitutional Law Center at Stanford Law School, was joined as co-counsel for Carney by Randy Holland, a retired Delaware Supreme Court justice of more than 30 years who is now senior of counsel with Wilson Sonsini.

"The Delaware state courts are an extraordinary treasure in our system," McConnell said. "They are specialized in corporate law and trust law, with an extraordinary reputation for nonpartisan, objective adjudication. That's why a majority of large corporations, as well as many smaller ones, choose to incorporate in Delaware."

He added that Delaware is the only state to prevent overwhelming partisan control by either party.

In the Qualcomm case, the federal government was beginning a wave of antitrust actions against technology companies that is still ongoing, and the suit put billions in annual revenue on the line, according to Wilson Sonsini.

Decided in October 2020, the case was particularly unusual because the federal government split its stance. While the FTC accused Qualcomm of an antitrust violation, the U.S. Department of Justice agreed with Qualcomm that there was no violation.

In the generic-drug case, decided in November 2020, the firm represented generic-drug maker Mylan Pharmaceuticals Inc., which wanted to fight a patent case in a jurisdiction where it had significant operations. Previously, brand-name drug manufacturers had "home-court advantage," meaning they could sue generic-drug companies in their own home market, but the case flipped that.

"Our win for Mylan is critical for all generic-drug makers as to where litigation can now take place," Johnson said.

--Editing by Steven Edelstone.

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