

## Appellate Group Of The Year: Latham & Watkins

By **Matthew Perlman**

*Law360 (February 8, 2023, 2:02 PM EST)* -- The appellate practice group at Latham & Watkins LLP won four of the five cases its attorneys argued before the U.S. Supreme Court last term, including unanimous opinions involving international arbitration and a tax levy challenge, landing the firm among Law360's 2022 Appellate Groups of the Year.

The five merits cases argued at the high court last term by attorneys from Latham's 86-member Supreme Court and appellate practice marked a record for the firm, and the group has already argued several important cases before the justices this term.

Gregory G. Garre, global chair of the group, told Law360 that the firm's appellate attorneys often get involved in cases when they're still in the lower courts, and said the group works closely with Latham's broader litigation team.

He noted that the firm's work for the Warhol Foundation in a high-profile copyright battle over Andy Warhol's portraits of music icon Prince, argued in October, involved appellate attorneys working with Latham's copyright practice. A case Garre argued in November over a challenge to the constitutionality of the U.S. Securities and Exchange Commission's administrative law judges, he said, required working with the securities group.

"That happens across the board," Garre said. "We're highly integrated into all litigation practices."

Roman Martinez, a deputy office managing partner for the firm's Washington, D.C., office, told Law360 that Latham had four different attorneys argue at the Supreme Court last term and that it will have multiple attorneys arguing again this term. He also noted that the group's newest partner, Samir Deger-Sen, is slated to argue his first case before the high court later this year.

"It's nice that we're in there a lot, but also that we're able to have a lot of our partners standing up and arguing for our clients," Martinez said.

Among Latham's Supreme Court wins last term was a unanimous opinion in June in favor of client ZF Automotive US Inc. The justices found that federal courts cannot compel discovery for foreign-based commercial arbitration. Martinez, who argued the case, said it grew from a client relationship in



Germany where the dispute first arose, and that it showcased the firm's litigation capabilities in the U.S. and abroad.

The case was important for the client, he said, but it was also important because foreign arbitrations have increasingly resulted in discovery requests in U.S. courts under a statute intended to cover requests from foreign courts and government agencies.

"We were happy to be able to take that to the justices and get them to unanimously agree with us that 'foreign tribunals' really doesn't cover foreign private arbitrations," Martinez said.

This term, Martinez argued at the high court for the Warhol Foundation in a case over how courts should decide when an artwork qualifies as fair use under copyright laws, which he said is "extraordinarily important for artists and other creators who build on preexisting works."

Another big win for the firm came in a pro bono case argued by partner Melissa Arbus Sherry, who convinced the Supreme Court to rule unanimously in April that the U.S. Tax Court had the authority to consider a North Dakota law firm's day-late challenge to an IRS levy. Garre said that case involved the appellate group working closely with the firm's tax attorneys on a "technical, but important" tax issue.

The court found that the 30-day time limit for filing a claim in Tax Court can be subject to exceptions in appropriate cases.

"Ultimately, Melissa argued it and prevailed in a 9-0 decision, which was a big win for Melissa and the group," Garre said.

Garre argued before the justices in November, representing a certified public accountant in a case over whether the federal courts have jurisdiction to hear a constitutional challenge to the SEC's in-house judges. He said that case is important for anyone subjected to administrative proceedings in front of decision-makers they claim are unconstitutional.

"It really is fundamentally important to be able to bring these claims in federal district court right off ... rather than having to wait several years before they have an opportunity," Garre said.

Garre said Latham's appellate group is active in the state courts, in addition to the federal courts, noting the firm's work representing Restoration Robotics in California state court defending against an investor lawsuit. A state appeals court in April affirmed enforcement of a forum-selection provision in the company's certificate of incorporation.

"That case underscores the diversity of our practice," Garre said. "It speaks to the variety of matters that we're handling and the depth of our practice."

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