

Appellate Group Of The Year: WilmerHale

By Jared Foretek

Law360 (February 9, 2024, 10:10 PM EST) -- WilmerHale spent 2023 bringing home major appellate wins in the tech world for Twitter, Apple, Intel and Cisco, as well as in the automobile competition space, with a Delaware Supreme Court victory for Tesla, earning it a spot among Law360's Appellate Groups Of The Year.

Perhaps the biggest of all was the Twitter case. In May, the firm helped to win a unanimous decision for the social media company, which was being sued — along with Google and Meta — for allegedly abetting a terror attack on an Istanbul nightclub.

The U.S. Supreme Court reversed the Ninth Circuit's decision, ruling that the companies couldn't suffer liability for the attacks, and skirted the question of whether Section 230 immunity applies to the platforms. Section 230 shields social media platforms from liability for other parties' content under the Communications Decency Act.

"The Twitter Section 230 case, I don't know that it's an exaggeration to say that it threatened the future of the internet as we understand it," Mark Fleming, a partner in WilmerHale's Boston office, told Law360. "And the ability to win that in the way that it was won, I think is a significant victory that doesn't happen every year."

WilmerHale won another significant reversal for Apple, Cisco and Intel at the Federal Circuit. In March, the appeals court revived the companies' suit against the Patent Trial and Appeal Board for the "Fintiv" rule it adopted in 2020, which denied patent reviews due to parallel district court challenges.

After the Northern District of California tossed the suit, WilmerHale helped to win a reversal in front of the appeals court.

That same month, the firm won another major victory for Apple in its long-running patent dispute with security software company VirnetX. The Federal Circuit upheld a PTAB decision to invalidate two VirnetX patent claims and struck down a \$576 million judgment against Apple that VirnetX won in Texas federal court years prior.

That win was the latest turnaround in a dispute that spanned 13 years and seven appeals before the Federal Circuit.



"That's a case worth literally hundreds of millions of dollars, so those are pretty important," Fleming said.

And in Delaware, the firm won a state supreme court ruling for Tesla, which had challenged the Delaware Division of Motor Vehicles' denial of a dealer license based on its business model of selling and servicing directly without franchise dealerships.

That ruling was a reversal as well, after a lower state court upheld the agency's decision.

"The broad range of subject matters that our appellate advocates are able to handle really, I think, matches what our clients expect from us, which is the ability to take any kind of case, whether it was won or lost in the court of first instance, and convince a court — whether it's three busy generalists or five or seven or nine — that our client had the right approach to things," Fleming said.

Away from tech, WilmerHale also took on some significant voting rights work in 2023. In Pennsylvania, the firm represented civil and voting rights groups as the Republican National Committee and the state's Republican party sued to keep county election boards from letting voters correct minor errors on mail-in ballots. The rights groups and the county election boards were successful when a state court dismissed the GOP suit in March.

With over 1,000 attorneys across 13 offices, the firm will likely be seeing more election law work as the country gears up for a general election in the fall.

"There's obviously been a great deal of litigation involving the ability to vote, the right to vote, election integrity," Fleming told Law360. "We've been heavily involved in that, and that's going to be, I think, a big theme in 2024, for obvious reasons."

--Editing by Janice Carter Brown.