

Appellate Group Of The Year: Akin Gump

By **Linda Chiem**

Law360, New York (January 09, 2013, 1:29 PM ET) -- Akin Gump Strauss Hauer & Feld LLP's appellate team secured a major U.S. Supreme Court win granting private individuals contracted for government work the same qualified immunity given to government employees, earning it a spot among Law360's Appellate Practice Groups of the Year.

The group's high court win in April in *Filarsky v. Delia* was just one of several major victories Akin Gump secured for clients including Starbucks Corp., Brinker Restaurant Corp. and Amphastar Pharmaceuticals Inc. — making 2012 a big year for the appellate practice group.

In *Filarsky v. Delia*, the high court ruled that private individuals are entitled to seek qualified immunity in certain civil rights suits, reversing a Ninth Court decision denying immunity to private employment attorney Steve Filarsky.

Filarsky was hired by the city of Rialto, Calif., for an internal-affairs probe of firefighter Nicholas Delia whom the city suspected of taking sick leave to remodel his home. Delia brought suit alleging the city of Rialto, the fire department, Filarsky and others involved in the investigation violated his Fourth and Fourteenth Amendment rights when they forced him to show them building materials he had bought, but hadn't yet used.

The other individual defendants were given qualified immunity, but Filarsky was denied that same immunity because he was a private attorney. The high court ultimately ruled that affording immunity to those acting on the government's behalf helps ensure that talented people aren't deterred from public service by the threat of lawsuits and damages.

Patricia Millett, head of Akin Gump's Supreme Court practice, co-head of the firm's national appellate practice and a partner in the firm's Washington office, told Law360 that the ruling was a substantial gain for the legal community, whose members frequently do work for the government, including in hotly contested cases over the Affordable Care Act and Arizona's immigration law.

Akin Gump also notched a big win in the California Supreme Court in a class action against Brinker Restaurant Corp. — a case widely seen by business and legal communities as the most important decision the state Supreme Court would make in 2012, given its enormous impact on virtually all California employers and employees.

"There were 26 amicus briefs in the case which speaks to the measure of how interested folks were and there were at least nine cases — all of the same issues — that had also sought review and were held up pending the outcome of Brinker," said Rex Heinke, co-head of the firm's national appellate practice and a partner in the firm's Los Angeles office.

In *Brinker*, the California Supreme Court ruled that employers only needed to make meal breaks available to employees and did not have to ensure that their employees actually take those meal breaks. Since the *Brinker* decision in April, multiple class actions in California challenging companies' meal break policies have been defeated.

The firm also secured success for Starbucks Corp. in the Second Circuit in a dispute with the National Labor Relations Board over a company policy barring workers from wearing more than one pro-union button at a time on their uniforms. The Second Circuit overturned the NLRB's ruling that Starbucks committed unfair labor practices, but its decision also required the NLRB to re-evaluate its own test for determining misconduct in retail- or service-based businesses.

Not too shabby a year for the firm's appellate practice group, which operates primarily out of the Washington and Los Angeles offices. Akin Gump did not have an appellate practice group until 2000, when firm partners planted seeds in the Los Angeles office for a program that has since grown to 15 attorneys who almost exclusively handle appellate work.

“For us, the work has been explosive and we're growing and hiring to meet the clients needs but I'm also trying to be very careful not to make it too large a practice group,” Millett said. “With the size it is, we're able to provide incredible hands-on experience to the younger attorneys who can do this work at this level where they come in and start drafting Supreme Court briefs.”

Akin Gump also has been a mainstay on the National Law Journal's annual hot list of the nation's top appellate firms for five consecutive years.

It's a distinction the firm said it has earned from achieving a high rate of success in appellate matters across all practices in federal and state appeals courts and the U.S. Supreme Court.

--Editing by Andrew Park.