

## Appellate Group Of The Year: Paul Weiss

By **Nadia Dreid**

*Law360 (February 9, 2023, 2:03 PM EST)* -- Paul Weiss Rifkind Wharton & Garrison LLP came out on top at the U.S. Supreme Court twice last year, convincing the justices that no emotional damages are available under the Affordable Care Act and getting clarity on who has jurisdiction when a non-Native person commits a crime on tribal land, earning it a spot among Law360's 2022 Appellate Groups of the Year.

The appellate practice at Paul Weiss is relatively new — it only recently celebrated its fourth birthday — but it has already landed on Law360's annual list of top appellate groups twice. Its borders, however, are hard to define, because Paul Weiss assigns attorneys to the litigation department generally.

Supreme Court pro and Washington D.C., managing partner Kannon K. Shanmugam said that about 10 associates spend most of their time on appellate litigation, with Shanmugam the only partner assigned to the group.

Others with appellate experience hop in on cases as needed, but the group is still relatively small when compared with the size of the firm overall, as Paul Weiss has about 1,000 attorneys around the globe. But despite its youth, the practice has wasted no time racking up dozens of appeal wins at the nation's federal appellate courts.

"We grow with the work and the work has been growing, so I would certainly anticipate that in the coming years the practice will continue to grow in size," Shanmugam said. "At the same time, the calling card of our practice is that we give young lawyers tremendous opportunities, and I certainly want to ensure that we continue to do that even as the practice continues to grow and mature."

Since last year, two of those young attorneys — Masha Hansford and Aimee Brown — have taken the experience they gained at the firm and moved on to the Office of the Solicitor General, so the firm is working on "replenishing our ranks with these departures," Shanmugam said.

One of the biggest cases the appellate attorneys at Paul Weiss have handled this year was getting the Supreme Court to settle some of the dust kicked up by the *McGirt v. Oklahoma* decision in 2020, which declared that Oklahoma state authorities lacked jurisdiction over crimes committed by Native Americans on tribal lands.



That ruling left up in the air whether state authorities had the jurisdiction to prosecute crimes committed by non-Native Americans against Native Americans on tribal lands. But in a 5-4 opinion, the justices ruled in June that state and federal prosecutors shared jurisdiction.

Shanmugam is no stranger to appellate oral argument — he has more than a hundred under his belt — but it was his first time arguing an issue of Native American law, which he says made it a "particularly daunting challenge," even though he ultimately prevailed.

He also argued Paul Weiss' other big win before the court that term, on behalf of Premier Rehab Keller, a Texas-based physical rehabilitation center. A blind and deaf woman sued the center, seeking damages for emotional distress, after she says the center failed to provide her with an interpreter.

The justices eventually ruled 6-3 that one cannot seek emotional distress damages when seeking to enforce federal civil rights laws such as the Rehabilitation Act of 1973 or the Affordable Care Act. Shanmugam said the case was different because it required digging into common law, which stretches back hundreds of years, so there was a "great deal of historical analysis."

"It involved a question of available remedies under spending clause statutes, which are statutes that impose certain conditions on the receipt of federal funds," he said. "And the way that historically the Supreme Court determines the available remedies is to look at remedies that were available for breaches of contract in common law."

There were other wins as well, in other federal appellate cases. One highlight was a series of wins on behalf of insurer CNA Financial across the country. The insurer has been fighting suits by policyholders who argue that their insurance should cover pandemic-related losses.

It would have imposed "crippling liability" on insurers if businesses had been able to claim COVID-19 business losses on their basic policies, the partner has told Law360. The firm has obtained six affirmances for the insurer.

"We were traveling from circuit court to circuit court, arguing the issues," he said. "They were subtly different from case to case, but ultimately we thought there were general principles of insurance law that governed all of these cases, and so far we have been consistently successful."

--Editing by Peter Rozovsky.