

## Rising Star: Munger Tolles' Benjamin Horwich

By Y. Peter Kang

*Law360, Los Angeles (April 11, 2016, 4:00 PM ET)* -- Benjamin J. Horwich's career achievements include helping convince the U.S. Supreme Court to effectively prevent drug companies from exiting the vaccine market, a critical matter of public policy, earning the Munger Tolles & Olson LLP partner a spot on Law360's list of the top six appellate attorneys under age 40.

Horwich, who recently turned 39, was named a partner in January, just 17 months after he joined the firm. He attributes part of his success as a Rising Star to being exposed to an enormous number of different legal issues through his time as Assistant to the Solicitor General in the U.S. Department of Justice, as well as clerkships in the U.S. Supreme Court, the Third Circuit and the Northern District of California.



"As an appellate lawyer, there is really no substitute for having a broad base of areas of the law where you have some familiarity," Horwich said. "Our stock in trade is talking to generalist judges who tend not to have extremely deep knowledge of any single subject matter but rather a desire to fit the pieces of the law together in a harmonious way. Coming to an appellate court with that common ground is really valuable."

During his more than five years with the U.S. Solicitor General, Horwich was able to argue 10 cases before the nation's highest court. One of the most memorable and rewarding cases, he said, was *Bruesewitz v. Wyeth LLC*, a 2011 ruling that held the National Childhood Vaccine Injury Act of 1986 preempts design-defect tort claims against vaccine manufacturers.

Horwich, who argued on behalf of the federal government as a friend of the court siding with the drugmakers, said it was important because it helped prevent pharmaceutical companies from exiting the less than lucrative vaccine market due to tort liability.

"The law stands as one of the most ingenious and successful pieces of tort reform ever," Horwich said. "I'm certainly proud of being a part of delivering on the promise that Congress sought out to make in the 1980s and certainly take only the smallest amount of credit."

Horwich said he uses that experience and many others, as well as his time clerking for Justices Samuel A. Alito and Sandra Day O'Connor, to help him in his practice. His ability to "marry the understanding of the local courts with the long view of what a case looks like if it's impacted by the Supreme Court" brings value to his firm's clients, he said.

In advising Swedish telecom equipment maker Telefonaktiebolaget LM Ericsson Inc. in its patent licensing dispute with tech giant Apple Inc., one of the biggest mobile tech cases of the past year, Horwich said they were preparing to address the unresolved issue of how courts will assess damages for standard essential patents on fair, reasonable, and nondiscriminatory, or FRAND, terms.

“That’s an issue at the forefront of the intersection of IP and antitrust law,” Horwich said.

While the issue wasn’t decided due to a global settlement reached between the parties in December, Horwich said his appellate experience provides him with a key long-term outlook at the trial level.

“Understanding how precedent develops in appellate court gives you an advantage at trial court, where you’re building that record,” he said. “Bringing that long-term perspective is valuable to a client who is interested in the sound development of the law that governs its business activity.”

One piece of advice that he offers young lawyers looking to advance their careers is to distinguish yourself from other attorneys.

“The background I have developed is something distinctive,” Horwich said. “Being able to explain what you as an attorney can offer that is distinctive is the path to success, because it puts yourself in the best position to tell clients, ‘I’m the right person for this job.’”

--Editing by Emily Kokoll.

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