

Latham & Watkins makes the Appellate Hot List all 9 years.

A SPECIAL REPORT

# APPELLATE HOT LIST

## 2016



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## Latham & Watkins

The usually calm Gregory Garre turned heads at Washington's Reagan National Airport in June when he found out on that he had won the landmark U.S. Supreme Court affirmative action decision known as *Fisher II*.

"I was about to catch a plane down to Fort Lauderdale for a panel," the Latham & Watkins partner and former U.S. solicitor general recalled. "I got some strange looks from the people around me because I was excitedly reacting to the court's decision."

It was the second round of the *Fisher v. University of Texas* case, and few court observers predicted Garre would convince the high court that the university's race-conscious admissions policy was constitu-

tional. Justice Anthony Kennedy, who had never before voted in favor of an affirmative action plan, wrote the decision for a 4-3 majority.

After an inconclusive decision in the case in 2013, Garre had retooled his arguments with Kennedy in mind, and it worked.

"It was a blockbuster year, and *Fisher* was a huge win for the firm and for Greg—and a surprising win," said partner Melissa Arbus Sherry, a leader of Latham's appellate group along with Garre and partners Richard Bress and J. Scott Ballenger.

Garre has chaired the appellate group since 2009.

Sherry, who joined the firm in 2014 after five years at the solicitor general's office, chalked up wins as well.

She represented the U.S. Soccer Federation in a dispute with a players' group, and the U.S. Court of Appeals for the Seventh Circuit in September took the rare step of reversing an arbitration award.

Another big win for the firm came in March 2016 when the U.S. Court of Appeals ruled in favor of Latham client Maher Terminals LLC in a high-stakes dispute with the Port Authority of New York and New Jersey. "It has been a nice, diverse group of victories across practice areas and different courts," said Sherry, who was an associate at Latham before her stint in the SG's office. "I felt like I was coming home."

—TONY MAURO



“Latham won a record-breaking appellate victory against the federal government when the U.S. Court of Appeals for the Sixth Circuit threw out a \$657 million False Claims Act damages award against United Technologies Corp., which had been the largest posttrial damages award entered under the False Claims Act.”



“Led by former Solicitor General Gregory Garre, the U.S. Supreme Court and appellate practice group at Latham & Watkins takes on some of the toughest and complicated high-stakes cases—and wins.”



“The appellate group at Latham & Watkins undertook high-stakes, high-profile appeals across a broad swath of law in state and federal courts.”



“Latham stepped in as appellate counsel in *U.S. v. Home Concrete & Supply LLC* and obtained a rare win against the Internal Revenue Service. The Supreme Court ruled on April 25 that the agency could not rely on an extended statute of limitations in pursuing actions against certain tax shelters.”



“After sitting out Supreme Court appearances for one year, as required by law, the former solicitor general was back before the justices in spring 2010. He argued two cases, just eight days apart and as different as night and day. He won both.”

“The Latham team plied its appellate expertise in the lower courts as well in 2010.”



“Although fewer than 1% of petitions for review are granted overall by the Supreme Court, Latham has secured a dozen grants of certiorari during the past five years.”



“In a landmark patent-exhaustion case, Latham argued that a patent owner can place conditions on a licensee’s right to make or sell, but cannot authorize the licensee to sell an article without exhausting the patent monopoly in that article. The Supreme Court agreed...”