

The Firms That Won Big At The Supreme Court

By **Jacqueline Bell**

Law360 (July 1, 2018, 10:03 PM EDT) -- Supreme Court advocacy is a high-risk, high-reward pursuit.

The cases often have split the lower courts, centering on the most divisive issues of the day.

Attorneys typically have just 30 minutes to win over justices who may be nearly impossible to persuade.

And sometimes, in close disputes, the justices give contradictory clues about where they are leaning, leaving advocates with few hints about how the case will be decided.

“The thing you do know is: How did I do?” said Andrew Pincus, a partner at Mayer Brown LLP who has argued more than two dozen cases before the Supreme Court. “Did I get in the points I wanted to get in? Did I have good answers for their questions? You don’t know if they carried the day, but at least you know whether you were able to put on the table your best response.”

“And then, almost always, within the next 30 minutes, you say, ‘If I only had made that point,’” he added. “No matter how satisfied you are, the brain is always second-guessing.”

Here are the eight law firms that argued at least three cases, often battling one another. Three firms scored at least four wins each.

While many of these firms’ Supreme Court stars have a long history with the justices — either as former clerks, former solicitors general or longtime members of the Supreme Court bar — past performance offers no guarantee of future results.

Kirkland & Ellis LLP, Orrick Herrington & Sutcliffe LLP and Jenner & Block LLP all ended the term with at least four wins.

Law Firm Scorecard

Firm	Wins	Losses	% Wins
Kirkland & Ellis	6	2	75%
Jenner & Block	4	0	100%
Orrick*	4	0	100%
Gibson Dunn	3	0	100%
Mayer Brown	2	1	67%
Williams & Connolly	1	2	33%
Jones Day	1	3	25%
Hogan Lovells	0	3	0%

It was a banner year for Kirkland attorneys, who appeared at eight oral arguments this term. The team was led by Paul Clement, a former U.S. solicitor general who argued six of those cases and scored wins in five.

Clement appeared in some of the biggest business cases, scoring wins in the employment case *Encino Motorcars v. Navarro*, the patent case *WesternGeco v. Ion Geophysical Corp.* and the class action battle *Epic Systems v. Lewis*.

Kirkland attorney Erin Murphy also argued for the Wisconsin State Senate as amicus in the gerrymandering case *Gill v. Whitford*, helping to score a win in a broader fight over redistricting.

The power of the firm's appellate practice benefits the firm as a whole, said Mark Filip, who serves on Kirkland's global management committee.

"This strength helps clients in appellate matters, and also helps make our legal representations more effective in trial courts and other legal analyses that play out years before anyone gets to an appellate court," Filip said.

Orrick attorneys were also frequently seen at oral arguments this term.

Joshua Rosenkranz, who heads the firm's Supreme Court and appellate litigation practice, pulled out a remarkable win in *Sessions v. Dimaya*, an immigration case held over from last term. The case was reargued with Justice Neil Gorsuch on the bench, after the court initially appeared too divided to decide.

In a rare move, Justice Gorsuch sided with the court's liberal wing and backed a majority opinion authored by Justice Elena Kagan, which effectively nixed a tool used to place people in deportation proceedings.

Rosenkranz also argued a hot-button case over whether the federal government can use warrants to force companies like Microsoft Corp. to turn over emails stored abroad. That case was rendered moot soon after oral arguments, when Congress passed the Clarifying Lawful Overseas Use of Data Act, which makes clear that warrants issued for data held by companies like Microsoft and Google cover data stored anywhere in the world. Both sides then asked the court to drop the case and wipe the slate clean, and the justices promptly did.

When tallying the Law360 scorecard, we didn't score this case as a win or loss for the firm. Congress stepped in after oral arguments, and the court did not end up addressing the core issues presented by the case.

But it was a resolution that Rosenkranz's client Microsoft welcomed in April, given the company's long-standing argument that Congress was the proper branch to resolve the matter.

In *City of Hays, Kansas v. Vogt*, Orrick attorney Kelsi Corkran stuck the landing in a Fifth Amendment case, when the court decided after oral argument that the case should be dismissed as improvidently granted — or DIG, in high court parlance — effectively preserving her client's win in the lower court.

At oral argument, with several justices wrangling about the "odd" nature of the case, Corkran jumped on a DIG as a possible option for the court, assuring the justices that if they decided they had been hasty

in taking the case, “we would certainly not object.”

“I think we said in our brief in opposition that we thought it was premature to take this question at this time,” she added.

Orrick partner Eric Shumsky also scored a win in *Hughes v. U.S.*, a dispute over the proper application of sentencing guidelines, and partner Robert Loeb notched a victory in *Byrd v. U.S.*, a Fourth Amendment case in which the justices backed an unlisted driver objecting to a police search of a rental car.

“This was a very exciting term for us,” Rosenkranz said. “It really represented Orrick coming of age. Eight years ago, I was the only full-time appellate lawyer at Orrick. We’re now a group of 40 full-time appellate lawyers.”

Jenner & Block’s appellate practice also reaped big rewards this term, with wins in all four cases its attorneys argued.

Jenner’s Jessica Amunson notched a win in a criminal case, *Class v. U.S.*, with the justices ruling that guilty pleas don’t necessarily block constitutional challenges to the laws the defendants pled guilty to breaking. Matthew Hellman also scored a victory in the tax obstruction case *Marinello v U.S.*

And Adam Unikowsky continued his winning streak with wins in both cases he argued before the high court: one in a case over lawsuit filing deadlines and another in a dispute involving life insurance, divorce and the contracts clause of the Constitution.

“Term after term, the firm has proven its ability to deliver results at the Supreme Court,” said Ian Gershengorn, a former acting solicitor general who leads the firm’s appellate and Supreme Court practice.

Supreme Court specialists at other firms racked up their fair share of wins as well.

At Gibson Dunn & Crutcher LLP, the firm’s attorneys finished the term strong with three wins in three cases, including the high-profile fight over sports betting that pitted two former solicitors general against each other: Gibson Dunn’s Theodore Olson and Kirkland’s Paul Clement.

In a 6-3 ruling, the Supreme Court kicked open the door to legalizing sports betting in states across the country, handing the win to Olson.

Mayer Brown also scored two victories, one in an environmental law case over the federal government’s authority under the Clean Water Act. The firm also notched a win in a bankruptcy case, with the high court bolstering protections for debtors.

Gregory Castanias, head of Jones Day’s Federal Circuit team, pulled out a big win in a patent case in *SAS Institute v. Iancu*, with the justices ruling that final decisions of the Patent Trial and Appeal Board must address all patent claims challenged in a petition.

The head of Williams & Connolly LLP’s appellate litigation practice, Kannon Shanmugam, argued three cases before the justices this term, scoring a win for Digital Realty Trust in February in a dispute over anti-retaliation measures meant to protect whistleblowers in the Dodd-Frank Act.

Hogan Lovells partner Neal Katyal, a former acting solicitor general, argued three times before the Supreme Court this term, waging battles over securities class actions, rules governing appeals in consolidated cases, and the high-profile fight over the president's travel ban in *Trump v. Hawaii*.

But as that particularly divisive case proves, even after oral arguments at the highest court are done, the work of advocacy continues.

After the president's travel ban was upheld Tuesday in a 5-4 ruling by Chief Justice John Roberts, Katyal issued a statement calling on Congress to change the policy, saying that "the final chapter has not been written."

"I am proud to have played a part in this case and represented the Americans who exercised their constitutional rights to sue the president," he said.

--Editing by Jocelyn Allison, Jeremy Barker and Aaron Pelc.

Methodology: A law firm's Supreme Court win-loss record is based on the outcome of cases where a member of the firm argued before the court. The scorecard includes all law firms with three or more attorney appearances at oral arguments over the course of the term. In cases where there is not a straightforward ruling on the merits, Law360 sometimes had to weigh a range of factors, including how much of the parties' arguments the court adopted and the likely impact of the ruling, when selecting the winning side.

Law360 treated consolidated cases resulting in a single opinion as one case for the purposes of this scorecard.

**Orrick also argued for Microsoft in *U.S. v. Microsoft* before the Supreme Court this term. The Supreme Court shuttered the case once federal legislation enacted after oral arguments effectively mooted the dispute. Law360 did not include the case in the scorecard.*