

The Firms That Won Big At The Supreme Court

By **Jacqueline Bell**

Law360, New York (June 26, 2017, 8:43 PM EDT) -- One firm went undefeated at the Supreme Court this term. Another built on last year's winning streak. And some high court powerhouses took their lumps.

Attorneys from these firms' elite appellate practice groups took on at least three oral arguments in a single term, and they waged war with government attorneys, boutique law firms and sometimes each other in class action disputes, election law battles and securities wrangles, among other fights. But only four firms emerged from those brawls with at least three wins once the dust settled.

Law Firm Scorecard

Firm	Most Frequent Arguer	Wins	Losses	% Wins
Perkins Coie	Marc E. Elias	3	0	100%
Jenner & Block	Adam G. Unikowsky	3	1	75%
Mayer Brown	Andrew J. Pincus	2	1	67%
Quinn Emanuel	Kathleen M. Sullivan	2	1	67%
Williams & Connolly	Kannon K. Shanmugam	2	1	67%
Hogan Lovells	Neal K. Katyal	4	3	57%
Kirkland & Ellis	Paul D. Clement; Christopher Landau	3	3	50%
Goldstein & Russell	Thomas C. Goldstein	1	3	25%
WilmerHale	Seth P. Waxman	1	5	17%

Advocacy before the Supreme Court can be a high wire act, and the results hard to predict. Attorneys who are repeat players rigorously prepare for those 30 minutes they are allotted, practice their arguments and carefully craft responses that they hope will address, as briefly as possible, the toughest questions likely to be raised by the justices.

“It’s much easier to lose a case than win a case at oral argument,” said Jenner & Block LLP partner Adam Unikowsky, who scored victories in all three cases he argued before the high court this term.

Jenner & Block, Hogan Lovells, Kirkland & Ellis LLP and Perkins Coie LLP all ended the term with at least three wins in cases argued before the high court. And at least this term, success seemed to breed success for some members of the Supreme Court bar.

Unikowsky, a former clerk to the late Justice Antonin Scalia, had a remarkable year, going 3 for 3 with wins in cases involving U.S. Securities and Exchange Commission disgorgement orders, veterans benefits, and asset forfeiture in criminal cases.

All of Unikowsky’s oral arguments were held between March 20 and April 18, making for a hectic schedule that may have negatively affected his sleep — but not his impressive results.

“It was very exciting,” Unikowsky said. “Every case is different. Every case presents a different set of issues, a different set of strategies.”

Jenner scored three wins in four cases, adding to the firm’s winning streak at the high court. The firm’s attorneys argued five cases last term and won all five, and they went 2 for 3 the previous go-round.

“Adam and the team of appellate lawyers have been really focused on finding strong petitions to bring to the Supreme Court on cases where we think we can make a difference,” said Matthew Hellman, co-chair of the firm’s appellate and Supreme Court practice. “And I think we’ve seen the fruits of that over the past few terms.”

Supreme Court specialists at other firms racked up their fair share of wins as well. At Perkins Coie, Marc Elias, chair of the firm’s political law group, secured wins in two major redistricting cases, *Bethune-Hill v. Virginia State Board of Elections* and *Cooper v. Harris*. Partner Eric D. Miller also found success in the tribal sovereign immunity case *Lewis v. Clarke*.

At Hogan Lovells, Supreme Court advocacy this term was a volume business, with someone from the firm standing up at oral argument in seven cases, more than 10 percent of the 64 cases argued.

Most of those arguments featured Neal K. Katyal, who was an acting U.S. solicitor general under President Barack Obama. Katyal argued in a remarkable six cases this term, more than any other attorney. Katyal racked up a win for Bristol-Myers Squibb Co. and Sanofi-Aventis US LLC in a product liability dispute when the justices found that the state’s courts do not have jurisdiction to hear claims from out-of-state residents. And he scored a unanimous ruling for the New York town of Chester in a Fifth Amendment takings case.

Hogan Lovells partner Catherine E. Stetson also secured a win at the high court with a ruling for Venezuela that set a high bar for foreign expropriation suits.

Most of the law firms that appeared in three or more cases this term can claim a winning record. But

many of those largely victorious firms had only three cases before the court. Several law firms with more than three cases — WilmerHale, Kirkland & Ellis and Hogan Lovells — saw some mixed results.

A Supreme Court powerhouse, WilmerHale nevertheless lost five cases of the six that it argued this term, several of them patent cases. In December, the firm lost a fight in the long-running scorched-earth patent war between its client Apple Inc. and Samsung Electronics Co. Ltd., when the high court threw out a \$400 million damages award against Samsung.

In February, the justices unanimously reversed an appeals court ruling that Life Technologies was liable for infringing a patent belonging to WilmerHale client Promega Corp. And in June, the court ruled against WilmerHale client and branded-drug maker Amgen Inc., finding that biosimilar makers can give a 180-day notice of sales before their products win approval, in a decision that will speed up their ability to sell lower-cost versions of drugs.

Seth Waxman, co-chair of WilmerHale's appellate and Supreme Court litigation practice, said the firm was gratified to once again have a "robust number of merits cases," this term handled by multiple lawyers at the firm.

"As for wins and losses, there's no doubt that clients come to us with their most difficult matters, and every once in a while the year-end statistics reflect that," Waxman said. "Even when the court didn't give us everything we wanted, in most cases there are issues open on remand where we can help our clients achieve their goals nonetheless."

WilmerHale's record last term bears that out: The firm won four of the five cases it argued. In the October 2014 term, the firm won four cases and lost four.

After Kirkland & Ellis snapped up prolific Supreme Court litigator Paul Clement, a former U.S. solicitor general, along with the other attorneys from the renowned appellate boutique Bancroft PLLC in September, the firm ended the term with a striking six appearances before the high court. That's second only to Hogan Lovells and tied with WilmerHale.

Yet in the final tally, the firm suffered a couple of defeats before the high court. The firm lost a bankruptcy dispute in a matchup with WilmerHale, and it came up short in *Cooper v. Harris*, one of the redistricting battles. In the other redistricting case, *Bethune-Hill v. Virginia State Board of Elections*, where Kirkland represented the board, the Supreme Court rejected the state's theory of how its redistricting efforts should be reviewed. But the high court tempered the loss a bit by backing the state's redistricting efforts in one of the 12 challenged districts as justified under the toughest possible test, strict scrutiny.

Still, in opinions issued on the last days of the term, Kirkland notched a win on behalf of Divna Maslenjak, a woman from Bosnia, when the Supreme Court ruled that naturalized U.S. citizens can't be stripped of their citizenship in a criminal case based on "immaterial" false statements. The firm also grabbed two other wins, one in a case examining the proper venue for government workers' discrimination claims and another in a dispute over the timing of securities class action claims.

Other notable wins for firms that argued before the court at least three times this term include Quinn Emanuel Urquhart & Sullivan LLP's big win for Samsung in its patent brawl with Apple and the firm's victory in an immigration law fight.

Orrick also notched two wins in three argued cases, scoring one for homeowners in legal battles with Fannie Mae and another in a Fourth Amendment case for the county of Los Angeles. The justices punted the third case to the next term.

Williams & Connolly LLP's Kannon Shanmugam posted a pair of victories in two unrelated cases both examining aspects of the Fair Debt Collection Practices Act. Supreme Court boutique Goldstein & Russell nabbed a win in a False Claims Act case.

At Mayer Brown LLP, Supreme Court litigator Andrew Pincus secured wins in both of the cases he argued, one in a battle over arbitration agreements and the second in a fight over the power of patent owners to control the use of patented products post-sale.

"This was particularly rewarding because both cases were cases in which we got cert granted. And neither I think was an obvious grant," Pincus said. "So it's satisfying when you take a case from that stage all the way through to getting a successful result."

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 the court issued an opinion. 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.

--Editing by Mark Lebetkin and Jeremy Barker.