

## The Firms That Won Big At the Supreme Court

By Jimmy Hoover

Law360, Washington (June 27, 2016, 11:10 PM ET) -- While the usual appellate powerhouse firms scored big at the U.S. Supreme Court in the 2015 term, a dark horse managed to emerge with a spotless 5-0 record, and a veteran boutique was able to shape landmark rulings on both the Affordable Care Act and the Obama administration's executive orders on immigration. Here, Law360 takes a look at how the country's top firms performed at the high court this session.

| The Law Firm Scorecard |  |      |        |        |
|------------------------|--|------|--------|--------|
| Firm                   | Most Frequent Arguers  | Wins | Losses | % Wins |
| Jenner & Block         | Paul M. Smith  | 5    | 0      | 100%   |
| Mayer Brown            | Paul Hughes, Andrew J. Pincus, Mark C. Fleming and Michael B. Kimberly | 4    | 0      | 100%   |
| Stris & Maher          | Peter K. Stris   | 2    | 0      | 100%   |
| WilmerHale             | Seth P. Waxman   | 4    | 1      | 80%    |
| Kellogg Huber          | David C. Frederick   | 3    | 1      | 75%    |
| Bancroft               | Paul D. Clement  | 5    | 2      | 71%    |
| Jones Day              | Michael A. Carvin  | 4    | 2      | 67%    |
| Gibson Dunn            | Matthew D. McGill and Theodore B. Olson                                | 2    | 1      | 67%    |
| Hogan Lovells          | Neal K. Katyal   | 2    | 2      | 50%    |
| Duggan Shadwick        | John M. Duggan   | 1    | 1      | 50%    |
| Latham & Watkins       | Gregory G. Garre   | 1    | 1      | 50%    |
| Sullivan & Cromwell    | Jeffrey B. Wall and Garrard Beene                                      | 1    | 1      | 50%    |
| Kirkland & Ellis       | Christopher Landau   | 1    | 2      | 33%    |
| Sidley Austin          | Carter G. Phillips   | 1    | 3      | 25%    |
| Goldstein & Russell    | Thomas C. Goldstein  | 0    | 3      | 0%     |
| Consovoy McCarthy      | William S. Consovoy  | 0    | 3      | 0%     |
| Orrick Herrington      | E. Joshua Rosenkranz   | 0    | 2      | 0%     |

Jenner & Block hit nothing but net at the Supreme Court this term, winning five cases it argued before the justices. A sixth argued case, *Duncan v. Owens*, was dismissed by the justices after oral

argument as having been improperly taken up, an outcome that was ultimately favorable to Jenner's client, who was convicted of murder, as the lower court had reversed a sentence for lack of evidence.

In addition to Jenner's outsized performance, appellate boutique Bancroft PLLC defended its status as one of the most successful high court practices in the country.

All told, only seven of the 12 firms that appeared in three or more cases can claim a winning record from the drama-packed term.

Among that group, mega-firm Mayer Brown LLP dazzled with four out of four victories, while WilmerHale's renowned Supreme Court group logged four wins in the five cases it argued.

But the year's most impressive performance was arguably by Chicago-based Jenner, which improved on a 67 percent win record in the 2014 term with victories this year in complex cases surrounding the sovereignty of Puerto Rico and when defendants can obtain attorneys' fees against the Equal Employment Opportunities Commission.

With three appearances before the bench, Jenner & Block partner Paul M. Smith argued the most cases for the firm this term, including the EEOC fight where the justices agreed that CRST Van Expedited Inc. did not have to obtain a ruling on the merits of all the EEOC's claims of widespread sexual harassment at the trucking company in order to receive an award of attorneys' fees.

A former clerk of the late Associate Justice Lewis F. Powell Jr., Smith also went to bat for publishing giant John Wiley & Sons Inc. in a dispute over attorneys' fees with a book reseller who defeated copyright claims. Though it vacated a Second Circuit decision refusing a \$2 million fee request, the Supreme Court largely endorsed the publisher's argument that the case was not the kind of "objectively unreasonable" suit in which a fee penalty should be levied.

"We're very pleased both at the volume of cases we were able to be involved in, and that we had a number of different lawyers at different levels that had the opportunity to argue," Smith said in an interview with Law360.

Smith said he wasn't sure whether it was "statistical noise" that Jenner doubled the number of argued cases this year, or whether it was the result of some tactical change at the firm. Still, what was certain, he said, was the performance of the arguing attorneys.

"They all did great," he said.

Alongside Jenner, Bancroft nabbed five wins in eight appearances, including as amici. The most notable among those was the Supreme Court's headline-grabbing 4-4 split in *U.S. et al. v. State of Texas et al.*, which affirmed a lower court's injunction on President Barack Obama's executive actions on immigration policy. In that case, Bancroft partner Erin E. Murphy appeared before the court on behalf of the U.S. House of Representatives in support of the challenge to the policies from 26 states.

Bancroft also starred in the landmark *Little Sisters of the Poor v. Burwell* case, a challenge to the Affordable Care Act's contraception mandate. Bancroft's heavy hitter, Paul Clement, argued for the Catholic group with support from Jones Day attorney Noel Francisco, although the justices' "compromise" ruling was neither a win or loss for the firm.

Between the immigration tie and the rare contraception ruling, Bancroft's results would likely have been even more positive were it not for the untimely passing of late Associate Justice Antonin Scalia in February, given Scalia's reputation as a staunch conservative and Catholic.

Still, with five wins, Bancroft restored its record from the 2013 term following a slump last year that saw the firm go one for three at the court.

Another boutique to walk away this year with heads high was Kellogg Huber Hansen Todd Evans & Figel PLLC, which was formed by former Mayer Brown attorneys out of a conflict of interest with a telecommunications client. Kellogg Huber won 75 percent of the cases it argued, including a victory for whistleblowers in a False Claims Act suit against Universal Health Services, a national chain of

clinics and hospitals.

Other boutiques were less fortunate. Goldstein & Russell, which topped the winner's list last year, struck out in all three of its cases. One of those losses was a 4-4 tie that upheld a decision forcing firm client Dollar General to face a \$2.5 million lawsuit in tribal court over the alleged sexual assault of an underage Native American intern.

Goldstein, Bancroft, Kellogg and Robbins Russell Englert Orseck Untereiner & Sauber LLP put up a combined .818 batting average in their 11 Supreme Court cases this term, winning six of those against opposing counsel at BigLaw.

--Additional reporting by Jonathan Randles, Allissa Wickham, Vin Gurrieri and Jake Simpson. Editing by Philip Shea and Jill Coffey.

*Methodology: Law firms' Supreme Court win-loss record is based on the outcome of cases where a member of the firm argued before the court. In complex cases, Law360 considers a range of factors, including the likely impact of the ruling, when selecting the winning side.*

*Law360 largely treats consolidated cases resulting in a single opinion as one case for the purposes of this scorecard. For the three consolidated cases involving Breathalyzers: Birchfield v. North Dakota, Bernard v. Minnesota and Beylund v. Levi, Law360 scored Mayer Brown with one win for that case.*

*Law360 did not score the consolidated cases over the Affordable Care Act's contraception mandate, since the justices directed the Obama administration and religious nonprofits to work out a compromise. Duncan v. Owens was also not scored, after the Supreme Court dismissed the writ of certiorari as improvidently granted after oral argument.*