The Firms That Won Big At The Supreme Court

By **Jack Karp**

Law360 (July 1, 2022, 5:18 PM EDT) -- Oral arguments at the U.S. Supreme Court are always a singular experience, the more so this term as the justices returned to hearing cases in person after being remote last term.

Attorneys arguing at the court this term had to get comfortable with a new questioning format while also dealing with absent justices, a less intimate courtroom and a gallery largely empty of spectators.

"To me, that gave the courtroom a palpably different vibe," Arnold & Porter partner Allon Kedem told Law360 Pulse. Kedem, who was once an assistant in the Office of the U.S. Solicitor General, has argued 12 times at the Supreme Court, but this was his first time doing so in private practice.

Before the pandemic, attorneys arguing the day's second case, as Kedem was, would watch the first argument in the courtroom. But this time, Kedem and the other lawyers arguing second had to stay in the attorneys' lounge until it was their turn to argue, to minimize the number of people in the courtroom.

"So I waited in the lounge for the prior argument to end, pacing and mumbling answers to imaginary questions," Kedem said.

U.S. SUPREME COURT 2021 TERM REVIEW
Law Firm Scorecard

Firm	Win	Loss	Cases
Latham*	3	1	5
WilmerHale	1	4	5
Kirkland	3	1	4
O'Melveny	3	0	3
Arnold & Porter	2	1	3
Kellogg Hansen*	2	0	3
Paul Weiss	2	1	3
Williams & Connolly	2	1	3
Orrick	1	2	3

* 1 additional case not scored

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Once in the courtroom, the justices' questioning was also different, according to O'Melveny & Myers LLP partner Michael R. Dreeben, who has argued over 100 cases at the Supreme Court and spent 24 years as the deputy solicitor general in charge of the government's criminal docket.

While oral arguments before the pandemic involved a compressed time period and "pretty active and often vociferous interaction between the justices," the court this term turned to a hybrid model that

included a two-minute opening from advocates and some of the more regimented, serial questioning used during remote arguments last term, Dreeben told Law360 Pulse.

"It has a tremendous effect on how advocates prepare," he said, particularly having to present a case for two minutes at the start of arguments. "We had to be prepared to deliver a synthesized argument in a compressed form knowing that we would not be interrupted."

Arguments also lasted longer under the new format, something that could benefit an advocate who had a solid position but could expose weaknesses for others, because attorneys "couldn't run and hide," Dreeben said.

The gallery itself felt different as well, with the lectern from which attorneys argue moved farther away from the bench, according to Kedem and Dreeben.

Some advocates may have appreciated the change because they could now see how all the justices were reacting to an argument with one glance, said Dreeben.

But it did make arguments less intimate, both he and Kedem said.

"Under pre-COVID circumstances, oral argument at the Supreme Court feels very intimate: You are so close to the justices that you can tell from the look in their eyes whether your answer landed (or didn't)," Kedem said, but "under the new setup, the justices seemed far more distant."

One justice wasn't even there when Kedem argued at the court. Justice Brett Kavanaugh participated in arguments remotely that day after testing positive for COVID-19. Other justices and even some attorneys skipped in-person arguments as well due to the coronavirus.

Another notable absence was the public. With members of the Supreme Court bar and spectators who usually fill the gallery not permitted to attend, Kedem missed the "anticipatory energy from the bar members and public sitting behind you," he said. "In their absence, the proceeding had more of a 'workmanlike' feeling."

Despite all those differences, once the arguments began, "the same old adrenaline kicked in," Kedem said.

Attorneys at the nine law firms on this year's scorecard had a chance to feel that adrenaline most often this term. A firm had to argue at least three times to make the list, and several managed to rack up an impressive number of wins before the court.

Latham & Watkins LLP was one of the most active firms before the court this term, with its attorneys appearing before the justices in five cases, three of which the firm won.

Roman Martinez, the deputy office managing partner of the firm's Washington office, won both of the cases he argued this term, getting the justices to rule that federal courts cannot order discovery for investor-state and private commercial arbitration abroad and that police officers are not subject to civil liability for failing to warn criminal suspects of their right against self-incrimination.

Meanwhile, partner Melissa Arbus Sherry, a former assistant to the U.S. Solicitor General, notched her own win before the justices, successfully convincing them that a North Dakota law firm's challenge to

an IRS levy could be considered by the U.S. Tax Court despite being filed one day late.

The firm only suffered one loss at the high court this term, and a fifth case wasn't scored by Law360 because it resulted in a 4-4 split after Justice Amy Coney Barrett sat the case out after hearing it when she was on the Seventh Circuit. The deadlock in the case argued by J. Scott Ballenger let stand the Seventh Circuit's ruling in favor of Latham's client Union Pacific Railroad Co., which escaped a negligence suit from an injured engineer.

"We're extremely proud to have had four different lawyers – Melissa Arbus Sherry, Scott Ballenger, Roman Martinez and myself – argue five different cases before the court this term, with three of those cases being granted off our petitions for certiorari," the chair of Latham's Supreme Court and appellate practice, Greg Garre, told Law360 Pulse.

"Not only that, we had 10 different associates work on these matters, fulfilling our goal of staffing our matters with a diverse group of attorneys and grooming the next generation of homegrown Latham Supreme Court advocates," he added.

–Additional reporting by Caroline Simson, Rachel Scharf, Theresa Schliep, Jon Steingart, Anna Sanders, Daniel Wilson, Kevin Penton, Juan Carlos Rodriguez, Kellie Mejdrich, Ryan Davis, Marco Poggio, Britain Eakin, Tiffany Hu, Khorri Atkinson, Jack Queen, Linda Chiem and Andrew Westney. Editing by Pamela Wilkinson and John Campbell. Graphics by Chris Yates.

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 2021 term, regardless of the outcome. Some cases were not scored.

As a general matter, if the Supreme Court affirms the lower court, the petitioners lose. If the Supreme court reverses or vacates the lower court ruling, in whole or in part, the petitioners win. Cases that are dismissed as improvidently granted after oral argument are recorded as a win for the respondent.

There are, of course, exceptions. In cases where there is not a straightforward ruling, 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 did not score LeDure v. Union Pacific Railroad Co., since the justices ended up deadlocked 4-4, which let stand the lower court's ruling in favor of Union Pacific.