



# 2018 Practice Group of the Year

## Appellate

Kirkland & Ellis LLP had a big year in front of the U.S. Supreme Court in 2018, winning six cases, including one concerning the Alien Tort Statute and one for the Wisconsin State Legislature in a gerrymandering case, earning it a spot among *Law360*'s Appellate Groups of the Year.

Paul Clement, a partner in Kirkland's Washington, D.C., office who had several big victories at the Supreme Court last term, attributed the firm's success to its willingness to prepare and tailor arguments specifically to what it believes the Supreme Court justices will be partial to.

"You have to take the cases the way they come," he said. "The fact that we were successful in so many cases speaks to the nature of the case but also speaks to our approach to the case, which is to focus on the case and the court and try to make arguments that are going to appeal to the Supreme Court based on the way it looks at legal issues and interprets statutes."

One of Clement's biggest cases that he argued and won came in April 2018 and involved a foreign corporation, Arab Bank, which was sued under the Alien Tort Statute for allegedly financing Hamas and other terrorist groups.

That case presented a unique challenge because the court had previously dodged the issue of

whether litigants could use the ATS to hold foreign corporations liable for overseas human rights abuses and violence, according to Clement.

"That's an issue that had been percolating around the Supreme Court for a number of years; and one of the reasons why some people were betting against us was a number of years earlier the Supreme Court had a chance to decide the foreign liability issue and dodged it by determining the case on other grounds," he said. "It was kind of a unique challenge confronting a dynamic where it seemed like previously the court had some reluctance to squarely confront the issue."

The court ended up siding 5-4 with Arab Bank. In his opinion, Justice Anthony M. Kennedy said it is up to Congress to decide whether foreign

victims should be allowed to sue foreign corporations in federal court.

In another big win at the high court last April, Clement led an appeal by Encino Motorcars LLC to overturn a Ninth Circuit ruling that employees at car dealerships could pursue a wage-and-hour lawsuit against Encino because they are eligible for overtime pay.

The Ninth Circuit originally ruled in favor of the employees; however, in June 2016 the High Court directed the Ninth Circuit to revisit the decision.

After the Ninth Circuit again ruled in favor of the employees, the case returned to the Supreme Court, where Clement argued that auto service advisers aren't covered by the Fair Labor Standards Act's overtime pay requirement, and the court agreed 5-4.

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“I had a special attachment to the Encino case because I ended up arguing it twice,” Clement said. “By the second time we argued it in the Supreme Court I felt very familiar with the issues.”

Kirkland also scored another big win at the Supreme Court last June in a high-profile political gerrymandering case. Erin Murphy, a partner at Kirkland’s Washington, D.C., office, represented the Wisconsin State Legislature and argued to the high court that the Democratic plaintiffs lacked standing to challenge the map.

The court agreed, striking down a Wisconsin district court’s ruling that the map was unconstitutional.

Chief Justice John Roberts Jr. wrote in his opinion for the court that the Democratic plaintiffs failed to prove they had standing to challenge the map because, rather than showing how they experienced voter dilution in their individual districts, they relied on statewide evidence that the overall map favored Republicans. However, the

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court’s narrow ruling means the issue will likely resurface in the near future.

“That’s obviously a very hot button issue for the court and is going to be back there again this year,” Murphy said.

Murphy also said that the strategy for that case was not going with a broad argument, instead picking a narrow one that the court would be more receptive to.

“Of course you’re going to have broad arguments, but it can also be really important to have narrower arguments and paths to consensus that the court might be able to take up if they’re not sure they want to reach the broadest issues in the case,” she said.

Murphy attributed much of Kirkland’s success to a deep bench of litigators who can handle a wide variety of issues. At Kirkland a dozen attorneys focus exclusively on appellate

litigation, but there is no designated appellate team.

“We have a great team of other partners and associates who are able to work on cases,” Murphy said. “If you’re going to take on that many cases you really need to have a team that can work together.”



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