

Lawyer's supreme moment

By [Robert Trigaux](#), Times Columnist

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Guy Burns is no baseball player, but he spent Monday at his own World Series. For the first time in his career, the Tampa lawyer went all the way to the U.S. Supreme Court in Washington to argue a case aimed at protecting the wallets of 90 million American investors.

Burns is part of a team taking on the \$9 trillion mutual fund industry that these attorneys say is overcharging investors. At 10 a.m. Monday, they had 30 minutes to argue their case in front of the Supreme Court justices. They took 28, later using the remaining two minutes to offer quick rebuttal to lawyers arguing for the mutual fund industry.

Burns, 61, has seen a lot of courtrooms across the country, argued a ton of cases and won his share. When some of the Supreme Court justices started asking questions, Burns said he had to sit on his hands because his legal team had hired a high-powered lawyer who specializes in arguing before the Supreme Court to speak on their behalf.

"I was like a third-grader, thinking 'Ooh ooh, I know the answer,'" Burns said Monday in a midday phone interview after the court appearance. Justices John Roberts, Antonin Scalia and Sonia Sotomayor, the latest appointee, actively questioned the attorneys.

Burns says he is hard pressed to guess where any of the justices stand on the case. A decision is probably several months away.

The legal battle is an important one: Why should some institutional investors like pension funds be able to negotiate lower fees with a mutual fund adviser to manage their money, while the same adviser can charge two to five times as much to individuals who invest in that adviser's mutual fund?

The higher the mutual fund fee, the lower the investor's return.

The case, *Jones vs. Harris Associates*, was brought against Harris by three investors in the Oakmark mutual funds family. The investors have lost at every legal stage, but they did win the okay to be heard at the Supreme Court.

The case has caught national attention with stories and editorials (for both sides) appearing in the *Wall Street Journal*, *New York Times*, *USA Today*, Bloomberg News and on NPR Monday morning, among other prominent media.

If individuals are putting a combined billion dollars into a mutual fund and a pension fund puts a billion dollars into the same fund, why shouldn't they both pay the same fees, Burns asks. He says individual investors in Oakmark funds would have realized \$50 million more a year in returns if they paid the same lower fees.

Burns is the senior Tampa attorney with Clearwater's Johnson, Pope, Bokor, Ruppel & Burns law firms. He has a long track record of securities litigation, usually representing consumers who believe they were wronged or misled by false investment promises.

Burns says he felt "shoehorned" in to the relatively small Supreme Court to accommodate all the attorneys and a small contingent of the public allowed to view court arguments.

Supporting Burns' team were some heavy hitters. The nation's solicitor general, Elana Kagan, acted on behalf of the Securities and Exchange Commission. Legendary mutual fund pioneer John Bogle, who founded the low-fee Vanguard family of mutual funds, and the AARP also presented briefs arguing for lower fees.

The other side was thick with trade groups representing the mutual fund industry as well as the free market-oriented Cato Institute.

"We did everything we could do," says Burns, satisfied with his team's argument. "We left no stone unturned."

What happens if the Supreme Court sides with Burns? The case goes back to an appeals court where the judges would be instructed to reconsider the case using a different standard of fiduciary duty by mutual funds.

"That could send a shot across the bow of the mutual fund industry and require them to look much more critically at their fee structure" — one that is mostly rubber stamped at the moment, Burns says.

And if the Supreme Court rejects this argument? "It's business as usual," Burns says. Lawyers could bring new cases but given the new level of proof it would be, the Tampa attorney says, "a very daunting task."

Burns could have talked longer if not for a flight to Pittsburgh he needed to be on. You see, he was due in court there to argue another mutual funds case, this time against the giant Federated family of mutual funds.

Ninety million investors are counting on him.

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