

Appellate MVP: Morgan Lewis' Allyson N. Ho

By Jeannie O'Sullivan

Law360, Newark (November 23, 2015, 4:42 PM ET) -- Allyson N. Ho of Morgan Lewis & Bockius had just scored a U.S. Supreme Court victory addressing the duration of retiree benefits last year when she faced the justices yet again in a case spotlighting deference to agency decisions, marking an ambitious schedule that carved her a spot among Law360's Appellate MVPs for 2015.

If two Supreme Court cases in a single year wasn't harrowing enough, add to that a Fifth Circuit win, pro-bono work that's close to her heart and the honor of being named one of three finalists in Texas Lawyer's inaugural "Attorney of the Year" contest. And she sits on the Texas Judicial Council and the bipartisan Federal Judicial Evaluation Committee.

Yet Ho, who is based in the international firm's Dallas and Houston outposts, seems to thrive on the unique challenge of appellate litigation, an area that she says is growing more specialized.

"I think we're also seeing a trend and in a greater appreciation for the skill set that appellate litigators tend to bring to all levels, from advising on dispositive motions in trial courts, to assisting with legal strategy in terms of coming up with creative or novel approaches, to finding solutions to address our clients' most pressing needs," Ho, Co-chair of the firm's appellate practice, told Law360.

A typical year in Ho's driven career began before the high court on Nov. 10, 2014, when her arguments in *M&G Polymers USA LLC v. Tackett* fueled a decision that paved a new path for companies paying millions of dollars in retiree health care benefits. The court was tasked with interpreting silence or ambiguity regarding the duration of benefits in collective bargaining agreements, according to the firm's summary of the case.

Boosted also by amicus briefs and an ironclad strategy, Ho persuaded the court to overturn the Sixth Circuit's longstanding "Yard-Man presumption" arising from a 1983 case in which the court found unalterable lifetime benefits could be granted even when there was no clear promise to do so in the contract at issue. The justices delivered a unanimous opinion in January that far surpassed a mere

MVP

APPELLATE



Allyson Ho
Morgan Lewis

rejection of the precedent, according to Ho.

“The court didn’t just strike down Yard-Man, they cleared out a web of related rules and holdings that had developed around the presumption, and took care to to explain what rules should apply going forward,” she said.

Three weeks after the M&G Polymers argument, Ho was back in court that December to defend her D.C. Circuit victory in *Perez v. Mortgage Bankers Association*. Representing the bankers, she told the justices that the U.S. Department of Labor flouted the Administrative Procedure Act’s notice-and-comment procedures when it reversed its position that mortgage loan officers are not entitled to overtime pay under the Fair Labor Standards Act, according to the firm’s summary of the case.

Although the high court overturned the D.C. Circuit’s decision, finding that federal agencies aren’t bound by a formal rulemaking process when changing rules, several justices agreed with Ho’s contention that SCOTUS should revisit and overrule its own precedent, the summary said.

“Even though we lost, we succeeded in planting some seeds that hopefully will come to fruition,” Ho said.

The mortgage industry was bolstered by Ho again in July when the Fifth Circuit upheld summary judgment in favor of her clients, Merscorp Holdings Inc. and Mortgage Electronic Registration Systems Inc. in *Dallas County, Texas v. Merscorp Inc.* The companies, along with Bank of America, faced a lawsuit by three counties alleging the banks failed to record assignments of deeds of trust in the Texas public land records and knowingly recorded documents falsely representing MERS’ as a beneficiary of the security instrument, according to the firm’s summary of the case.

In a precedential ruling, the Fifth Circuit held, among other things, that two of the counties weren’t due declaratory relief because a Texas law governing recording assignments of deeds of trust doesn’t include a private right of action, nor does the federal Declaratory Relief Act create an independent private right of action.

"What was most rewarding was that the Fifth Circuit did not just affirm a very sound opinion, but went further and made clear that our clients had been in full compliance with the law," Ho said.

In the pro bono arena, Ho helped obtain a meaningful victory for San Diego’s Mount Soledad Veterans Association as its lead counsel in a federal court battle over the constitutionality of its war memorial cross being on government land. Thanks to “passionate efforts” on behalf of Ho, the daughter of a Korean War veteran, the association reclaimed the memorial in July through a government sale, according to the firm’s information about the case.

Summing up the MVP to Law360, Morgan Lewis chair Jami Wintz McKeon said Ho draws respect from the nation’s highest court, appellate bar and clients who call on the attorney to solve their biggest problems.

“She brings together tremendous intellect, experience beyond her years, and superior oral and written advocacy,” McKeon said.

--Editing by Patricia K. Cole. All Content © 2003-2016, Portfolio Media, Inc.