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Morgan Lewis' Allyson Ho Scores First SCOTUS Win

By Natalie Posgate – (January 28, 2015) – Last month, Allyson Ho celebrated a milestone conquest: completing the first two U.S. Supreme Court oral arguments in her career, which took place within three weeks of each other.

This week began with another conquest. The Supreme Court returned its opinion for Ho's first case, *M&G Polymers USA, LLC v. Tackett,* and it was in her client's favor.

The case involves a divided issue among U.S. courts about retiree health care benefits. In Monday's opinion, the Supreme Court ruled that a lower court improperly implemented contract law when it ruled in favor of a group of retired factory workers who claimed their collective bargaining agreements entitled them to lifetime contribution-free health care coverage from their former employer, M&G Polymers USA, LLC.

As a result, the Supreme Court vacated the judgment and remanded the case back to the U.S. Court of Appeals for the Sixth Circuit in Cincinnati, Ohio, asking it to "apply ordinary principles of contract law," the opinion said.

Not only was the opinion an individual victory for Ho and her firm, Morgan Lewis, it was also a big step forward for corporations that negotiate collective bargaining agreements with labor unions because it was the first time for the nation's High Court to review the specific issue, despite various requests to do so in the past.

"Health care is obviously a very hot topic these days," said Ho, a partner in Morgan Lewis' Dallas office. "We were able to communicate in our certiorari petition how important the issue was to resolve and get a clear answer, and that our case presented the court with a good opportunity to look at the issue and decide it."

Though the Supreme Court did not actually rule on the issue, Ho said the court's opinion opened up the possibility of more collective bargaining cases being brought to other appellate courts, including the Fifth Circuit, since it commands the Sixth Circuit, which historically has been pro-retiree, to change its course of legal conclusion.

Allyson Ho

"It will have a huge impact on employers nationwide because now the Supreme Court says to even the playing field for employers," Ho said. "One impact of the decision is that the Sixth Circuit will likely not be the magnet for this type of litigation that it has been in the past."

The issue in dissent is how courts should interpret collective bargaining agreements that are ambiguous on certain issues, such as how long employers must provide health care benefits to retired employees, whether employers can change benefits or whether employers can ask retirees down the road to contribute toward their health care coverage.

In *M&G Polymers v. Tackett,* a group of retirees sued M&G after the company announced in 2006 that it would start requiring retirees to contribute to the cost of their health care benefits. The retirees claimed that the new rule breached both the original collective bargaining agreements and the pension, insurance and service award agreement (P&I agreement) that M&G had signed with the labor union years before.

A district court dismissed the complaint for failure to state a claim, but the Sixth Circuit reversed the dismissal based on its reasoning in an ›

earlier labor & employment decision, nicknamed *Yard-Man,* that retiree health care benefits are unlikely to be left up to future negotiations.

When it went back to the district court, it ruled in the retirees' favor, and then the Sixth circuit reaffirmed the district court's ruling.

When the Supreme Court decided to review the case, the justices unanimously disagreed with the way the Sixth Circuit interpreted the law and its use of the Yard-Man decision to do so.

In a 14-page opinion, Justice Clarence Thomas wrote that the Sixth Circuit came to its legal conclusions "not from record evidence, but instead from its own suppositions about the intentions of employees, unions and employers negotiating retiree benefits."

Justice Thomas wrote that the flaw with Yard-Man is that it "violates ordinary contract principles" by favoring vested retiree benefits in all collective-bargaining agreements.

He also pointed out that the Sixth Circuit failed to consider traditional principles in contract law that "courts should not construe ambiguous writings to create lifetime promises" and that "contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement."

Ho said she got involved in the case because Morgan Lewis had been representing M&G Polymers since the issue was at the district court level. She argued the case before the Supreme Court justices on Nov. 10.

Three weeks later, Ho argued her second Supreme Court case, *Perez v. Mortgage Bankers Association,* which she expects the justices to return an opinion on sometime over the next several months.

When asked what it was like not only to argue in the country's most powerful court, but to do so with two back-to-back cases, Ho said it was the "experience of a lifetime."

In addition to the "exhilarating" feeling of standing at the podium before "nine of the smartest, best lawyers in the country," Ho said her experience at the Supreme Court was extra exciting because she is a former law clerk of Justice Sandra Day O'Connor, and her opposing counsel, Washington, D.C. lawyer Julia Penny Clark, was one of Justice Lewis F. Powell's first women law clerks.

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