

MVP: Gibson Dunn's Eugene Scalia

Law360 (November 27, 2018, 11:21 AM EST) -- Gibson Dunn & Crutcher LLP's Eugene Scalia beat the U.S. Department of Labor this year, scoring a high-profile victory that vacated the agency's controversial Obama-era fiduciary rule for retirement account advisers, earning him a spot among **Law360's 2018 Appellate MVPs**.

HIS BIGGEST ACCOMPLISHMENTS THIS YEAR:

One of Scalia's most notable achievements was persuading the Fifth Circuit to close the book on the Department of Labor's 2016 fiduciary rule and issue a mandate that officially vacated the regulation nationwide in June, three months after a divided panel invalidated it.

The regulation, Scalia said, "was an immensely controversial and burdensome rule that really pushed the envelope of the agency's regulatory authority."

Scalia represented the U.S. Chamber of Commerce, the Securities Industry and Financial Markets Association and several other leading trade associations in arguing that the rule was arbitrary and capricious, exceeded the Labor Department's authority, impermissibly created a private right of action and violated the Federal Arbitration Act.

A Fifth Circuit panel decided 2-1 to vacate the fiduciary rule in March, but it held off on issuing a mandate. The absence of that mandate prompted the Labor Department in May to decline to scrap the rule despite the Fifth Circuit's invalidation.

The Fifth Circuit issued the mandate in June, making effective the panel's March decision vacating the rule.



Eugene Scalia
Gibson Dunn

Another closely watched regulatory challenge from the year that Scalia identified as being especially gratifying was attaining a victory for MetLife Inc. In January, MetLife and the government agreed to end an appeal of a judge's order releasing the insurer from its status as a systemically important financial institution.

The New York-based insurer and the Financial Stability Oversight Council lodged a joint motion to dismiss the case at the D.C. Circuit, signaling that MetLife will remain free of the SIFI designation, which would have placed it under stricter regulatory scrutiny.

"It was a case that was perceived by a lot of people as being very important to the future of regulation of the financial services industry," Scalia said.

HIS BIGGEST CHALLENGE THIS YEAR:

Attempting to present the fiduciary rule case to the Fifth Circuit in a simple way came with hurdles. It involved the intersection of the Employee Retirement Income Security Act of 1974, the tax code and administrative law, "which are not topics that necessarily get people's blood racing," Scalia said.

"We had to arrive at a way that covered some complex and potentially dry issues that was clear and grabbed the court's attention and persuaded them of our view," Scalia said.

HOW HE WORKS THROUGH CHALLENGING CASES:

In the fiduciary rule case, Scalia and his team tried to have a clear and immediately understandable presentation for the appeals court with overarching themes that wove together some of the more detailed, granular legal arguments, he said.

"We looked to tell an overarching story of mistaken overreach by the Labor Department, and then had essentially different chapters to that story, which addressed how they approached substantive questions of ERISA law and under the tax code and procedural issues under the Administrative Procedure Act," he said.

HIS PROUDEST MOMENT:

Some of Scalia's proudest moments come out of witnessing the associates he works with at Gibson Dunn develop and succeed in their roles.

"It's gratifying," he said, "to watch young lawyers get better all the time, and it's nice to be able to feel that you had some role in that development."

HIS ADVICE FOR JUNIOR ATTORNEYS:

Whether they practice law at a firm, in-house, with the government or at a nonprofit, Scalia believes young lawyers should enjoy their jobs.

"As a lawyer, you ought to have fun doing what you're doing. If you are excited by it, if you bring enthusiasm to it, then a lot of other good things are going to follow," he said. "By the same token, if you're not having fun, go try something else."

— As told to Michele Gorman

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