Appellate Group Of The Year: Gupta Wessler

By Jared Foretek

Law360 (February 10, 2025, 4:03 PM EST) -- Gupta Wessler LLP had one of the most impactful years in its 12-year history in 2024, representing transportation workers, victims of sexual assault by Uber drivers and homebuyers, as well as taking home two unanimous wins in the U.S. Supreme Court against Bank of America and preparing to argue for another in 2025, landing the firm a spot among the 2024 Law360 Appellate Groups of the Year.

Its success at the high court came despite a conservative majority typically less receptive to its progressive, public interest-based arguments.

"We're winning the cases pretty consistently, which people are always surprised by because … it's in some tension with what their view of the current U.S. Supreme Court is like," Deepak Gupta, the firm's founding principal, told Law360. "We are not trying to fight the culture wars or politicize our cases, we're trying to win our cases for our clients."

One of those unanimous Supreme Court victories came in May, when the justices vacated a 2022 Second Circuit decision that had let Bank of America out of a class action suit brought by homebuyers accusing it of failing to comply with New York escrow interest payment laws. To win, the attorneys at Gupta Wessler successfully beat back a defense from Bank of America that the Dodd-Frank Act necessarily preempts state consumer financial laws.

According to the justices, state financial laws are preempted only if they "prevent or significantly interfere with the exercise by the national bank's exercise of its powers." Now, the case is back in the Second Circuit, where Gupta Wessler is briefing judges once again.

Gupta said that, prior to the case, it would have seemed a "hopeless issue" to many after the federal government for years had been "fairly aggressive about arguing that state law was preempted." But the justices significantly narrowed what had been a fairly forgiving test for what issues state law was preempted on.

"This was a consumer-side victory in the Supreme Court on a really hard-fought issue," Gupta said. "In some ways, we won this case in our meetings with the government because we persuaded the government to change its position. We persuaded the Solicitor General's Office and the Consumer Financial Protection Bureau to agree with us that … actually the test that had been adopted for preemption was too preemptive."

The firm also won a major high court fight for a class of truck drivers. In April, the justices unanimously vacated a Second Circuit order and revived a wage-and-hour lawsuit from drivers for Flowers Foods, the owners of Wonder Bread and Tastykake.

Section 1 of the Federal Arbitration Act exempts "seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce" from mandatory arbitration agreements and can bring their claims in court. But both the district court in the case and a Second Circuit panel held that, because the drivers are employed by the bakery industry, and not for a company that "pegs its charges chiefly to the movement of goods or passengers" — as the circuit opinion put it — the drivers didn't qualify.

"The question … was whether transportation workers have to work for a transportation company to be exempt," Jennifer Bennett, who argued the case in front of the high court, told Law360. "There's no language in the statute that says that, and it didn't make sense for workers for Amazon to be treated differently than workers for Southwest [Airlines]."

So Gupta Wessler's team of attorneys, led by Bennett, went about trying to narrow the question for the justices as much as possible, avoiding any broader narratives around workers' rights and employers given the current political makeup of the court.

"The Supreme Court has said that statutes … should be read by the text. And courts were routinely interpreting the Federal Arbitration Act as not a statute, … holding that … basically whoever wants the arbitration wins, kind of no matter what the text of the statute says," Bennett told Law360. "So the idea was, well, the Supreme Court says that's not how you do statutory interpretation, so I wonder if there's a way to ask the Supreme Court, 'Should the Federal Arbitration Act be a statute?'"

Gupta said the firm's appellate lawyers are trying to keep the scope of their arguments increasingly limited these days, especially in front of the high court.

They recently took the same approach in front of the justices while representing Karyn Stanley, a retired firefighter in Sanford, Florida, who is looking to sue the city for retirement benefits-related discrimination under the Americans with Disabilities Act.

Originally, her health insurance policy offered free insurance until the age of 65 for workers retiring due to a disability. But in 2003, the policy cut the subsidy to just 24 months from retirement, a change Stanley said she didn't know about.

The Eleventh Circuit upheld the district court's dismissal of the case, holding that the firefighter wasn't discriminated against during her employment. But Gupta, who argued the case last month, once again tried to keep the question as narrow as possible, asking the justices whether a former employee who was discriminated against loses their cause of action simply because they're no longer employed.

"We could have approached the question, and there's a big circuit split about, 'Can anyone who is no longer employed by someone sue under the ADA?' But there was a narrow argument available to us, which was basically, this discriminatory policy was in place when she was employed and she was disabled, and so she was suffering the alleged discrimination at that

time, while she was employed. And then it continued, and she felt the effects because it involved her retirement benefits."

The justices have yet to issue an opinion, but several seemed keen on issuing a narrow decision without touching broader ADA questions.

Gupta is hopeful that they'll at least give Stanley the chance to fight another day in district court — and extend the firm's Supreme Court hot streak.

"Objective observers perceived that that narrow argument resonated across the bench, across the full spectrum of the bench, not just with the justices that people assume are going to be sympathetic to civil rights plaintiffs," he said. "We pitched a narrower argument because we thought it was strategically the right thing to do."

--Editing by Dave Trumbore