

MVP: Cohen Milstein's Michelle C. Yau

By Rachel Stone

Law360 (September 22, 2021, 4:44 PM EDT) -- Michelle Yau of Cohen Milstein Sellers & Toll PLLC served as the senior attorney representing participants and beneficiaries of the Triad Manufacturing Inc. Employee Stock Ownership Plan in an ERISA suit claiming the company overcharged workers for company stock. Her team won its bids to keep the case in federal court and recently at the Seventh Circuit, earning her a spot among Law360's 2021 Benefits MVPs.

HER BIGGEST ACCOMPLISHMENT:

To Yau, fighting so that workers could bring their claims against companies in Employee Retirement Income Security Act suits — and not have them sent to arbitration — is a crucial issue for workers; whether an arbitration clause is enforceable can entirely shift the dynamics of a case.

Over the past year or so, she's defeated arbitration clauses in two major cases, with an appeals court affirming a lower court ruling in her favor in one of those matters.

Her work on the Cohen Milstein team representing Triad workers ranks as one of Yau's largest wins of this past year. Her legal team netted a victory at the district court level when a federal judge denied Triad's attempt to send a proposed class of workers' suit to arbitration, and won again at the Seventh Circuit earlier this month when it also refused to make the workers individually arbitrate their cases.

In January, an Illinois federal judge also refused the defendants' bid to compel arbitration in an ERISA case where Yau's team was representing a proposed class of Casino Queen employees who claimed the company forced them to buy the company's overpriced stock.

"It's coming up a lot: Can employees be forced to arbitrate their claims, and, in particular, give up group representative action in an ERISA context, on behalf of [a full retirement] plan?" Yau told Law360. "It's been really exciting. I wonder if this issue is going to go to the Supreme Court."

And while many class action decisions on the issue of arbitrability don't tend to favor the plaintiffs, Yau



said that ERISA litigation has allowed her teams "a lot of success where success has been generally hard to achieve."

The best-case scenario would be to pass laws at the federal level stipulating that employers can't use an arbitration clause to stop employees from seeking plan-wide relief under ERISA, Yau told Law360. "I'm hoping that the arbitration law in the ERISA context will be more favorable to class actions than in other areas," she said.

WHY SHE'S A BENEFITS ATTORNEY:

"Since college, I have felt passionately about economic injustice," Yau told Law360. She worked on labor issues facing university employees while she was an undergraduate student, and she continued that focus in law school, advocating for Harvard Law custodians, employees and dining hall workers.

But her classes on collective bargaining left her "sort of depressed," Yau said. "It was an area where I felt the law was in decline," she told Law360.

In contrast, she found more promise in being able to enforce more protective labor statutes like ERISA, which seemed more promising as ways to directly protect rank and file employees.

And although Yau now sees ERISA as the perfect statute for her interests, she didn't always plan on focusing on employee benefits law and the mismanagement of retirement assets.

Before law school, she first spent two years working on Wall Street on the recommendation of her father and her desire to make sure her beliefs were grounded in some truth.

"My dad was like, 'What do you know about capitalism? Maybe you should go out into the real world before you commit yourself to a fight you don't understand,'" Yau recounted.

"It was great advice, and it really just confirmed the power inequality and the power that corporations have over their employees," she said. After law school, she ended up working at the U.S. Department of Labor, which led her to an almost two-decade career focusing on ERISA.

In addition to allowing her to fulfill what she's wanted to accomplish since college, benefits law also satisfies Yau's love for technical, quantitative work. Most of her cases involve complex financial instruments that, because they're not understood by many people outside the financial world, can be abused by Wall Street, she said.

"It feels like the most important work from a standpoint of economic justice," Yau said. "It's really gratifying every day; I'm never bored."

ON HER BIGGEST CHALLENGE OF THE YEAR:

The coronavirus pandemic has created logjams throughout the legal system, with stalled cases forcing more to pile up. For Yau, one of the issues she's dealt with this year is trying to keep her cases moving and ensure she can get justice on behalf of her clients without massive delays.

"In the post-COVID world, courts have a lot more on their plate," she said.

"Our clients are anxiously awaiting justice, [but] the passage of time and the slowdown of courts are not

on their side," Yau told Law360. "Making sure that justice is not delayed more than it needs to be has been an ongoing challenge."

WHAT MOTIVATES HER:

For Yau, it all comes back to the rank-and-file employees. "I'm a first-generation immigrant; my parents came to this country on student visas, and having a job was such a blessing."

Her father was often the smartest person in the room, but she noticed that other people seemed to be the ones making "money off his blood sweat and brilliance," she said.

"Especially in this country, there are a lot of people working hard, certainly not at the top of the food chain ... they're working multiple jobs and trying to provide for their families. It's those employees who are the reason that I don't think I could ever leave my practice," Yau said.

"I can't imagine doing anything [other] than trying to protect employees and their rights under federal statutes."

— *As told to Rachel Stone. Editing by Adam LoBelia.*

Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2021 MVP winners after reviewing nearly 900 submissions.

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