

MVP: Steptoe's Alice Loughran

Law360 (December 4, 2018, 3:39 PM EST) -- Steptoe & Johnson LLP's Alice Loughran convinced the U.S. Supreme Court to hear BNSF Railway Co.'s dispute over the taxability of compensation for a former employee's lost time after a workplace injury, showcasing her zealous defense of railroads and landing her among Law360's 2018 Transportation MVPs.

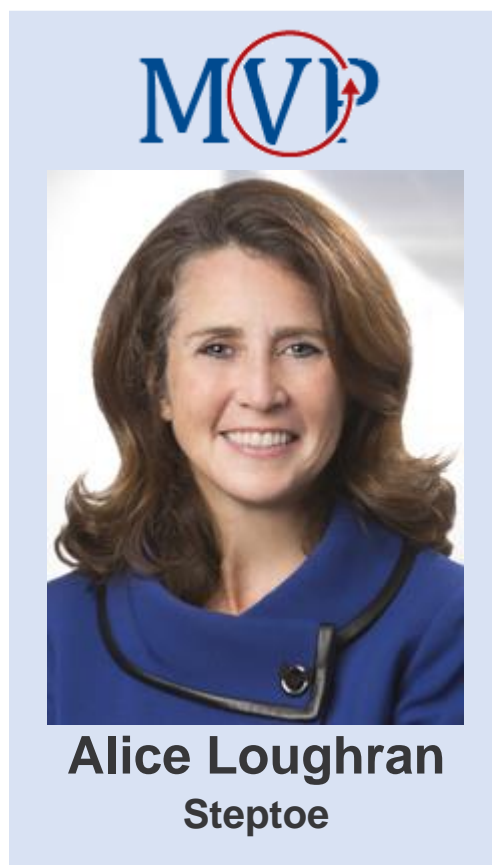
HER BIGGEST ACCOMPLISHMENT OF THE YEAR:

Loughran is representing BNSF Railway in its bid to have the Supreme Court determine that compensation for a former employee's lost time following a workplace injury is taxable under the Railroad Retirement Tax Act.

The railroad is seeking to undo the Eighth Circuit's ruling that \$125,000 in damages under the Federal Employers Liability Act, or FELA, given to former BNSF employee Michael Loos for a 2010 knee injury in a Minnesota train yard were not taxable. The railroad had argued that it had already paid \$3,765 to the Internal Revenue Service as Loos' share of payroll taxes, and it wants the award reduced.

The case deals with the intersection of railroad retirement benefits and federal taxes, and it's significant because it concerns questions about statutory interpretation and the amount of deference to administrative agencies — known as the Chevron deference — that courts are finding increasingly interesting these days, Loughran explained. But she acknowledges that the dispute doesn't necessarily "have a lot of sex appeal."

"This is not a high-octane case. In fact, as I recall, the bloggers referred to it as '[the] most spectacularly boring case' and because the Supreme Court had already taken one of these there was some skepticism expressed [that] they would take another one that dealt with this intersection between railroad retirement and federal taxes," Loughran told Law360. "So being able to accomplish a certiorari grant on a subject that was viewed as 'spectacularly boring,' in my view, was just a huge accomplishment."



In that other case concerning the Railroad Retirement Tax Act and federal taxes, *Wisconsin Central v. USA*, the Supreme Court ruled in June that stock options given to railroad employees were not considered money and, therefore, not taxable.

“We embrace that decision,” Loughran said of *Wisconsin Central*. “It came after certiorari was granted but before we filed the opening brief. We follow that decision down to every part of the analysis ... That decision is fully consistent with BNSF’s position on the merits of our case.”

WHY SHE’S A TRANSPORTATION AND APPELLATE ATTORNEY:

As a member of Steptoe’s litigation department and its regulatory and industry affairs department, Loughran has cultivated a reputation as an expert on federal preemption issues in the railroad industry and frequently serves as a go-to adviser to the nation’s largest railroads, known as the Class I railroads, on the topic.

“There’s a significant role to be played in transportation because the railroads have been around a long time and they’ve developed a carefully calibrated approach to litigation,” Loughran told Law360. “They have experienced trial attorneys on the ground and they’re working at the first stage of the case, but there’s room at the trial and subsequent stages for someone like me to help out in the background with the legal issues.”

Loughran has always been drawn to litigation. According to the firm, she’s had an outsized role drafting petitions for certiorari, merits briefs, amicus briefs and emergency stay motions in the Supreme Court. She’s also had extensive experience before federal circuit courts and state supreme courts, representing clients on a wide variety of issues such as federal preemption, intellectual property, punitive damages and the taxation of intellectual property developed overseas.

“It has the ups and downs and the roller coaster feeling to it,” Loughran said. “But moreover, for somebody that wants to continue to grow, I felt there was a lot of room to grow as an attorney in litigation. That’s what I really thrive on. I love that.”

OTHER NOTABLE CASES SHE’S WORKED ON:

Loughran defended Union Pacific Railroad Co. against a putative class action from Cedar Rapids, Iowa, property owners who claimed the railroad’s efforts to stabilize their rail bridges by weighing down rail cars filled with ballast exacerbated the June 2008 flooding of the Cedar River and caused extensive damage to their properties.

After winning in the Iowa trial court, which prompted the property owners’ appeal to the state’s high court, Loughran successfully persuaded the Iowa Supreme Court to rule in favor of Union Pacific in June. The court determined that “state tort claims like the ones alleged here that involve second-guessing of decisions made by railroads to keep their rail lines open are expressly preempted” by the Interstate Commerce Commission Termination Act of 1995, which protects railroads when “taking action to preserve their own transportation facilities.”

Loughran explained that based on the plaintiffs' allegations, the railroad moved to dismiss because "you can't have a jury second-guessing how a railroad operates and manages core operations because of the obvious problem that the railroads are in multiple jurisdictions."

ADVICE FOR JUNIOR ATTORNEYS:

A graduate of DePauw University and the John Marshall Law School, Loughran served in the U.S. Peace Corps in the Dominican Republic and sharpened her legal prowess in the U.S. Department of Justice's Honors Program for five years before joining Steptoe in 2000.

She insists that good old-fashioned face time with clients is necessary for successful lawyering.

"My advice is to get to know the clients, their business and what's on their minds," Loughran said. "So that means visiting clients, listening to them, trying to learn more about their business and the issues that they're facing. And with that, I would recommend joining an industry association because you get exposure to the people and the issues."

— *As told to Linda Chiem*

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 2018 MVP winners after reviewing nearly 1,000 submissions.

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