

Environmental Group Of The Year: Cohen Milstein

Law360 (January 25, 2019) -- Cohen Milstein Sellers & Toll PLLC doubled down on claims government officials should be held individually responsible for the water crisis in Flint, Michigan, earning it a spot among Law360's 2018 Environmental Groups of the Year.

Though just seven of the firm's 98 attorneys work full- or part-time on the firm's environmental and toxic tort cases, the group tackles complex, challenging litigation across the country. The group's lawyers, who are roughly split between Palm Beach Gardens, Florida, and Washington, D.C., are playing a leading role in the Flint water crisis litigation.

The group also launched and began discovery in a case accusing DuPont of dumping toxic chemicals into the source of drinking water for North Carolina residents and guided thousands of Ecuadorian farmers to a settlement with government contractor DynCorp over its responsibility for pilots whose chemical sprays were accused of affecting the farmers.

The group's work is primarily driven by a desire to address corporate and governmental misconduct against the public, toxic tort practice group co-chair Ted Leopold said.

"It's a practice group that feels very strongly in these cases and trying to do all it can to protect the environment and all those that are affected," Leopold said.

The Flint lawsuit was brought on behalf of residents after the town's water supply was switched to the Flint River, which was so caustic it corroded lead pipes in homes and businesses, causing lead poisoning and physical damage to homes and businesses.

In addition to those claims, the lawsuit also raises Equal Protection Clause issues over the allegedly slower response to the crisis in the largely black community, and says government officials involved, including former Gov. Rick Snyder, are not immune for their actions.

While U.S. District Judge Judith Levy allowed portions of the case to move forward on Aug. 1, including bodily integrity claims, she dismissed Snyder and other state officials from the lawsuit on the grounds that the residents hadn't proved the civil servants had sufficient knowledge of the crisis.



However, the firm's Oct. 5 amended complaint again named Snyder in his individual and official capacities. The group added a new analysis alleging Snyder was deliberately slow to declare an emergency in the crisis because of the race of Flint residents.

It took months for Snyder to declare an emergency in Flint, but just days or weeks for similar proclamations in majority-white communities — a discrepancy that had no good reason, according to partner Emmy Levens, who works on toxic tort and large class actions for the firm.

"There was no explanation for that and it hurt the people of Flint," Levens said.

While the Flint crisis has impacted an estimated 100,000 people, its size is dwarfed by another of the firm's toxic tort cases. In North Carolina, Leopold estimates about 700,000 people were exposed to chemicals dumped for decades by DuPont and its Chemours unit into the Cape Fear River, the source of drinking water for residents across five counties.

The substances, a family of polyfluorinated chemicals including PFOA, PFOS and GenX, are byproducts of manufacturing Teflon and fire-, water- and stain-resistant materials from DuPont's Fayetteville Works facility. According to the suit, DuPont lied to state regulators that it was properly disposing of the chemicals when it was actually dumping them in the river.

As a result, four of the counties rank among the highest in the country for liver disease, and others lead North Carolina for having statistically higher rates of testicular cancer, kidney cancer and pancreatic cancer. The firm is seeking multiple forms of relief for residents, such as covering medical bills for those who got sick because of the chemicals, filtering the air and water and replacing contaminated plumbing and appliances, according to the suit.

In January 2018, Cohen Milstein and Susman Godfrey LLP were appointed interim co-lead counsel in the putative class action and in May were allowed to begin discovery, the results of which Leopold said are confidential.

DuPont isn't the only company that's made PFCs, Leopold said. Because they don't easily degrade, the chemicals pose an ongoing risk to people and the environment, he said.

"Unfortunately we're going to be hearing a lot more about PFOAs and PFOSs in the future and the effects it is having on drinking water for communities," Leopold said. "Not only is it going to have an effect on the water itself but it's going to have a dramatic effect on the health and safety to those that are drinking the water."

In December 2017, Cohen Milstein steered 2,000 Ecuadorian farmers to a confidential settlement with DynCorp in a lawsuit alleging they were hurt by chemicals sprayed by the U.S. government contractor. In April 2017, a Washington, D.C., federal jury largely sided with DynCorp in the case, although it found the company was a joint employer of the pilots, whose chemicals strayed from Colombia to Ecuador as part of an aerial drug eradication program.

In October 2018, Cohen Milstein launched a putative class action in North Carolina on behalf of thousands of residents who claim CSX prevented the construction of a floodgate in a levee. When Hurricane Matthew struck in 2016, the lack of a floodgate led to flooding that allegedly impacted more than 20,000 people and caused \$257 million in damage.

Leopold said that even after years of working in toxic tort and consumer protection litigation, he's still surprised by the level of environmental pollution in the country and partly blames the situation in North Carolina on what he called a lack of sufficient regulations.

"One of the things we always learn about these cases is that because of more deregulation, that there's more and more bad acts, if you will, by corporations in terms of environmental dangers and pollution," Leopold said.

By **McCord Pagan**

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