

MVP: Cohen Milstein's Joseph M. Sellers

By Kevin Stawicki

Law360 (September 9, 2021, 4:32 PM EDT) -- Joseph Sellers of Cohen Milstein Sellers & Toll PLLC's employment practice led a class of flight service specialists to a \$44 million settlement with the Federal Aviation Administration to end one of the federal government's largest age bias payouts, earning him a spot as one of Law360's 2021 Employment MVPs.

HIS BIGGEST ACCOMPLISHMENT OVER THE PAST YEAR:

Sellers was the co-lead counsel in a class action lawsuit accusing the Federal Aviation Administration of discriminating against nearly 700 older flight service specialists, which resulted in a settlement for more than \$40 million — a sum Sellers said is the federal government's largest age bias payout.

In April, the FAA agreed to pay nearly \$44 million to end the 16-year-old suit, which claimed the agency violated the Age Discrimination in Employment Act when it outsourced thousands of flight service jobs mostly held by people over 40 years old to defense contractor Lockheed Martin Corp.

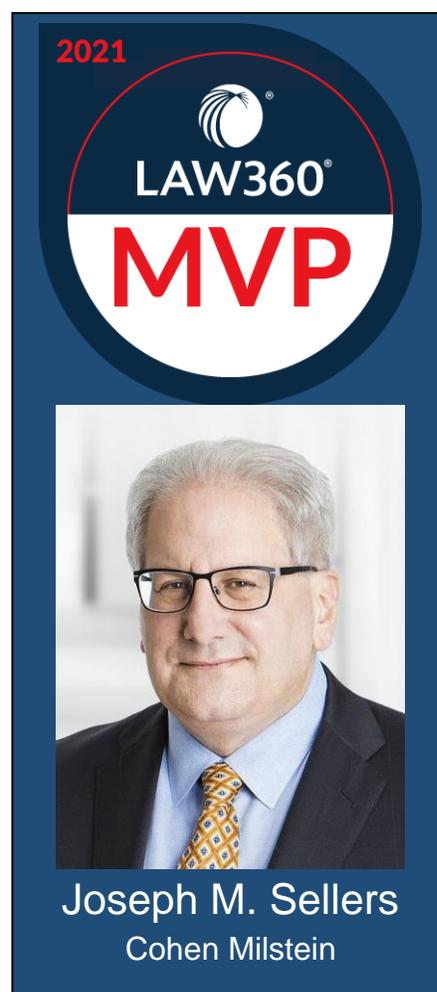
In addition to navigating the challenges of representing 670 workers, Sellers said the posture of the case was further complicated by litigation that was pending at the U.S. Supreme Court at the time.

"We had to contend with the legal standard for what qualifies as proof of intentional discrimination of the age discrimination law, which was subject of a case pending at the Supreme Court while this case was pending," Sellers said. "We were preparing for a variety of options that we'd have to try the case on different standards."

OTHER NOTABLE CASES HE'S WORKED ON:

Sellers has led a certified class of Sterling Jewelers sales workers in a pay and promotion gender discrimination case that broke novel legal ground on arbitration issues.

The case, which is currently awaiting trial before an arbitrator, involves around 69,000 female sales



employees alleging they were paid less than their male counterparts and denied promotions because they are women. The litigation took on a life of its own when an arbitrator certified the class of 69,000 workers and a federal judge later undid that decision because the women didn't join the arbitration, Sellers said.

"This case raised the question — on what authority can arbitrators bind absent class members," Sellers said. "What about all these women in our case who didn't sign up to join the case with this particular arbitrator, but the arbitrator nonetheless issues a decision certifying a class that would bind their interests?"

In 2019, the Second Circuit stepped in to resolve that question. A three-member panel backed the arbitrator's decision, saying that by agreeing to arbitrate disputes with Sterling in the first place, these tens of thousands of "absent" workers agreed to be bound by arbitrators' decisions on the scope of their agreement. Sterling appealed that decision to the Supreme Court, which ultimately declined to take up the issue in 2020.

HIS PROUDEST MOMENT:

Serving as one of the top lawyers in a high-profile case that reserved protections for hundreds of thousands of young unauthorized immigrants was among Sellers proudest moments.

Sellers was co-lead counsel in *NAACP, et al. v. Donald J. Trump*. In 2020, the Supreme Court blocked the Trump administration from terminating the Deferred Action for Childhood Arrivals program.

The justices held that the high court could review the DACA program, which offers deportation relief and work permits to young immigrants brought to the U.S. as children. They also found that the U.S. Department of Homeland Security's decision to terminate the program was arbitrary and capricious.

"I have had many special experiences, but this was certainly very high on the list because of the population we were serving, the vulnerability they were suffering from," Sellers said.

The DACA case was such an important employment case as it was a civil rights case, Sellers said.

"The benefit of being a DACA recipient is that you're eligible to work in this country," he said. "The rescission of DACA, besides exposing people to the risk of being deported, deprives them of the chance of having gainful employment. One of the basic features of what we do is protecting the interests of people who want and need to be gainfully employed."

WHAT MOTIVATES HIM:

Sellers said his interest in pursuing employment law emanates from his experience in civil rights, which he honed at the Washington Lawyers Committee for Civil Rights, where he spent 16 years heading the Employment Discrimination Project.

In 1997, he started the National Civil Rights Practice at Cohen Milstein. The meaningful nature of the work at the firm has kept him grounded and motivated to practice law, he said.

"Many lawyers, I'm afraid, handle work that may be intellectually challenging but may be not personally gratifying," he said. "This is such a personal and special thing for me. It's an opportunity to provide representation to people who have been aggrieved by reprehensible conduct and offer assistance to the most vulnerable members of society."

— As told to Kevin Stawicki

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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