

## MVP: Cohen Milstein's Karen L. Handorf

By Emily Brill

*Law360 (December 4, 2019)* -- Cohen Milstein Sellers & Toll LLP partner Karen Handorf succeeded in getting a U.S. Supreme Court petition accepted and negotiating a \$100 million settlement with a hospital in an Employee Retirement Income Security Act class action this year, landing her a spot among Law360's 2019 Benefits MVPs.

### **HER BIGGEST ACCOMPLISHMENT THIS YEAR:**

Handorf, chair of Cohen Milstein's employee benefits and ERISA practice group, said this year's biggest accomplishment — both for her and the firm — was getting the U.S. Supreme Court to accept review of the Eighth Circuit's employer-friendly ruling in *Thole v. US Bank*.

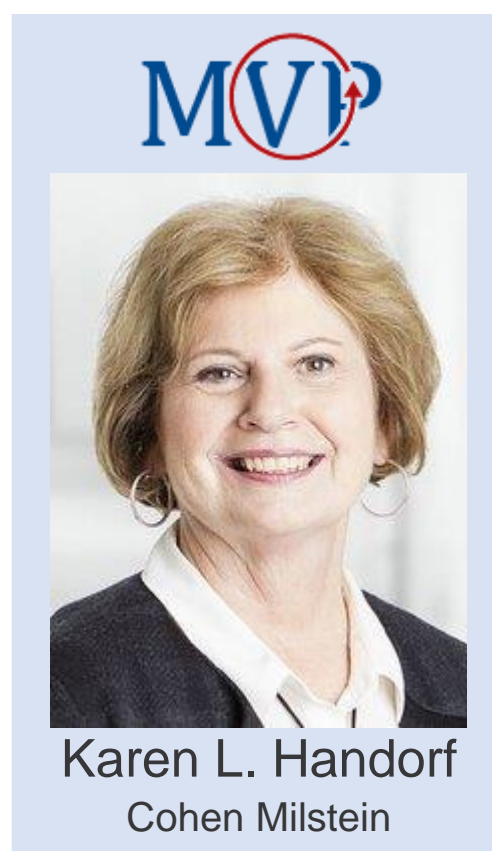
The case asks the high court to decide whether workers can sue over the mismanagement of their retirement savings when their pension plan is fully funded. The Eighth Circuit ruled in October 2017 that they could not, reaching the opposite conclusion of the Second, Third and Sixth circuits.

The U.S. government has sided with the US Bank pension plan participants, whom Cohen Milstein is representing. Handorf is optimistic that the justices will rule in her clients' favor.

"I'm fairly confident the Supreme Court is going to rule on the plaintiffs' behalf in *Thole*," Handorf said.

She said it's important that plan participants be able to sue even when their plan is fully funded, because Congress passed ERISA to give workers tools to hold their employers accountable for risky pension decision-making. If they can't sue, they can't use those tools.

"This is exactly what Congress passed ERISA for — to give people access to the federal courts to protect



their own interests," Handorf said. "I just think fiduciaries of defined-benefit plans have been able to get away with murder because no one could sue them unless they were underfunded."

#### ***HER BIGGEST CHALLENGE:***

Handorf said her biggest challenge this year was continuing to litigate cases accusing hospitals of misusing ERISA's exemption for church-affiliated pension plans. The cases are important because ERISA-exempt plans can ignore federal funding rules, placing retirees' savings at risk, Handorf said.

But the cases have lost momentum in the federal courts since the Supreme Court ruled in 2017 that hospitals with religious ties qualify for the church exemption. Handorf is now tying up loose ends in many of those suits, negotiating settlements and, in some cases, arguing that plans' oversight mechanisms disqualify them from the exemption.

"The church plan cases are frustrating, because the courts kind of want to get rid of them and don't understand completely the significance of the protections of ERISA to people who work all their lives with the expectation that they're going to get a benefit," Handorf said.

This spring, Handorf helped negotiate a \$100 million settlement in a suit against Dignity Health on behalf of a group of its current and former employees. The settlement is still waiting on preliminary approval after a California federal judge rejected it the first time around.

Handorf and her team have argued that the deal is actually worth almost \$700 million because of future payments it promises to the retirement plan.

#### ***WHY SHE'S A BENEFITS ATTORNEY:***

Handorf said she represents workers in benefits cases because she wants to level the playing field, helping workers get justice in an arena that is difficult to understand, where the odds are often against them.

"I think it's very difficult for [benefit plan] participants to understand their rights, and even understand their benefits," Handorf said. "As a result, I think their employer can often not pay attention to the plans and not be as prudent as they ought to be."

Plaintiff-side attorneys can help workers understand their rights under ERISA, a famously complicated law, and help them defend those rights in court, she said.

"If somebody doesn't represent the participants, then their rights are going to be trampled on," Handorf said. "These cases can be very challenging, but it's exhilarating when you get a victory or change a law or make a difference to people."

#### ***HER ADVICE TO JUNIOR ATTORNEYS:***

Handorf said she'd advise younger benefits attorneys not to give up when ERISA seems too hard to understand. You can get there, she said.

"ERISA is difficult, but anybody can master it if you work hard enough," Handorf said.

She said she'd recommend looking into the history of how and why ERISA was passed, as a way to learn its basic principles and give context to the thornier provisions.

"I think you can read the remedial provisions of ERISA and scratch your head at how they got interpreted the way they did, but if you understand the historical context, it makes a lot more sense," Handorf said.

— *As told to Emily Brill*

*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 2019 MVP winners after reviewing nearly 900 submissions.*

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