

Rising Star: Cohen Milstein's Mary J. Bortscheller

By Emily Brill

Law360 (October 7, 2019) -- Cohen Milstein Sellers & Toll PLLC's Mary J. Bortscheller has helped secure more than \$230 million for workers in Employee Retirement Income Security Act settlements with hospitals over the past two years, earning her a spot as one of five benefits attorneys under age 40 honored as a Law360 Rising Star.

THE BIGGEST CASES OF HER CAREER:

Bortscheller works for Cohen Milstein, the first plaintiff-side law firm to challenge hospitals' use of an ERISA exemption intended for churches and their affiliates.

The firm filed a series of lawsuits alleging that hospitals were using an exemption they didn't qualify for to duck ERISA's funding and maintenance requirements, resulting in underfunded, ill-maintained retirement plans.

"The challenge about it was that it was a brand new legal theory that [Cohen Milstein ERISA practice chair] Karen Handorf conceived of," Bortscheller said. "It's challenging to take on something that's entrenched like this."

The challenge has largely paid off, though, with Cohen Milstein helping workers win hundreds of millions of dollars for their retirement plans. Bortscheller has helped represent the plaintiffs in litigation against Bon Secours Health System Inc. that settled for \$98.3 million, against Trinity Health Corp. and CHE Trinity Inc. that settled for \$75 million and against SSM Health that settled for \$60 million. She considers them the biggest cases of her career.

"I'm super proud of the money we've recovered for the health care workers," Bortscheller said. "That's number one. That's tangible."

PROUDEST MOMENT AS AN ATTORNEY:

Bortscheller is also proud of work she did representing two young sisters in their bid for green cards.

Bortscheller took on the case pro bono, working with an organization called Kids in Need of Defense, or KIND. She said the work left a deep impression on her, and she helped secure green cards for the "sweet, spunky" kids, who had come to the U.S. at ages 4 and 6 and were classified as unaccompanied minors

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STAR



Mary J. Bortscheller
Cohen Milstein

Age: 37

Home base: Washington, D.C.

Position: Associate

Law school: American University's
 Washington College of Law

First job after law school: Associate
 at Williams Montgomery & John Ltd.

“That was really special, and I’m really glad I was given the support to be able to do that for them,” Bortscheller said.

The case was not Bortscheller’s first time doing volunteer work as an attorney. Before securing her first legal industry job as an associate at Williams Montgomery & John Ltd., she volunteered for the Chicago Mortgage Foreclosure Project, helping people who were representing themselves pro se in foreclosure proceedings in Illinois state court.

OTHER NOTABLE CASES:

Aside from the health care workers’ cases, Bortscheller has been involved with a case that will be heard by the U.S. Supreme Court this year.

That case — Thole v. U.S. Bank — could determine whether workers are allowed to sue over pension plan mismanagement when the plan is fully funded.

In September, the U.S. solicitor general weighed in to say that ERISA allows pensioners to sue regardless of their plan’s funding status. Though the government said it was staying neutral in the case, the argument supports the workers’ side.

Bortscheller said she took that development as an indication the high court might side with her comments.

“We’re cautiously optimistic that we’ll get a good opinion from the Supreme Court,” she said. “We feel very pleased that the solicitor general is supporting our view of the law, and we’re hopeful that some positive law will result for participants.”

WHAT MOTIVATES HER:

Bortscheller said she’s motivated by a desire to use ERISA to help Americans who want to keep their retirement savings safe.

That’s why the statute was passed, she said, and it’s important that it be used in that way.

“I feel motivated to protect benefits these people rely on, that they’ve earned, to live healthy, happy lives when they retire,” Bortscheller said.

— As told to Emily Brill

Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2019 Rising Stars winners after reviewing more than 1,300 submissions. Attorneys had to be under 40 years old as of April 30, 2019, in order to be considered for this year's award. This interview has been edited and condensed.

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