

Securities Group Of The Year: Cohen Milstein

By **Emilie Ruscoe**

Law360 (December 1, 2020) -- Cohen Milstein Sellers & Toll PLLC's securities practice group brokered the settlement of shareholder derivative allegations against the leaders of Google's parent company Alphabet that included a record-setting \$310 million commitment by the company to diversity, equity and inclusion, landing it a spot among Law360's Securities Practice Groups of the Year.

Cohen Milstein's securities group helped resolve shareholders' claims that the company's board mismanaged misconduct claims against company executives. The settlement deal, which was announced in September, also included a commitment by Alphabet to make major changes to its company policies concerning misconduct claims.

The Alphabet outcome alone, given the company's prominence and the timeliness of derivative allegations arising from #MeToo-related claims, would have made for a banner year for the securities practice.

But the group also notched another notable accomplishment in the spring with settlement of similar derivative claims against Wynn Resorts, in the first suit to survive a demand futility dismissal bid because the company's board failed to adequately address sexual misconduct allegations against an executive.

Julie Reiser, co-chair of Cohen Milstein's securities group who served as the lead partner on both the Wynn and Alphabet derivative settlements, highlighted a common theme of the cases that underscored the significance of achieving the settlements: "that executives are too important to be held accountable for misconduct, or, if they're held accountable for misconduct, it is better to pretend it never happened and pay them a lot to make them go away."

That "bad apple theory," Reiser said, "is usually, I think, way too myopic. I believe that a lot of people know what's going on, they're afraid to speak up, they watch it affect their counterparts. They don't know what to do and then they see the company covering up that misbehavior so reporting falls on deaf ears, a lot of time there's retaliation."

If other attorneys take away one major point from these victories, she said, it should be "don't let defendants or companies get away with the bad apple defense."

"It's usually a toxic culture where women are harassed or shamed or feel like they will get forced out if they speak up, but it's also a culture where a woman can watch it happen to a friend, and be afraid to report it, and feel like she's enabling the misconduct." Reiser said.

Companies and their leaders should also be on notice because of the wins, she added.



"You would hope that these sorts of settlements also send messages to companies that are facing their own potential crisis that they don't want to go down this route, they don't want to have the scandal break and the valuation decline of the company before they take action," Reiser said.

In addition to the precedent set by the Wynn case and the settlement sum in the Alphabet case, Reiser noted that an additional aspect set apart the Alphabet matter: "most of the people involved in negotiating the settlement were women."

Reiser said that dynamic felt very different from other settlement negotiations and was collaborative. She added that some of those attorneys had young daughters, which they bonded over and which made the need for more inclusive and equitable company cultures in the tech industry feel all the more personal and important.

"There's so much opportunity, there's so much room for growth and there's so much stability and salary potential in tech," Reiser said, adding that her own daughter is currently studying computer science.

Cohen Milstein started its run in the nation's capital and maintains a principal office there. Though the firm has about eight practice groups, its securities and antitrust practices are its most robust groups.

Steven Toll, securities practice group co-chair with Reiser and a Cohen Milstein managing partner and executive committee member, estimated that the work of those two practices makes up roughly half of the firm's work.

Toll said the diversification gives the firm the freedom to be more selective than some of its competitors with the cases it brings, and added that the firm's cross-practice strength has informed its strategic approach to securities litigation.

For example, Reiser's expertise in civil rights matters deeply informed the group's accomplishments in the Alphabet case and a similar settlement it achieved in an action concerning executive misconducts within Wynn Resorts, and the firm's civil rights and employment practice can lend additional expertise in such matters.

The securities group is made up of between 25 and 30 attorneys, according to Toll, and its D.C. office is where most of the practice is based, though some attorneys are located in New York, Philadelphia and Chicago. Some of the group's attorneys are currently assisting with a few environmental torts cases, and Toll himself is handling a case against IBM involving breach of contract and fraud claims, but other lawyers in the group are fully focused on securities litigation, Toll said.

"Securities has been a critical factor in the firm's success over the years, there's no question," Toll said, noting that for years following the 2008 financial crisis, between five and seven of the group's attorneys worked full-time as lead counsel on about eight class actions arising from mortgage-backed securities allegations against financial services companies and their executives. Cohen Milstein ultimately secured about \$2.5 billion for shareholders in those matters, Toll said.

"There was a lot of misconduct by the banks in that area, and hopefully it won't happen again," Toll said, though he noted that he's currently handling a big case against one of those same financial institutions over "a new type of misconduct they're engaged in in terms of their lending portfolio."

"Some of these outfits just don't behave properly," he said.

Since the financial crisis, Cohen Milstein has grown from about 40 lawyers in 2009 to about 100 lawyers

just over a decade later. In that time, the securities group has grown at a measured pace, and has recently expanded into the derivatives space.

"Wynn and Alphabet are two examples of how we've gotten into this derivative space in a kind of focused way: obviously, those two cases have some similarities in terms of what the issues were, the misconduct. But we also do some other derivative cases that just relate to financial improprieties," Toll said.

With so much about the future uncertain due to the pandemic, including, notably, court operations and trial logistics, the practice group's plans for its future remain open-ended even for a group working on a contingency basis. In the meantime, most of the firm continues to work remotely, with regular video check-ins as a cornerstone of its strategy for maintaining connections between colleagues.

"Everybody's kind of making do, and I suppose everybody's waiting, hoping that there will be some return to normalcy," Toll said.

--Editing by Nicole Bleier.

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