

Titan Of The Plaintiffs Bar: Cohen Milstein's Daniel A. Small

By Hailey Konnath

Law360 (May 28, 2020) -- Daniel A. Small, known today as one of the country's most respected litigators in antitrust class actions, never took an antitrust course in law school. In fact, Small had no intention of becoming a lawyer at all when he was starting his career. After earning his history degree, he took a gig teaching middle schoolers at a New York boarding school.

But one big career change and three decades later, Small is a highly regarded partner at Cohen Milstein Sellers & Toll PLLC, where he's racked up a laundry list of accolades and impressive victories litigating against big-name clients. In the last year alone, Small took on Google LLC, California health care giant Sutter Health, Blue Cross Blue Shield of Michigan and President Donald Trump. And he's secured millions of dollars in settlements and important nonmonetary relief for his clients, landing him a spot among Law360's 2020 Titans of the Plaintiffs Bar.

Small, who lives in Washington, D.C., was ultimately drawn to antitrust law because it's an exciting, interesting and consequential field, he told Law360 in a recent interview. And there's a talented group of attorneys working on both sides, many of whom he's learned from, he said.

"I find I'm litigating with and against some really tough lawyers," Small said. "And I'm working with top experts."

In September, a Michigan federal court approved a \$30 million settlement in a long-running class action in which Small's clients claimed that Blue Cross Blue Shield of Michigan's anticompetitive agreements with the state's hospitals resulted in costly hospital services. Small was co-lead counsel in the matter, representing a class of direct purchasers of health care services.



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Blue Cross Blue Shield had looked to ditch the suit, but the court denied that motion in 2012. For the next seven years, the parties slogged through extensive discovery.

That same month, a California federal judge granted preliminary approval to a \$13 million cy pres settlement resolving class action allegations that Google had illegally gathered Wi-Fi network data with its Street View car fleet. In that case, Small helped negotiate a deal requiring Google to destroy all the data it gathered and to refrain from gathering protected data with its cars without prior notice in the future.

Among other nonprofit groups, the settlement funds went to Georgetown University's Center on Privacy and Technology, the Center for Digital Democracy and the Massachusetts Institute of Technology's Internet Policy Research Initiative.

However, Small said his most rewarding work in the last year was representing union health plans in a high-profile battle against Sutter Health, which agreed to make a historic \$575 million one-time cash payment to resolve allegations that the company gouged the health plans with inflated hospital costs. The deal was reached in principle last October, on the eve of trial.

And Small was involved in most aspects of the litigation: taking depositions, appearing in court, working on motions, coordinating with experts and, ultimately, negotiating with Sutter to end the case.

"I think the relief we achieved in the settlement is very important, and we're hopeful it will promote competition among health care providers in Northern California as well as provide meaningful compensation to the members of our class," Small said.

Over the years, Small has studied the economic issues underpinning antitrust disputes in myriad markets, including animation and visual effects, hospital nurses and wild blueberries.

His work has taken him to jurisdictions around the country, including arguing in the U.S. Supreme Court. Small and his team narrowly lost that case — which was over supplemental jurisdiction — "but it was tremendous experience," he said.

Small has spent almost the entirety of his legal career at Cohen Milstein. He joined the firm just two years out of law school, after completing a clerkship for a Florida federal judge.

Small said he was attracted to Cohen Milstein because he wanted to do high-stakes, complex litigation in D.C., and Cohen Milstein is the place to be for that, he said.

Ultimately, he stayed because he developed a strong attachment to the firm and its culture.

"In addition to wonderful cases to work on, it's really a great place to work in terms of collegiality and the talent and the striving for excellence," Small said.

Small grew up in Connecticut and got his bachelor's degree at Colgate University in New York. After his teaching years, he earned his law degree from American University's Washington College of Law.

When he's not in court, Small said he loves to ski and ride his bike. He and his wife see movies with their movie club. He hangs out with friends and family.

"I think about [those things] more and more after 31 years of litigating," Small said.

--Editing by Haylee Pearl.

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