

Titan Of The Plaintiffs Bar: Cohen Milstein's Steven Toll

By Dean Seal

Law360 (May 8, 2018, 2:24 PM EDT) -- Cohen Milstein Sellers & Toll PLLC's Steven Toll racked up a series of multimillion-dollar settlements in 2017, including a \$175 million shareholder deal with BP over the Deepwater Horizon spill and \$165 million in a mortgage-backed securities class action, landing him among Law360's 2018 Titans of the Plaintiffs Bar.

A long-time member of Cohen Milstein's executive committee, Toll negotiated five multimillion-dollar victories in 2017, settling longstanding federal cases on behalf of pensioners, investors and consumers. One of his biggest was a \$175 million settlement between BP PLC and investors who bought its shares in the wake of the deadly Deepwater Horizon explosion and oil spill in 2010.

Toll served as lead counsel in what he describes as a "long, very vigorously litigated case" that centered on the company's statements about the volume of oil spilling into the Gulf of Mexico. Ultimately, the two sides reached a settlement that won final approval in February 2017, just weeks before a trial was set to begin.

"It was a very interesting, long battle with BP and its counsel, who fought us on every issue," Toll said.

Not long after that case wrapped up, a New York federal judge granted preliminary approval in May 2017 for a \$165 million settlement in another one of Toll's cases — a nine-year-old class action over risky residential mortgage loans authorized by Novastar Mortgage Inc.

The firm, already known for taking on similar cases in the wake of the financial crisis, represented a class of investors accusing Novastar and three major banks of packing subprime loans into mortgage-backed securities.



STEVEN TOLL ON PLAYING THE LONG GAME: "Not many cases in our business go to trial, but that's the only way you get a good result — you prepare it as if you're going to trial."

It was a hard-fought case, Toll said, with Cohen Milstein poring over tens of thousands of loan documents and fighting through appellate courts until the banks agreed to go to mediation, a process Toll spearheaded.

“They just wanted to defend it as long as they could in case they got lucky and just knocked us out or we couldn’t get a class,” Toll said.

Final settlement approval is on hold pending an appeal from one of the plaintiff institutions, but Toll said he’s no stranger to lengthy litigation.

In September, a Washington, D.C., federal judge granted final approval for a \$28.25 million settlement, ending a decade-long investor suit against Harman International Industries Inc.

Toll said with a laugh that much of the case’s “tortured history” stemmed from its stagnancy, with a district judge taking years to grant a motion to dismiss — only to see Toll eventually convince the D.C. Circuit to revive the suit.

“It’s not easy to get a dismissal reversed, and this was reversed on a couple of important legal issues in the securities world involving cautionary statements and the like,” Toll said. “That was a very good feeling to win that on appeal after we lost in the district court, and then ultimately after some discovery, the defendants wanted to settle.”

Also in September, Toll scored a \$10 million settlement with Braskem S.A., a Brazilian petrochemical producer named in the widely publicized Petrobras corruption probe. The deal settled investor claims that Braskem didn’t disclose at least \$5 million in annual payments of purported bribe money in exchange for favorable supply prices.

Toll said U.S. District Judge Paul A. Engelmayer challenged him in oral arguments as to whether the company had a duty to disclose the payments, but ultimately found in his favor.

While not the largest settlement sum of his year, Toll said he was proud of the \$10 million result given that it recovered a high percentage of the amount shareholders said they’d lost. And in signing off on the agreement, Judge Engelmayer praised Cohen Milstein for its “vigorous, effective and creative advocates.”

“Lead counsel is well respected in the field of securities class action litigation and prosecuted this action with diligence and skill,” Judge Engelmayer wrote in his February order.

Without slowing down, Toll helped negotiate a \$36 million settlement in October for a multidistrict consumer class action accusing Lumber Liquidators of selling composite flooring with hazardous levels of formaldehyde. Cohen Milstein served as co-lead counsel in the suit, ultimately landing a deal requiring Lumber Liquidators to pay \$22 million in cash and \$14 million in store-credit vouchers to affected purchasers.

In the year ahead, Toll and his team have their sights set on a number of the world’s biggest banks as co-lead counsel with Quinn Emanuel Urquhart & Sullivan LLP in two separate suits asserting investor class claims over alleged market manipulations.

While five big settlements last year is a high bar, Toll said his firm was ready to push every case on their

docket to a “trial-worthy position.”

“Not many cases in our business go to trial, but that's the only way you get a good result — you prepare it as if you're going to trial.” Toll said. “If you resolve it favorably, then you don't have to, but you have to be all set and ready to go.”

“That's the way you get the best result for the class,” he added.

--Editing by Melissa Lipman and Kelly Duncan.

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