

Rising Star: Cohen Milstein's S. Douglas Bunch

Law360, New York (July 31, 2017, 4:09 PM EDT) -- Cohen Milstein Sellers & Toll PLLC's S. Douglas Bunch has worked to expand investor rights by advancing path-breaking legal arguments, recently notching a significant D.C. Circuit ruling limiting safe-harbor protections for forward-looking statements, earning him a spot among attorneys under 40 being honored by Law360 as Rising Stars.

THE BIGGEST CASE OF HIS CAREER:

One of the earliest suits that Bunch got involved with while at Cohen Milstein was a securities fraud suit against Harman International Industries Inc. over allegedly false and misleading statements that the company made about the prospects of its business making and selling personal GPS devices.

More than seven years later, the case made it up to the D.C. Circuit, where Harman argued that its forward-looking statements were covered under safe-harbor provisions because they were accompanied by appropriately cautionary disclaimers. But Bunch's team argued — and the D.C. Circuit agreed — that those disclaimers weren't meaningful because they were misleading in light of facts that Harman was aware of at the time the statements were made.

The U.S. Supreme Court declined to hear Harman's appeal in February 2016, letting stand the circuit court's ruling limiting the scope of safe-harbor protections under the Private Securities Litigation Reform Act.

"That was significant to me because it was the right result in this case," Bunch says. "The PSLRA or any other statute should not allow defendants to make statements blindly to investors and escape liability simply because they use adequate cautionary language to insulate them."

RISING

STAR



S. Douglas Bunch
Cohen Milstein

Age: 37

Home base: Washington, D.C.

Position: Partner

Law school: William & Mary Law School

First job after law school:
Associate at Cohen Milstein

A settlement of more than \$28 million was announced in the suit in April.

HIS PROUDEST MOMENT:

That D.C. Circuit ruling in the Harman suit also marks what Bunch calls his proudest moment. It's perhaps no wonder, given how long he had worked on the case and how notable the ruling was in the securities litigation world.

"To see it come full circle and to see us reverse the district court in the D.C. Circuit and then eventually reach a very favorable settlement for the class — in large part because of that — was significant," Bunch says.

Bunch adds he's also comforted that, in an era when it's rare to see rulings in favor of plaintiffs on appeal in dismissed securities suits, the court took "such a strong stand" in their case and "saw the right result."

HIS TOUGHEST MOMENT:

In the years after the mortgage meltdown that precipitated the Great Recession, Bunch was part of a Cohen Milstein team working on a class action that sought to hold ratings agencies like Moody's Investor Service Inc. liable as underwriters for alleged defects in offering documents for mortgage-backed securities. Rather than being merely passive graders of securities, Bunch's team argued, the ratings agencies had taken an active role in packaging these securities for sale to the investing public and should therefore be held as liable under the Securities Act as the underwriting banks for any defects in those documents.

This was a cutting-edge argument that could have reshaped the face of post-crisis MBS litigation, but the Second Circuit on appeal ultimately affirmed a lower court's dismissal of the ratings agencies from the suit.

"I think the Second Circuit saw that as a stretch, but I'm proud that we made that novel argument and employed our creativity to make arguments that would advance the law and expand the scope of investors' rights," Bunch says. "It was frustrating that, at the end of the day, at least under the Securities Act, there was no remedy."

A \$40 million settlement later ended the class action.

ADVICE FOR YOUNG ATTORNEYS:

Bunch keeps it simple: Be creative, take risks and push the law.

"It's up to you as a plaintiff's lawyer to use your creativity, to think of analogous areas of the law to connect to the facts that you're dealing with, to take risks and to not be afraid to encourage courts to expand the law to protect additional individuals' rights," Bunch says.

— As told to Jon Hill

Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2017 Rising Stars winners after reviewing more than 1,200 submissions. This interview has been edited and condensed.

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