

MVP: Cohen Milstein's Theodore J. Leopold

By Justin Wise

Law360 (September 16, 2021, 4:33 PM EDT) -- Theodore Leopold of Cohen Milstein Sellers & Toll PLLC helped secure a \$641 million partial settlement for victims of the Flint, Michigan, drinking water crisis that received preliminary approval earlier this year, earning him a spot as one of Law360's 2021 Environmental MVPs.

HIS BIGGEST ACCOMPLISHMENT OVER THE PAST YEAR:

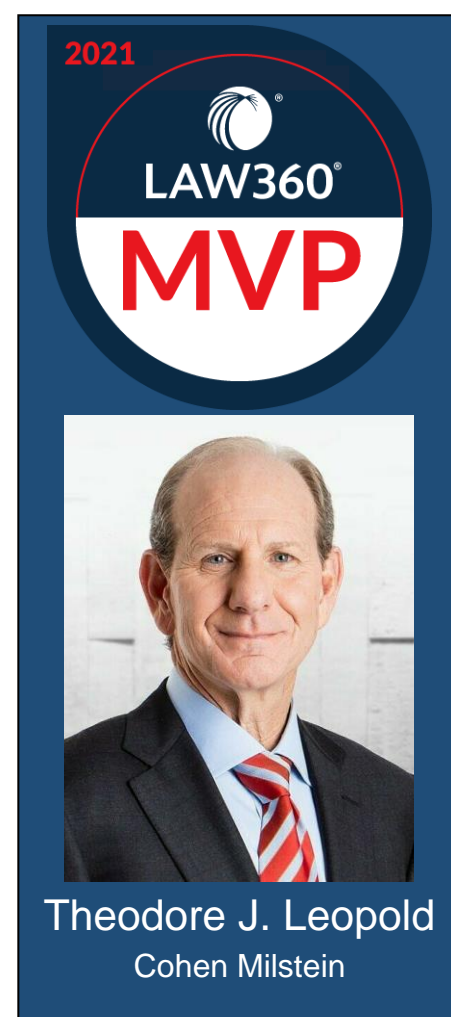
Leopold has served as co-lead class counsel since 2017 for Flint residents and businesses pursuing claims against the state after being exposed to toxic levels of lead and other contaminants in the city's drinking water. A Michigan federal judge in January granted preliminary approval to a \$641 partial settlement the state agreed to pay to resolve claims that their mismanagement led to the crisis.

The settlement, which resolves claims against parties including the Michigan Department of Environmental Quality and former Michigan Gov. Rick Snyder, is still awaiting final approval and a trial is soon to begin against other defendants. But Leopold said the January decision marked a major step forward in the case.

"Basically it's an admission by governmental entities and private governmental members that their conduct and decision-making [contributed] greatly to this crisis," he said. "It helps bring closure to the community. We're very proud we were able to address these issues and bring some semblance of justice and closure to that aspect of that case."

Tens of thousands of people could receive compensation via the settlement, Leopold noted, and a victims compensation fund will provide about 80% of the funds to minors. Payouts are to be based on a damage grid that considers the level of injuries incurred from contaminant and lead exposure.

The settlement has attracted opposition from some class members, though Leopold said "at the end of the day, we did a good job of addressing concerns on behalf of the community." He suspects final approval will come "some time soon."



HIS BIGGEST CHALLENGE IN THE PAST YEAR:

The Flint case presented numerous challenges for Leopold's team, from overcoming government qualified immunity claims to handling various individual and class claims in the action.

Some government officials argued they were protected from the claims by qualified immunity, which shields public officials from money damages unless they violated a constitutional right and that right was clearly established at the time of the challenged conduct. The Sixth Circuit in May 2020 rejected the argument, ruling that residents could pursue allegations against officials for violating their right to bodily integrity. The decision came just before the state agreed to settle.

Battling immunity claims from public officials is to be expected in a case like this, Leopold said.

"Anytime you sue a governmental entity like a state or federal government, you always have these issues," he said. "There are certain types of facts and circumstances that will obviate immunity against them, and here we were able to address those issues that dealt with many of those immunities and prevail."

The immunity claims were unsuccessfully appealed several times at both the federal and state level, Leopold said, which reinforces the plaintiffs' solid ground in the case.

"I don't think anybody can say that the issues on the immunity were not fully, fairly and adequately filtered out and litigated," he said.

Leopold added that bringing the Flint settlement to closure on all aspects while continuing to litigate other parts of the case provided an "interesting and good challenge." The case has demanded a lot of creativity, Leopold said, given the size of the class along with the additional individual claims.

It "creates an interesting dynamic that takes a lot of diligence," he said.

OTHER NOTABLE CASES HE'S WORKED ON:

Leopold is representing plaintiffs in a number of disputes still making their way through the courts. Those include a wrongful death and property damage mass action against the U.S. Department of Interior and National Park for alleged negligence in its response to the 2016 Chimney Tops 2 Fire in Tennessee, which damaged thousands of homes and buildings and resulted in over a dozen deaths.

A judge in September 2020 denied in part the defendant's motion to dismiss and allowed certain claims to move forward. A trial first addressing liability is set for July 2022, Leopold said.

Leopold is also involved in litigation against Dupont Co. over the alleged illegal discharge of the chemical GenX in North Carolina's Cape Fear River and multiple Michigan state agencies over their role in May 2020 dam failures in the towns of Edenville and Sandford. A court in May ruled in favor of the plaintiffs' summary judgment trespass claims.

"They were on notice for a long time that the dam was exposed and going to fail, and then you have this disaster," Leopold said. "Now they don't want to take responsibility."

WHY HE IS AN ENVIRONMENTAL LITIGATOR:

Leopold, who specializes in product liability, said he's increasingly focused on environmental cases over the past seven to eight years. He notes that much of that focus has been in response to opportunities

that he thought meshed well with the firm's prowess. There's also a need for assertive action when it comes to these environmental crises, he said.

"It's certainly an important area, especially in these times," he said. "I think we need to do all we can to protect the environment."

WHAT MOTIVATES HIM:

Leopold cited the range of public and private parties he's faced off against in court as motivation in his practice. In cases like the one against Dupont or the state of Michigan, plaintiffs are seeking to hold the defendants accountable for their alleged negligence or failures, he said.

Litigation is an effective way to ensure these parties know they must "take responsibility and act in the right way," he said.

"Litigation is a beautiful and wonderful opportunity to level the playing field," he said. "Regardless of whether you're the U.S. government or a state agency, when you litigate them, the individual or groups of individuals are on the same footing [and] stature as anybody else."

— *As told to Justin Wise*

Law360's MVPs are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals and complex global matters. A team of Law360 editors selected the 2021 MVP winners after reviewing nearly 900 submissions.

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