

Benefits Group Of The Year: Cohen Milstein

By Kellie Mejdrich

Law360 (February 18, 2022, 2:02 PM EST) -- Cohen Milstein Sellers & Toll PLLC notched several key court wins and settlements over the past year in Employee Retirement Income Security Act class actions, earning the firm a spot among Law360's 2021 Benefits Groups of the Year.

One of Cohen Milstein's most significant wins occurred in September 2021, when the Seventh Circuit affirmed a lower court's ruling that an arbitration provision in a St. Louis manufacturing company's employee stock plan was unenforceable because it would block planwide remedies available under ERISA by limiting relief to individual claimants.

The ruling in favor of Triad Manufacturing Co. workers established a path out of arbitration clauses in employee stock ownership plan, or ESOP, cases, including for a group of workers the firm was representing in another class action in Illinois.

"It's been a really crazy-busy year, but we're really proud of the results that we've delivered for our clients," Michelle Yau, chair of the practice group, said.

In a sign of the ruling's impact, the Seventh Circuit later that month suggested Illinois-based Casino Queen voluntarily dismiss its appeal seeking to force arbitration of claims brought by a proposed class of Cohen Milstein-represented workers alleging ERISA violations through fraudulent mismanagement of their ESOP. The appeal was voluntarily dismissed by October.

"They took the Seventh Circuit's advice, and they didn't even bother moving forward with their appeal," Yau said, noting that the result had immediate impacts for ESOP participants. "Essentially, we didn't have an opportunity to win the second Seventh Circuit appeal. But, you know, Triad won for both cases. That's really the major effect we're hoping these great decisions have on the law broadly."

A federal judge handed the firm another win in the case in January, denying the casino's motion to dismiss.

Beyond arbitration, the practice group also won significant settlements for workers it represented in ERISA class actions, including in July, when U.S. District Judge Haywood S. Gilliam Jr. gave



preliminary approval to a \$9.6 million settlement between asset management giant BlackRock and a proposed class of workers and retirees represented by the firm.

The settlement, given final approval in November, covered approximately 17,000 BlackRock employees who participated in the company's retirement savings plan and alleged retirement plan mismanagement by the company and its plan fiduciaries in violation of ERISA.

Another major settlement agreement was filed in July between T. Rowe Price and a class of workers accusing the investment management company of costing workers \$123 million by loading its retirement plan with in-house offerings. A \$7 million price tag for the settlement, which still needs final approval, was made public in January. The settlement would cover over 18,000 T. Rowe Price retirement plan participants and also give the savers more flexibility with the way their savings are invested.

And there's more ahead in 2022 after Cohen Milstein attorneys defeated a motion to dismiss in a massive ERISA class action against banking giant Wells Fargo in May involving one of the largest 401(k) plans in the country, with hundreds of thousands of participants.

Workers allege Wells Fargo engaged in self-dealing by offering proprietary, unproven funds for employee retirement savings that were expensive or had poorer performance than other comparable options, and U.S. District Judge Donovan Frank denied the company's motion to dismiss in its entirety.

Parties are working toward filing a proposed settlement agreement in the coming months, court records show.

Cohen Milstein attorney Daniel Sutter, who drafted the Wells Fargo complaint originally filed in March 2020, said putting together the massive case involved substantial financial research and analysis to piece together.

"A lot of it is really just chasing down what Wells Fargo was doing in their plan, from pretty hard-to-research places," he said.

The benefits practice group consists of five attorneys based in Washington, whom Yau described as a group of "specialists in ERISA who have dedicated our careers to protecting people's pensions and retirement savings."

For Sutter, those issues were on direct display when he joined Cohen Milstein after finishing his undergraduate degree in 2010 on the heels of the financial crisis, attending law school while working at the firm. He said he developed an interest in ERISA in particular because of the strong protections it affords everyday American workers.

"I very much had an interest in protecting retirees after seeing what happened during the financial crisis," he said.

Yau described a similar passion for ERISA and its ability to help everyday workers plan for retirement.

"Our clients are middle-class Americans working for any number of companies and corporations, trying to put food on the table for their families and have a stable, meaningful retirement," Yau said.

--Editing by Gemma Horowitz.

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