

Employment Group Of The Year: Cohen Milstein

By **Amanda Ottaway**

Law360 (January 19, 2022) -- Cohen Milstein Sellers & Toll PLLC collected worker-side victories against powerhouse employers including the Federal Aviation Administration, Sterling Jewelers, McDonald's and Chipotle, earning it a spot among Law360's 2021 Employment Practice Groups of the Year.

Joseph Sellers, co-chair and founder of the firm's civil rights and employment group, said that while the group is relatively small, it's key to the firm's mission and values.

"I think it's fair to say that the civil rights work we do is part of the firm's DNA," said Sellers, who was himself named a 2021 Law360 Employment MVP. "It's responsive to some of the values that many of the lawyers of the firm have about the type of practice we want to engage in."

The group is made up of about nine attorneys mostly based in Washington, D.C., Sellers said, noting that he has no plans to permanently expand it.

One of the firm's key recent wins came in New Jersey federal court, where a judge in September 2021 approved a \$15 million settlement ending collective wage and hour claims Cohen Milstein and attorneys from Outten & Golden LLP and Green Savits LLC brought against Chipotle Mexican Grill on behalf of management trainees who allege they were improperly denied overtime pay.

"We are pleased that Chipotle eventually agreed to settle this on terms that we think provide for meaningful relief for the clients and, I assume, offer Chipotle some resolution of the matter that otherwise it was going to have to litigate," Sellers said.

The case centered on a controversial 2016 U.S. Department of Labor overtime eligibility expansion rule, which a Texas federal judge barred the agency from implementing in November of that year. In June 2017, named plaintiff Carmen Alvarez sued in New Jersey anyway, claiming Chipotle had misclassified her and other so-called apprentices as exempt from overtime pay requirements.

In March 2018, the judge granted Chipotle's motion to hold Alvarez and her lawyers in contempt for bringing the suit based on the rule, saying the filing directly violated his injunction. Being held in contempt would have had "enormous repercussions," Sellers said, but ultimately the Fifth Circuit reversed the Texas judge's decision.



Another win came in the California state wage and hour case *Sanchez v. McDonald's Restaurants of California*. In October 2020, a judge approved a \$26 million settlement between the fast-food giant and a class of workers from what Sellers said comprised about 105 corporate-run stores in California.

McDonald's employees who worked overnight shifts unlawfully missed out on overtime pay because their shifts spanned two different days, he explained. Cohen Milstein represented the McDonald's workers alongside attorneys from Altshuler Berzon LLP and Matern Law Group PC, according to the settlement agreement.

In 2017, a judge issued a tentative ruling in California state court that found the violations weren't necessarily willful and that McDonald's would likely owe about \$750,000. The workers appealed, and McDonald's settled for \$26 million while the appeal was pending, Sellers explained.

"We were able to show that the amounts that were awarded were so far below what is ordinarily awarded for these kinds of penalties, or for these kinds of violations, that there was a significant likelihood that we would be successful on appeal," he said.

The firm scored another big win in April 2021 when the U.S. Department of Transportation and the FAA agreed to a nearly \$44 million settlement ending 16 years of litigation alleging the FAA discriminated against nearly 700 older flight service specialists.

Sellers said that to the best of the firm's knowledge, the payout represents "the largest age discrimination settlement of federal sector claims against the federal government."

Also in October 2020, Cohen Milstein earned a victory in an ongoing case when the U.S. Supreme Court declined to hear Sterling Jewelers' petition seeking to limit when workers can pursue class arbitration.

"It really was the first time a court — in this case, a court of appeals — set forth the legal foundation for arbitrators to be able to bind absent class members in arbitration," said Sellers.

--Additional reporting by Vin Gurrieri, Kat Greene, Bill Wichert, Jess Krochtengel and Braden Campbell.
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