

Life Sciences Group Of The Year: Cohen Milstein

By Kevin Stawicki

Law360 (December 7, 2020) -- Cohen Milstein Sellers & Toll PLLC's life sciences practice group is a small but mighty team of two attorneys who landed a number of litigation wins over the past year, including a \$62.5 million settlement in a pay-for-delay class action against Allergan over its birth control drug, landing the group among Law360's 2020 Life Sciences Groups of the Year.

The duo said they tackle their hefty workload by working with other practice groups at the firm, namely the antitrust team, of which they are a subset group.

"We are the core attorneys, but we reach out and sometimes we might have a team of six attorneys from other groups," said Donna M. Evans, of counsel at Cohen Milstein. "We tap whoever we need to join us."

Antitrust lawyers make up about a third of the firm, but Cohen Milstein partner Sharon K. Robertson, who leads the life sciences group, said her team's success comes from the firm's understanding of the need for differentiation in the practice of antitrust law.

"It's the firm's commitment to antitrust law and its recognition that there are certain subsets of antitrust law that deserve exclusive attention that has allowed this portion of the practice group to thrive," Robertson said.

The winning strategy has allowed the team to work on cases like a pay-for-delay class action alleging Lupin Pharmaceuticals and a pair of Allergan units worked to sideline generic alternatives of the birth control drug Loestrin. Cohen Milstein was co-lead counsel representing the end-payors and third-party payors, which reached a \$62.5 million deal with the Warner Chilcott defendants the day before trial.

But reaching that deal didn't come without some curveballs, Robertson said. One of the initial challenges was the sheer amount of work it took to dislodge some documents from the defendants based on privilege assertions.

Another came after a federal judge granted the third-party payor plaintiff's motion for class certification in 2019. That motion became a point of contention after the First Circuit reversed certification in a similar pay-for-delay case that involved end-payors and the drug Asacol.

"We had to really ramp up and change the way we had been approaching class certification because of that First Circuit decision," Robertson said. "In a matter of a few months, we had to retain new experts,



file a new briefing and go through an entire evidentiary hearing. Our firm took the lead on addressing the issues the First Circuit had raised."

The case was a prime example of the type of work Cohen Milstein pursues, Evans said.

"With all these cases, our feeling is that we are giving life to a case that gets a meaningful result," Evans said. "We are doing something for the plaintiff that are represented in the class and hopefully also putting down a marker that serves to have an impact on how pharmaceutical companies think about their behavior and the way they go about competition."

The firm is also representing direct purchasers in a lawsuit accusing pharmaceutical company Actavis along with fellow pharma company Shire, of conspiring to delay sales of a generic version of the attention deficit hyperactivity disorder medication Intuniv.

While a federal judge recently approved a \$19.9 million settlement deal between Actavis and the direct purchaser class, the claims against Shire remain unresolved and the case awaits trial.

"Our role in that case has really evolved," Robertson said. "These cases, because they are about lawyers who negotiate an underlying settlement, they really involve a lot of complicated privilege issues."

"We continue to play a critical role on the trial team," she added.

The pair said that while there are no specific plans to hire new team members, they are always keeping their eyes open for great talent.

"We're constantly looking for wonderful attorneys who we think will fit into the practice," Evans said. "There's no set plan either not to expand or expand. There may come a time where there's absolutely a need to make that decision more black and white."

"We think the team is good the way it is right now," Robertson said. "But we're always looking for new talent."

--Additional reporting by Adam Lidgett and Julia Arciga. Editing by Gemma Horowitz.

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