

THE 2016 ELITE TRIAL LAWYERS

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Welcome to The National Law Journal's third annual Elite Trial Lawyers report, in which we highlight 35 law firms that did some of the most creative and significant work on the plaintiffs side over the past three to five years. And in our Top 50 recoveries list, we recognize 50 firms that achieved the highest-dollar recoveries (including a few on both our lists) between July 1, 2015-July 1, 2016.

Honorees were selected after thorough research, analysis and nomination vetting by editors and reporters at NLJ and Law.com, and by our colleagues at ALM's VerdictSearch.

First, we highlight the 35 Elite Trial Lawyers finalists and winners in nine categories: antitrust; class actions; employment; financial institutions; medical devices; pharmaceuticals; products liability; securities; and special litigation.

For a selection of those honorees, we closely reviewed submitted nominations and reported on accuracy and performance. Since teamwork contributes to successful trial work, we recognized the work of firms as a whole.

The plaintiffs firms went up against some of the nation's largest corporations and their Who's Who list of defense firms. They obtained trial wins and settlements for clients in cases that made (and continue to make) headlines — those regarding defective hip implants manufactured by Johnson & Johnson subsidiary DePuy Orthopedics; an infamous "defeat device" to cheat automobile emissions tests in hundreds of thousands of Volkswagen vehicles; continued fallout from the 2008 housing market collapse; a yoga guru's alleged sexual harassment of female employees; and the resolution, after a quarter-century, of litigation by property owners near the former Rocky Flats nuclear weapons plant.

The 35 Elite Trial Lawyer firms are based in cities from New York to Miami to Seattle, and range in size from the hundreds to a dozen lawyers. Along with brief introductions to their most significant cases, we present Q&As (edited for length) with each firm.

Meanwhile, the Top 50 firms' recoveries totaled \$11.2 billion (see page S32.)

Special thanks goes to the following editors and reporters who worked on the report: Lisa Helem, Erin Harrison, Greg Mitchell, Vanessa Blum, David Bario, Amanda Bronstad, John Council, Scott Flaherty, Miriam Rozen, Richard Binder, Roberto Jimenez, Diego Radzinski, Peter Dolack, Angela Turturro and Kristie Rearick.

We hope you enjoy reading about the Elite Trial Lawyers and their work.

-- Beth Frerking, editor in chief

CLASS ACTION

The firms in this category so successfully served their clients that they made it hard to choose among them. One winning firm obtained a \$331 million settlement with an investment bank for purchasers of mortgage-backed securities; the other negotiated this year's stunning and speedily achieved settlement with Volkswagen after allegations surfaced about its "defeat device" used to cheat on emissions tests. Finalists use class action tools to challenge, among other problems, alleged violations of the Individuals with Disabilities Education Act in the District of Columbia's public schools, and exorbitant, unnecessary wind, hazard and flood insurance on mortgaged properties.

Cohen Milstein Sellers & Toll



Steven J. Toll of Cohen Milstein

WINNER

LARGEST OFFICE: Washington

ATTORNEYS: 95

Cohen Milstein obtained a \$335 million final settlement with Residential Capital LLC and an investment bank in a class action brought by New Jersey Carpenters Health Fund on behalf of purchasers of mortgage-backed securities.

In her order approving the settlement, Judge Katherine Failla of the U.S. District Court for the Southern District of New York wrote: "In 2008, no one else seemed to want to take this particular tack with litigation, and in 2011 they seemed to be proven correct; but here we are with a rather substantial settlement. I don't want to demean this by saying that fortune favors the brave, but that is what happened here. Plaintiffs' counsel took on an enormous amount of risk and stuck with it for nearly seven years."

The National Law Journal: Describe the national importance of your case and why your firm prevailed.

Steven J. Toll, Managing Partner: To date, our efforts have resulted in over \$2 billion in mortgage-backed securities settlements from some of the world's leading financial institutions. Judge Failla lauded the sheer scope of the case and tremendous work required to obtain the result, including arguing class certification three times, briefing four Rule 23(f) petitions to the Second Circuit, the completion of fact and expert discovery, and full briefing of summary judgment and *Daubert* motions.

NLJ: What's one interesting fact about your firm, or its lawyers, that few people know?

ST: Cohen Milstein, a pioneer in plaintiff class action lawsuits for almost 50 years, started out as the Washington, D.C., office of Kohn, Swift & Graf, the Philadelphia-based firm founded by Harold E. Kohn, the pioneering legend of the plaintiffs' bar. Now, we're a firm of over 90 lawyers in seven offices across the country, the most recent being our new office in Raleigh, North Carolina.

NLJ: What is your biggest worry about practicing law?

ST: So much of our practice is based on the interpretation of federal law and statutes. One of our ongoing concerns is whether those provisions are being interpreted in a fashion that might be overly influenced by some political or philosophical agenda.

NLJ: What do you think will be the most important development in the law/legal business that will impact your firm in the next 10 years?

ST: The most important development in the law may well be the appointment of a new Supreme Court justice or justices. That, plus possible changes to the rules of civil procedure that could significantly affect discovery rules and the litigation process.

Hagens Berman Sobol Shapiro



Steve Berman of Hagens Berman.

FINALIST

LARGEST OFFICE: Seattle

ATTORNEYS: 78

The firm received approval of a \$75 million settlement in July in a class action concussions case against the NCAA. It includes \$70 million to establish a 50-year medical monitoring program for college athletes, and \$5 million for a research, prevention and treatment fund. The firm used similar challenges against FIFA-affiliated U.S. Youth Soccer and American Youth Soccer, resulting in a settlement that eliminated "heading" the ball for soccer's youngest players..

The National Law Journal: Describe the national importance of your case.

Steve Berman, managing partner: These class actions have the power to change lives and do so every time an affected kid or college athlete steps onto the field. We fought

hard to hold these institutions accountable for the safety of athletes. It was time for the NCAA and these youth soccer organizations to step up and take responsibility.

NLJ: What traits do you respect most in opposing firms and lawyers?

SB: A challenge. Our side is routinely up against dozens of attorneys who try every trick in the book to throw us off.

NLJ: What do you think will be the most important development in the law/legal business that will impact your firm in the next 10 years?

SB: The law, and particularly class action law and consumer-rights litigation, is under constant threat by new regulations and restrictions backed by big corporations.

Lieff Cabraser Heimann & Bernstein



Steven Fineman of Lieff Cabraser Heimann & Bernstein.

WINNER

LARGEST OFFICE: San Francisco
ATTORNEYS: 70

Late last year, 500 class actions against Volkswagen A.G. were consolidated into multidistrict litigation and transferred to U.S. District Court for the Northern District of California. The cases filed against the giant automaker involved a "defeat device" that had been installed in nearly half a million cars sold in the United States to cheat emissions tests. Lief Cabraser partner Elizabeth Cabraser was appointed lead counsel and chair of the MDL steering committee.

On June 28, 2016, following five months of intensive negotiations, a set of interrelated settlements were filed to provide owners and lessees of Volkswagen and Audi 2.0-liter diesel vehicles with compensation. Judge Charles R. Breyer granted preliminary approval to the \$14.7 billion resolution within a month, and gave final approval in late October.

The National Law Journal: Describe the national importance of your case and why your firm prevailed.

Steven E. Fineman, managing partner: The VW litigation is the most significant case in the U.S. in 2015-2016, and Elizabeth Cabraser is sole lead counsel. The settlement of the \$14.7 billion two-liter vehicle cases was achieved through the efforts and talents of [the firm], the strongest plaintiff steering committee ever assembled, the Department of Justice and the Federal Trade Commission. LCBH's leadership was key to the historic resolution. And continues to be as the three-liter case is litigated.

NLJ: What's a word or phrase that best describes the firm?

SF: Champions for justice.

NLJ: What's one interesting fact about your firm ... that few people know?

SF: Fun fact: We have a performing pop/rock band called the R23s.

NLJ: What traits do you respect most in opposing firms and lawyers?

SF: Skill, professionalism and communicativeness.

NLJ: What is your biggest worry about practicing law?

SF: The impact of President Trump and a GOP-controlled Congress.

NLJ: What's the most significant change in trial practice you've seen in the last five years?

SF: Rising and unnecessary expenses caused by changes in procedural and substantive law.

NLJ: What do you think will be the most important development in the law/legal business that will impact your firm in the next 10 years?

SF: The impact of President Trump and a GOP-controlled Congress.

Podhurst Orseck



Aaron S. Podhurst of Podhurst Orseck.

FINALIST

LARGEST OFFICE: Miami

ATTORNEYS: 14

Podhurst Orseck lawyers were class counsel in nationwide class actions against some of the country's biggest banks and their related insurance companies. Settlements totalling \$300 million resolved allegations that the financial institutions forced homeowners into overpriced property insurance and entered into kickback arrangements that inflated the prices of the insurance policies.

The National Law Journal: Describe the national importance of your case and why your firm prevailed.

Aaron Podhurst, partner: This case carried national importance because millions of home owners were defrauded into buying more expensive home mortgages than necessary. ... We ultimately prevailed because the facts of the case were on our side.

NLJ: What traits do you respect most in opposing firms and lawyers?

AP: The opposing firms and lawyers I respect the most are those with a high degree of professionalism. ... When we operate in a professional and ethical manner it provides confidence that the system works.

NLJ: What is your biggest worry about practicing law?

AP: I worry sometimes citizens don't recognize the importance of an independent judiciary. Maintaining judicial independence allows judges to make the right decisions, therefore we cannot allow it to be attacked politically.

Terris, Pravlik & Millian



Bruce J. Terris of Terris, Pravlik & Millian

FINALIST

LARGEST OFFICE: Washington

ATTORNEYS: 12

The firm pursued for more than a decade a case involving the District of Columbia public school district's violations of the Individuals with Disabilities Education Act, specifically about a provision regarding services for preschoolers. A judge issued a 130-page opinion in favor of the class and issued a sweeping injunction, requiring that at least 95 percent of children between the ages of three and five who are referred for special-education services receive a timely eligibility determination.

The National Law Journal: Describe the national importance of your case and why your firm prevailed.

Bruce Terris, founding partner: We prevailed because we dedicated tremendous resources, including a detailed investigation of the statistics reported by the defendants. ... We succeeded because we have experience persevering in complex cases requiring a willingness to risk large sums of money and major work over many years.

NLJ: What traits do you respect most in opposing firms and lawyers?

BT: Cooperation and competence.

NLJ: What do you think will be the most important development in the law/legal business that will impact your firm in the next 10 years?

BT: Our firm is significantly affected by the attitude of federal judges towards plaintiffs' lawsuits ... There is considerable hostility to such litigation from many judges. I hope this will change.

Tycko & Zavareei



Hassan Zavareei of Tycko & Zavareei.

FINALIST

LARGEST OFFICE: Washington

ATTORNEYS: 14

The firm obtained a \$27.5 million settlement for a class of some 3 million Bank of America account holders based on allegations that the bank was overcharging for fees on checking accounts. The case was litigated in the U.S. District Court for the Eastern District of Pennsylvania. Judge Edward G. Smith called the recovery "outstanding, given the complexity of the litigation and the significant barriers that would loom in the absence of settlement."

The National Law Journal: Describe the national importance of your case.

Hassan Zavareei, founding partner: It shed light on a practice that, if left unchecked, could allow banks to cause harm to some of the nation's most economically vulnerable consumers because, necessarily, the individuals who were impacted by the practice are those who are prone to having a low checking account balance.

NLJ: What's a word or phrase that best describes the firm?

HZ: Intelligent, creative and aggressive public-interest litigators.

NLJ: What's the most significant change in trial practice you've seen in the last five years?

HZ: Defendants increasingly employ aggressive, early-stage litigation tactics such as motions to strike class allegations ... that — if allowed to be used improperly — could interfere with the ability of litigants and class members to obtain full discovery into wrongful acts.