

Compliance Group Of The Year: Covington & Burling

By **Al Barbarino**

Law360 (February 18, 2022, 2:02 PM EST) -- Covington & Burling LLP represented Salesforce in its \$27.7 billion July 2021 acquisition of Slack and played a key role in the formation of the fourth-largest car manufacturer in the world, landing the firm a spot as one of Law360's 2021 Compliance Groups of the Year.

As lead antitrust counsel on the Salesforce.com Inc. deal, first announced in December 2020, Covington handled the antitrust compliance and regulatory process in response to the U.S. Department of Justice's "second request" merger investigation. The firm helped the company produce millions of documents and submitted multiple white papers that highlighted what the firm's attorneys say was a robust documentary record behind the deal.

"To say that second requests are comprehensive would be an understatement," said Jim O'Connell, a Covington partner and lead attorney on the assignment. "The clock is ticking with every second request ... so the premium is on getting things done quickly and efficiently."

"Companies don't typically keep [data and documents] in the format that the DOJ is looking for," O'Connell added. "The challenge is to work with the company to identify who is likely to have the documents and data ... and on the other side working with the DOJ to make sure they feel they are getting what they need in a timely manner."

The deal merged Slack's popular messaging services with Salesforce's customer relationship management platform, positioning the joined companies to help consumers work more efficiently in an increasingly remote workplace, a Salesforce news release noted when the deal closed. "Headquarters are no longer on Madison Avenue or Main Street — they are in the cloud," the company said.

Covington also played a pivotal role in the successful merger of Peugeot with Fiat Chrysler, which led to the formation of Stellantis, the fourth-largest carmaker in the world, bringing together renowned brands such as Peugeot, Citroen, DS, Opel, Vauxhall, Fiat, Alfa Romeo, Maserati, Chrysler, Dodge and Jeep.

Covington secured Committee on Foreign Investment in the United States approval for the deal, which was completed in January 2021 and was valued by market observers at approximately \$52 billion. The deal was first announced in late 2019.



"We were very excited to have the opportunity to work on a deal of this scope and be involved in a very important market transaction involving iconic car brands," said Covington partner Heather L. Finstuen. "The combination of the two companies provides more financial flexibility and a greater geographic footprint, which allows them to increase opportunities in the electric vehicle market."

Finstuen, a Law360 2021 International Trade MVP, noted that the firm started working on the assignment in early 2020, just before the COVID-19 pandemic arrived in the U.S. in full force.

"That was one thing that no one could have anticipated," she said. "This deeply impacted global auto purchasing and caused real market uncertainties for both companies ... but thankfully we were able to come out on the other side."

As countries ramp up regulations across disciplines, the challenges of doing business globally have grown increasingly complex, Covington attorneys noted. That's why the firm employs more than 120 ex-government officials who have held senior roles across U.S. and European government agencies, as well as many who have managed corporate compliance functions in-house.

The firm's regulatory expertise helped secure a November 2020 complete declination on behalf of Johnson & Johnson in a fraud investigation by the U.S. Securities and Exchange Commission, a probe related to news reports claiming that asbestos had been found in the company's products.

The SEC focused on two broad categories: the accuracy of the company's disclosures related to the asbestos claims and whether insiders had traded on material nonpublic information in advance of news reports around the allegations, explained Covington partner Gerald Hodgkins.

The firm provided extensive documents to the SEC and also gave an oral presentation with supporting evidence. The complete declination was provided without any J&J officer or employee having to testify.

"The company felt very strongly about its position on the claims made, so it was very rewarding to be able to reach the right result that indicated that position of the company," Hodgkins said.

In another recent win on behalf of a globally recognized brand, **in late 2020**, the firm helped TikTok end the Trump administration's attempts to ban the popular social media app in the U.S.

The firm said it persuaded U.S. District Judge Carl Nichols that the ban violated both the Administrative Procedure Act and the International Emergency Economic Powers Act, in part because it would unlawfully prevent U.S. users from communicating and sharing data.

Nichols ultimately prohibited the U.S. Department of Commerce's app store ban of the platform, just hours before it was to take effect, finding that TikTok would have suffered "irreparable harm" if the ban had gone through.

--Editing by Andrew Cohen.