

MVP: Covington & Burling's Steve Fagell

By Phillip Bantz

Law360 (October 30, 2023, 1:07 PM EDT) -- This is the second time in three years that Steve Fagell of Covington & Burling LLP has earned a spot among Law360's White Collar MVPs — and for good reason: He continues to negotiate impressive, relatively painless resolutions for prominent corporate clients grappling with high-stakes regulatory investigations and enforcement matters.

His biggest accomplishment over the past year:

Fagell has logged some big wins within the last year, including a nonprosecution agreement with the U.S. Department of Justice for Uber Technologies Inc. and a settlement with the U.S. Securities and Exchange Commission for Dutch medical device maker Koninklijke Philips NV.

But his work for Stanley Black & Decker Inc. on an SEC case stands out as he helped the toolmaker dodge a fine for allegedly failing to disclose at least \$1.3 million in perks and benefits for executives.

The Connecticut-based company agreed to an order in June that it stop violating provisions of the Exchange Act, but did not admit or deny the SEC's findings.

In announcing the settlement, the SEC noted that it did not seek fines against Stanley Black & Decker because the company self-reported the alleged perk disclosure failures, cooperated with the investigation and took remedial measures to ensure compliance going forward. In a separate order, a former executive for the company, Jeffery Ansell, paid a \$75,000 civil penalty to resolve the SEC's claims against him.

Fagell, who guided Stanley Black & Decker's response to the SEC probe, said the settlement marked the fourth time in more than 20 years that the SEC declined to bring charges against a company in similar circumstances and the first time it's happened since Gurbir Grewal took over as director of the SEC's Division of Enforcement in 2021.

"The key was communicating clearly and effectively with the agency about Stanley's exemplary response," Fagell told Law360. "It was an exercise in jumping on the allegations quickly, getting them in



front of the SEC and responding to them in a way that the agency would have expected a responsible company to do."

Grewal said in a statement when the settlement was announced that the resolution highlighted the importance of "self-reporting and cooperation when entities and individuals discover violations of the federal securities laws."

The SEC, Fagell added, "made it a priority to explain why Stanley was getting such an unusual result in this case — and it was because of the company's self-reporting and cooperation and the exemplary way in which the company responded to the issues."

His proudest moment in the past year:

While Fagell ranked the Stanley Black & Decker case as his top accomplishment, he was equally proud of having helped Uber secure a nonprosecution agreement in July 2022 that ended a DOJ criminal probe into allegations that the ride-hailing company hid a 2016 data breach and obstructed a federal investigation into the incident.

Reflecting on the last year, Fagell said he was "proud to see the Justice Department recognize [Uber's] cooperation and remediation by agreeing to a rare non-prosecution agreement with no monetary penalty, and later praising Uber for its handling of the matter in public remarks by Principal Associate Deputy Attorney General Marshall Miller."

In the wake of the resolution, Miller told an audience at the American Bankers Association Financial Crimes Enforcement Conference that the "true top-line message from the Uber case is related to the corporate resolution: When Uber's new management came in and learned what had happened, they didn't hide the ball; they did what good companies should do — they stepped up and owned up."

While Uber avoided charges, the company's former security chief, Joseph Sullivan, was convicted in October 2022 of criminal obstruction and concealment of a felony in the unprecedented white collar criminal case.

Sullivan has the dubious distinction of being the first company executive convicted of trying to cover up a hacking incident. He was sentenced in May to probation without prison time.

The breach in question exposed the data of 57 million Uber passengers and drivers.

Why he's a white collar attorney:

Before Fagell went to law school in the late 1990s — he initially attended University of Chicago Law School before transferring to Harvard Law School — he worked for several years as a consultant with The Monitor Group, a Cambridge, Massachusetts-based consulting company that Deloitte acquired in 2013.

That experience in the business world gave Fagell an "understanding of financial markets, companies and the competitive pressures that often drive behavior in complex organizations," he said.

Later, when he switched gears and pursued a career in law, Fagell gravitated toward a practice that would allow him to apply his "business background to client problems that presented truly existential risk," which ultimately led him to the white collar realm.

A series of formative experiences — including a trial advocacy workshop at Harvard Law, a district court

clerkship, an early experience defending entrepreneur Walter Anderson in what was then the largest personal income tax fraud case in U.S. history and a stint with the DOJ's criminal division — paved his path to the white collar realm.

He worked at the Justice Department alongside then-Assistant Attorney General Lanny Breuer, who now serves as Covington's vice chair. Fagell, who left Covington to work at the DOJ, returned to the firm in 2010 and began handling white collar matters full-time.

His biggest challenge this year:

Fagell, who has been guiding more than 10 publicly traded companies through enforcement cases involving the Justice Department or SEC, didn't hesitate when asked about his top challenge over the past year.

"It's the art of juggling," he said. "That takes quite a bit of focus, attention and stamina."

Staying on top of all those cases also "requires exceptional colleagues and client teams, which I'm fortunate to have," he added. "Covington is built on a model of collegiality and teamwork, which makes all the difference when your practice involves high-stakes enforcement matters for the world's leading companies."

-- As told to Phillip Bantz

Law360's MVPs of the Year are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals, and complex global matters. A team of Law360 editors selected the 2023 MVP winners after reviewing more than 900 submissions.