

White Collar Group Of The Year: Covington & Burling

By **Reenat Sinay**

Law360 (December 11, 2020, 6:33 PM EST) -- Covington & Burling LLP's white collar practice secured nearly 20 declinations from the U.S. Department of Justice and the U.S. Securities and Exchange Commission and defeated a multibillion-dollar FCA case for a UnitedHealth unit, landing it among Law360's 2020 White Collar Groups of the Year.

Over the past year, the white collar team persuaded the government and regulators not to pursue charges or civil claims against its clients almost 20 times in a wide range of white collar matters. One of the highest-profile was the Justice Department's decision last December to end its Foreign and Corrupt Practices Act investigation into potential bribery by Uber Technologies Inc. in several Asian countries.

According to the firm's white collar practice co-chairs, Steven Fagell and Nancy Kestenbaum, the team's success in netting so many declinations is due in large part to its stable of 130 or so former prosecutors and government officials who are well respected by regulators and the DOJ.

"Drawing on this depth of experience gives us tremendous credibility with regulators, which means we can help our clients in white collar matters by being honest brokers of the facts, but tenacious advocates for our clients' position," says Kestenbaum.

The team's wealth of expertise is complemented by its "exceptionally collaborative" culture, in which the 140-attorney white collar group "seamlessly" coordinates with the firm's other highly regarded specialties, such as its regulatory and congressional investigations practices, she adds.

Fagell says that the practice's global reach, including in countries where many U.S. firms have yet to tread, offers clients another unique strength.

"We have a dedicated white collar and anti-corruption lawyer resident in Johannesburg," he says. "We also have a market-leading and sizable white collar team resident in our offices in China and in Seoul, South Korea."

Fagell, who led the Uber FCPA matter and was recently named a Law360 MVP, emphasized Covington's



skill in bringing the government onside in a variety of matters.

"What clients most want is to not end up in the government's crosshairs in any fashion," says Fagell. "I think Covington has had a unique track record in that regard in achieving declinations and outcomes short of settlements."

But the team's summary judgment win in a False Claims Act case against UnitedHealth Inc. subsidiary Executive Health Resources in November 2019 shows that Covington's white collar practice is just as strong on the litigation side, according to the lead defense attorney on the case, Christopher Denig.

The case revolved around accusations by a former EHR employee, Dr. Jesse Polansky, that the company, which helps determine hospital patients' admissions status, defrauded Medicare and Medicaid by purposely misclassifying patients. Polansky sought billions of dollars in damages.

Covington was brought on by EHR midway through the seven-year-long litigation and mounted a multi-pronged offensive and defensive discovery strategy to establish a strong factual record, says Denig.

This resulted in court-ordered sanctions against Polansky over his failure to produce thousands of documents, several favorable discovery rulings, and eventually summary judgment in EHR's favor, he said.

"This is a significant case for our white collar group and really highlights some of our strengths," says Denig. "Covington has a history of great success in convincing the DOJ to decline to intervene in FCA investigations. But this EHR case shows we're also still FCA litigators."

As it moves into 2021, the practice expects to see continued activity in the FCPA arena, export control investigations, securities and health care investigations, as well as potentially unique issues coming out of the COVID-19 pandemic, according to Fagell.

Congressional and environmental-related investigations could increase as well after President-elect Joe Biden takes office, Fagell adds.

Kestenbaum says the group also handles highly sensitive investigations, such as allegations of sexual misconduct and racial inequities in the workplace, and that an uptick in those types of inquiries over the past year indicates that they will be a focus next year as well.

The team's collegial spirit and sheer strength in knowledge and numbers make it well-positioned to tackle whatever lies ahead for its clients.

"We routinely build cross-office and cross-functional teams to achieve extraordinary results," says Fagell. "It really is a special sense of camaraderie within the firm and white collar practice, and a unity of purpose as we join together all the time on behalf of clients on extremely sensitive matters."

--Editing by Peter Rozovsky.