

White Collar MVP: Covington's Nancy Kestenbaum

By **Pete Brush**

Law360, New York (November 18, 2015, 5:22 PM ET) -- When the U.S. Department of Justice opened a foreign bribery probe into how Hyperdynamics Corp. won leave to search for oil off Africa's west coast, the Houston-based company turned to Covington & Burling LLP's Nancy Kestenbaum, whose work in persuading prosecutors to call off the dogs earned her a spot on Law360's 2015 list of white collar MVPs.

The single biggest key to success for Hyperdynamics in resolving the Foreign Corrupt Practices Act investigation, launched in 2014, was its decision to cooperate with investigators. A letter in May from the the DOJ made that clear.

"As you know, the department values cooperation with investigations, such as shown here," the DOJ's Patrick Stokes wrote earlier this year.

The 25-year veteran defense attorney and former prosecutor, who has worked at Covington since January 2004, said that Hyperdynamics made the right call when it opted for that course.

"A client's decision about whether to cooperate is a difficult one; for some clients it will make sense to cooperate, for others it will not. Once a corporate client has decided to cooperate, however, DOJ has repeatedly made clear that cooperation needs to be real," Kestenbaum said.

For Hyperdynamics, cooperation meant explaining to the government that it had transformed its leadership and board in 2009 after the events that triggered the probe — and a related U.S. Securities and Exchange Commission investigation — took place.

By September, Hyperdynamics also closed the book on the SEC's investigation, which related to payments made by its Guinean subsidiary to two supposedly unrelated companies between 2007 and 2008. The company agreed to pay a \$75,000 fine without admitting guilt, putting it on a path toward ending the major business disruption.

"Even if a client is cooperating, though, a lawyer can still be an advocate for the client, can put the evidence in context, can present mitigating factors and make legal arguments," Kestenbaum added.

Kestenbaum, who has represented clients ranging from multinational business giants to individuals, says there is no "one size fits all" formula when it comes to fending off the feds.

MVP



Nancy Kestenbaum
Covington & Burling

"The key is to understand the client's narrative, its goals and its challenges and to explain that to the government," she said.

A thoughtful approach may be required in 2016 as well as Kestenbaum works with David Samson, co-founder of the now-renamed New Jersey firm Wolff & Samson PC and a figure in the "Bridgegate" scandal that has roiled New Jersey and national politics.

Samson resigned from his chairmanship of the Port Authority of New York and New Jersey following the scandal that erupted after two eastbound lanes of the George Washington Bridge were closed in September, causing paralyzing traffic in Fort Lee, New Jersey.

Kestenbaum, who co-chairs the 850-lawyer firm's white collar defense and investigations practice, says that Covington houses some of the best names in the business, including former Attorney General Eric Holder and three former heads of the DOJ's Criminal Division: Lanny Breuer, Mythili Raman and Michael Chertoff.

"There is always someone with whom you can consult to get great advice," she said. "Covington has a distinctively collaborative culture, which makes it easy to draw on all of the firm's resources to help clients navigate difficult investigations issues."

--Editing by Stephen Berg.

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