

White Collar Group Of The Year: Covington & Burling

By **Sindhu Sundar**

Law360 (February 2, 2018, 5:06 PM EST) -- Covington & Burling LLP has been the counsel of choice for companies and institutions in major public crises, including Takata Corp. in its highly sensitive \$1 billion deal with the U.S. Department of Justice last year over faulty air bag inflators linked to at least 13 deaths in the U.S., landing on Law360's list of White Collar Practice Groups of the Year.

The Takata case was especially complicated, as it involved defective air bag inflators installed in multiple vehicle brands and models, a recall of historic proportions, and run-ins with other regulators, Covington's attorneys said.

An independent monitor's report issued in November for the National Highway Traffic Safety Administration described the recall as "the largest and most complex" in American history, noting it involved 46 million air bag inflators in 34 million vehicles made by 19 different automakers. The malfunctioning air bag inflators resulted in explosions of metal fragments of the steel inflator casing that caused serious injuries to the vehicle's occupants. The report indicates there were "hundreds" of victims of such injuries.

Another challenge for Covington was that in November 2015, Takata entered a \$200 million consent decree with the NHTSA in which the Japanese auto parts maker not only agreed to the largest fine that the traffic agency had ever imposed but also admitted that it had failed to report what it knew about the defect to the agency. The independent monitor was appointed in conjunction with that consent agreement.

Takata then brought in Covington, with its white collar staff that includes prominent former Justice Department attorneys and officials, to help negotiate its resolution with DOJ in its separate investigation, said Steve Fagell, a co-chair of Covington's white collar defense and investigations practice.

As part of the settlement with the DOJ, the auto-parts maker pled guilty to just one count of wire fraud and paid \$850 million in restitution to the automakers whose vehicles were recalled because of the air bags, \$125 million in restitution for victims and a \$25 million criminal fine, which Covington said was well below guidelines.



"It was a very sensitive and very complicated matter, and there were other regulators that had taken an interest in the case," Fagell said. "The challenge that comes from a matter like that is trying to advocate on behalf of a client that is involved in a very difficult set of facts, doing so credibly, and reaching a resolution that will satisfy the DOJ and allow the company to continue in business."

Over the past year, Covington has also stood out for its work in high-profile corporate investigations in other cases with public health and safety concerns that have drawn headlines, including allegations of sexual abuse at the private Connecticut boarding school Choate Rosemary Hall.

That effort produced a nearly 50-page report after a monthslong investigation into allegations of sexual misconduct by Choate's staff and faculty, some of which involved alleged incidents that took place far back as the 1960s. The report, which did not name anyone who said they had experienced abuse while they were students, found that the school reacted somewhat inconsistently to reports of misconduct, responding sooner in some cases than others. Even when the school's administration had verified allegations of misconduct, it handled such issues "internally and quietly," the report said.

Covington was also brought in last year to investigate allegations of sexual harassment and workplace hostility at the ride-hailing company Uber, which hired former Attorney General Eric Holder, now a Covington partner, and colleague Tammy Albarrán. That effort resulted in a 100-page report submitted to Uber, as well as a 13-page report of recommendations that was made public in June.

Nancy Kestenbaum, the Covington white collar co-chair who led the Choate investigation, spoke broadly about the firm's work in such complicated cases.

"In all the work we do, whether it is in a case involving a government investigation or an internal investigation, we work very hard, both to make sure that we investigate and understand the facts as best as possible, but also do so with as much sensitivity as possible," Kestenbaum said. "That sensitivity is particularly important when handling a matter involving misconduct and abuse."

The firm has more than 170 lawyers in its white collar and investigations practice. More than 30 members of its investigations team are former government officials, including senior SEC officials, three former DOJ criminal division heads, and former federal judges, according to the firm. The firm has added six senior attorneys, not all of whom are partners, to its white collar team over the past year.

"Our offices in D.C. and New York are at the top of the market, and we've had success in California, London and China, which are also important markets for our clients," Fagell said. "Even moving beyond physical location of our offices, we've had a tremendous amount of work around the world and we're able to handle any kind of white collar matter that comes up through our network."

--Editing by Jeremy Barker.

