

MVP: Covington & Burling's Steve Fagell

By Reenat Sinay

Law360 (October 26, 2020, 4:08 PM EDT) -- Steve Fagell of Covington & Burling LLP's white collar practice guided several global companies through government investigations, securing declinations to prosecute for Uber Technologies Inc. and pharmaceutical companies Roche and Alexion, earning him a spot as one of Law360's 2020 White Collar MVPs.

HIS BIGGEST CHALLENGE THIS YEAR:

This past year has been a particularly successful one for Covington's white collar group, which scored a "litany" of declinations from the U.S. Department of Justice, the U.S. Securities and Exchange Commission and other regulators on behalf of clients facing criminal investigations, says Fagell.

Uber escaped prosecution following a DOJ probe into whether its Asian operations ran afoul of anti-bribery laws, and F. Hoffmann-La Roche dodged charges in a DOJ inquiry under the Foreign Corrupt Practices Act into whether it and other pharmaceutical companies made improper payments to win pharmaceutical contracts from the Iraqi Ministry of Health.

But perhaps the most challenging victory over the last year has been Fagell's defense of Alexion Pharmaceuticals, which reached a deal with the DOJ and the SEC following a five-year investigation, he says.

"The investigation was unusual in the life sciences industry given that Alexion operates in the rare and ultra-rare disease space, which raised interesting and novel questions about how companies in this space can lawfully and effectively ensure that their life-saving therapies actually reach patients in countries where access to healthcare can be quite challenging," Fagell says.

"At the end of a long road, through millions of documents, countless witness interviews and exhaustive presentations, we convinced DOJ not to pursue any charges and secured a \$21.5 million no-admit, no-denial administrative settlement from the SEC under the accounting provisions of the FCPA," he added.



The SEC settlement notably included no accusations under the more serious anti-bribery provisions of the FCPA, and the regulator chose not to impose compliance obligations, monitoring or extra reporting, says Fagell.

WHY HE'S A WHITE COLLAR ATTORNEY:

Fagell's interest in white collar work began at Harvard Law School during its trial advocacy workshop, he says. That interest continued to grow during a district court clerkship and in his first few years as an associate at Covington.

But Fagell's early experience defending entrepreneur Walter Anderson in what was then the largest-ever personal income tax fraud case in U.S. history got him "hooked on white collar work", he says.

Fagell then moved on to become deputy chief of staff and counselor at the DOJ's Criminal Division under his mentor and current Covington partner Lanny Breuer, which he says offered him new perspective and cemented his choice to focus on white collar full time upon returning to Covington in 2010.

"White collar cases present fascinating factual and legal issues, but they also carry a special weight of responsibility," says Fagell. The government wields enormous power, and for clients facing criminal charges, the stakes, the uncertainty and often the fear could not be higher. That creates a special bond of trust between white collar lawyers and their clients."

"Nothing is more gratifying than safely and successfully guiding clients through a government investigation or prosecution and ultimately ensuring that justice is done," Fagell adds.

HIS ADVICE FOR JUNIOR ATTORNEYS:

In advising young lawyers, Fagell offers a piece of wisdom passed down from his own mentor.

"First, I would advise junior attorneys to do something that one of my greatest mentors, Lanny Breuer, has always encouraged in younger lawyers," he says. "That is, do what you love. Often in the law, if you're happy and engaged in your work, good things will follow."

While finding what you love to do, don't forget to focus on developing your own voice, says Fagell.

"It often is not long into a career before one is asked to give advice directly to a client or argue a motion in court or make part of a presentation to a regulator," he says. "It is in those moments when young lawyers really get to determine what kind of advocate they want to be and how they will marry their lawyering skills with their personalities."

The most effective lawyers out there may or may not always be the greatest technical lawyers, but they all have a special something that combines their legal skill with their character, style, experience and background, Fagell says.

HIS OTHER NOTABLE CASES:

One of Fagell's "standout" cases earlier in his career was his representation of Anderson, a telecommunications entrepreneur accused of evading taxes on \$450 million in undeclared income. The government investigated Anderson for several years in the early 2000s, and he was ultimately arrested in 2005.

Although Anderson eventually copped a plea and served prison time, Fagell says that the legal team had

the opportunity to create new law in the D.C. Circuit through a number of pre-trial motions in the case that are rarely granted, including a motion for a bill of particulars and a Rule 16 discovery motion.

"In essence, the Court required the government to identify — many months before trial — which specific documents in its possession the government intended to use in its case-in-chief at trial," Fagell said. "The order had the effect of requiring the government to come up with a de facto exhibit list well before trial, which was very helpful in a document-intensive case."

— *As told to Reenat Sinay*

Law360's MVPs 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 2020 MVP winners after reviewing more than 900 submissions.