

White Collar Group Of The Year: Latham & Watkins

By Jody Godoy

Law360 (January 31, 2020, 1:07 PM EST) -- Talking the U.S. Department of Justice out of charging Cognizant over an alleged bribery scheme and helping Nissan deal with the fallout from undisclosed pay to former CEO Carlos Ghosn were just a few of the significant matters that landed Latham & Watkins among Law360's 2019 White Collar Groups of the Year.

Kathryn Ruemmler, global chair of the firm's white collar defense and investigations practice, said the group's "demographic and geographic diversity" sets Latham apart from other large firms in the area.

The firm lists 95 partners as part of its white collar group, including 27 in Washington, D.C., and around a dozen each in New York and the Bay Area. The entire group employs more than 250 attorneys, including multiple partners in cities across the U.S., Asia, Europe and the U.K.

The group is also unique in having three former top-level DOJ lawyers who are women: Ruemmler herself, Alice Fisher and Leslie Caldwell, both of whom led the DOJ's criminal division, she said.

"We have got a lot of bet-the-company-matters being handled by a dozen or more partners in the practice group globally," Ruemmler said. "I think that is very unusual."

That global capacity came in handy this year for Latham's corporate client Nissan. Attorneys in Japan, France, California, New York and Washington, D.C., conducted an internal probe that recently found Ghosn, the automaker's former CEO, had been underreporting his compensation and misappropriating company assets.

The firm is also handling Nissan's response to related government investigations and helped it settle with the Securities and Exchange Commission last year for \$15 million.

While the Nissan matters are ongoing, several of Latham's white collar wins in 2019 involved the firm getting the government to decline to bring a case and end its investigation.

"From the client's perspective, a declination is the gold standard," Ruemmler said.



In one public instance last year, the firm helped close civil and criminal investigations into electronic systems maker OSI Systems Inc.

The DOJ and SEC started probing OSI after short-seller Muddy Waters Research accused the company of bribing its way into a contract with the Albanian government for X-ray screening at customs checkpoints.

Latham partner William R. Baker III said that OSI had confidence in the integrity of its Albanian business partner and quickly decided to do an internal investigation and contact U.S. authorities.

“They were doing things right in that market. And that was part of the story that we were able to tell,” Baker said of the company.

After two presentations, Latham convinced the SEC and DOJ that there was nothing there. OSI announced in June that the authorities had closed their investigations.

The DOJ can also decline to bring charges in exchange for companies’ good conduct under its Foreign Corrupt Practices Act corporate enforcement policy.

A declination under the policy is similar to a non-prosecution agreement, with one crucial difference. With an NPA, a company is often required to flag future potential wrongdoing to the DOJ.

“It’s having an ongoing relationship with DOJ that most companies would prefer to avoid, if they can,” Ruemmler said. “With a declination, that’s it, it’s over.”

Latham helped secure that kind of declination for IT company Cognizant last February after the company self-reported potential bribery related to a construction contract in India.

Ruemmler, who handled the matter along with Latham partner Douglas Greenberg, said they took advantage of the DOJ’s focus on encouraging companies to self-report violations.

Cognizant had self-reported, cooperated with the DOJ and taken steps to better comply with the law, which would usually score the company a declination under the FCPA corporate enforcement policy. However, there was an aggravating factor: the company’s executives were allegedly involved.

The attorneys convinced the DOJ’s Fraud Section that denying Cognizant a declination would turn companies off from self-reporting violations involving executives.

“If you did that, then you would really disincentivize companies who had identified a violation and involvement of senior management from self-disclosing,” Ruemmler said. “That would be a bad message to send.”

In the end, the DOJ used the Cognizant declination to highlight that a company can benefit from self-disclosure even where its executives were allegedly involved in a crime. As a condition of the declination, Cognizant agreed to pay \$25 million in disgorgement.

In another FCPA matter last year, Latham helped the oil and gas services company TechnipFMC settle with the DOJ and SEC over bribery in Iraq and Brazil. The DOJ deferred charges and agreed not to impose an independent monitor on the company.

TechnipFMC received a discounted fine for cooperating with authorities and remediating, and agreed to pay a total of \$301 million, most of which went to Brazilian authorities.

While a small army of partners in Washington, D.C., and around the globe make the firm well-equipped to handle FCPA matters, 2019 saw Latham handle other significant white-collar matters.

In 2018, a New York Times report revealed allegations that former Newark Archbishop Theodore McCarrick had sexually harassed other men in the church for decades. Afterwards, counsel for Catholic university Seton Hall asked Latham to independently investigate McCarrick's involvement with seminary students from 1986 to 2000.

Latham partner Jonathan Su said the investigation was one of the most unique and challenging of his career. The time period was long and predated smartphones, meaning the evidence available was different from what it would be now.

Additionally, Su said that while he's used to investigating alongside the authorities, the Seton Hall matter was unique. At the time, the Catholic Church, which had been criticized over its handling of sexual misconduct claims, was doing its own investigation, while the New Jersey attorney general's office launched its own task force.

"We wanted to be careful in how we navigated all of those things as we were doing the investigation," Su said.

After a year, the firm found McCarrick had created a "culture of fear and intimidation" and had abused his power to harass adult seminarians. The university subsequently took steps including hiring a chief compliance and ethics officer.

--Editing by Philip Shea.