White Collar Group Of The Year: Latham & Watkins

By Matt Chiappardi

Latham & Watkins LLP scored a major victory when it cleared sTec Inc.’s ex-CEO of insider trading claims as it also represents PG&E Corp. regarding the San Bruno pipeline explosion, a rare corporate criminal case heading toward trial, earning a spot among Law360’s White Collar Groups of the Year.

The firm’s white collar team boasts a wealth of roughly 200 talented practitioners, including about 35 partners worldwide, many of whom have experience as former U.S. Department of Justice prosecutors or have worked for the U.S. Securities and Exchange Commission or other government agencies.

“At any moment in time, if you take a snapshot, you’ll find a pretty broad swath of substantive expertise,” said David J. Schindler, one of the practice group's co-chairs. “Whether it’s a securities fraud case, or tax, or [U.S. Foreign Corrupt Practice Act] case, the reality is we have an incredibly deep and broad bench.”

That expertise allows Latham & Watkins to be at the forefront of what Schindler called “bet-the-business” and “bet-your-liberty” types of litigation, with the ability to understand the finer points of enforcement matters and persuade regulators that they may not actually have a case against their clients.

By example, the firm was able in 2014 to convince the DOJ to pass on prosecuting an undisclosed major pharmaceutical firm in an FCPA investigation that started four years earlier and was part of a sweep of probes into several companies in the same industry.

And when a matter does wind up in regulators' line of fire, Latham & Watkins has also achieved great success, such as in the trial against sTec’s ex-CEO Manouchehr Moshayedi.

Moshayedi was accused by the SEC of reaping nearly $270 million for himself and his brother in a sale of a large portion of their stock holdings by exploiting supposedly nonpublic information that a major company wanted few of the company’s most profitable products. It was one of the largest of the agency’s enforcement actions, seeking more than $800 million in penalties, to go to trial when it was heard in California federal court this past spring, and in June, the jury returned a complete verdict rejecting the SEC’s claims.

The agency had alleged Moshayedi struck a “secret side deal” to give a customer a discount to take on additional inventory so sTec could meet analysts’ expectations ahead of the ex-CEO selling a significant portion of his stake in the company in a secondary offering.
“It’s often easy to take facts just on the surface and suggest things were untoward,” Schindler said.

But with a strategy Schindler called “two parts hard work and one part strategic thinking,” Latham & Watkins was able to show the jury that when the full record was looked at in context, Moshayedi did nothing wrong, he said. The high-profile, and hard-fought, victory was one of several stinging trial losses for the SEC that some practitioners said have the agency rethinking which matters it puts before a jury.

The firm is also leveraging its litigation skill into the difficult cases surrounding the PG&E pipeline blast, one of the largest regulatory, criminal and mass tort matters in the country.

The explosion occurred in 2010 in a natural gas pipeline in San Bruno, California, killing eight people, injuring 58 others and destroying 38 homes, according to a report from California Public Utilities Commission. The company was hit with a criminal indictment in July on charges that it violated the U.S. Natural Gas Pipeline Safety Act and obstructed a federal investigation.

PG&E maintains its innocence in the matter, and in August, it plead not guilty to all the charges, setting the stage for potential trial, a rarity for corporate criminal matters.

Schindler called that move a “courageous decision” on PG&E’s part and said Latham & Watkins is prepared to apply its substantial expertise to defend its client.

The firm is also lead counsel for PG&E in the related civil litigation that involves more than 500 plaintiffs and said it has settled all of those cases. Latham & Watkins is also representing PG&E in related shareholder derivative litigation and other regulatory matters.

The cases are sprawling, arduous and complex, with moving parts that include PG&E’s appeal of a record $1.4 billion penalty recommended by CPUC administrative law judges, and arguing the final decision ought to take into account $2.7 billion it is already spending in safety enhancements.

Being involved in perhaps one of the most challenging cases of its kind in recent memory is nothing new for the firm. Latham & Watkins says it has been involved in the practice area since before it was dubbed “white collar” and has one of the largest contingents of attorneys who specialize in those types of matters.

This year, the firm made several high-profile additions to its top-flight roster, including John Sikora, who joined the firm in its Chicago office after 16 years at the SEC, and Michael Fee in the Boston office, who brought with him 25 years experience in private practice.

A number of attorneys also returned to Latham & Watkins this year after holding prestigious positions in the U.S. government.

Kathryn Ruemmler returned to the firm in July after five and a half years in the White House Counsel's Office, where she worked as President Barack Obama’s longest-serving counsel, and Jonathan Su recently came back to Latham & Watkins after serving in the White House Counsel’s Office from 2012 to 2014 and previously as an assistant U.S. attorney in the District of Maryland.

But even with that fully stocked roster, Schindler says the firm is best able to wield its abilities with a strong team approach, reiterating his “deep bench” analogy. Just as there are some sports franchises that try to acquire a superstar and then build a team around that player, there are law firms that go out to find one or two sterling practitioners and do the same, he said.

What distinguishes Latham & Watkins’ white collar team is that it is built to be an entire team of
superstars but one that functions as a unit, Schindler said.

“At the end of the day, one or two people just can't do it,” Schindler said. “Our success is driven by the fact we have a team."

--Additional reporting by Brandon Lowrey, Jeff Sistrunk and Beth Winegarner. Editing by Christine Chun.

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