

White Collar Group Of The Year: Latham & Watkins

By **Bill Wichert**

Law360 (February 5, 2018, 11:58 AM EST) -- Latham & Watkins LLP helped to broker a lower settlement for Deutsche Bank AG over U.S. claims related to its sale of mortgage-backed securities leading up to the 2008 financial crisis and to defeat a multibillion-dollar lawsuit against four chemical companies, making the firm one of Law360's White Collar Practice Groups of the Year.

With senior government officials and partners from other firms among its additions, the practice notched those victories in recent years while increasing its firepower to include about 150 attorneys across the globe, with continued growth anticipated in London and Asia.

"The idea is to have ... top attorneys in each of the major financial centers worldwide," said Steven Bauer, a firm partner and global co-chair of Latham & Watkins' white collar defense and government investigations practice group.

"Our major financial clients are present in all of those centers," Bauer said. "We want to be where our clients want us to be."

Bauer said Latham & Watkins looks to strike favorable deals for its clients, but the firm also is prepared to take cases to trial.

"The first goal is to protect the client and if we can do that by making a favorable deal, we'll do that, but then we also pride ourselves on having ... a pretty good stable of trial-ready lawyers," Bauer said. "So if the case needs to be tried, we're ready to try it."

The firm demonstrated its deal-making prowess in negotiations with the U.S. Department of Justice over allegations that Deutsche Bank misled investors into buying risky mortgage-backed securities in the run-up to the financial crisis.

The DOJ had demanded that Germany's largest bank pay \$14 billion to resolve claims under the Financial Institutions Reform, Recovery and Enforcement Act — a penalty that investors feared could have destroyed the bank.

But in a \$7.2 billion settlement finalized in January 2017, Deutsche Bank agreed to pay \$3.1 billion in civil



monetary penalties and \$4.1 billion in relief to underwater homeowners, distressed borrowers and affected communities.

Latham's Richard Owens, who worked on the deal, told Law360 in December as part of his Banking MVP profile: "The significance is obvious from the magnitude of the liability the bank was facing and its need to get that matter resolved as promptly and as sensibly as possible in the midst of all the press attention the DOJ's claims have received."

Another high-profile win for the firm came in October when it helped to knock out a False Claims Act lawsuit brought by Kasowitz Benson Torres LLP in D.C. federal court against Dow Chemical Co. and three other companies. The complaint alleged that they failed to report risk information to the U.S. Environmental Protection Agency and cheated the government out of billions of dollars in unassessed penalties.

In granting a defense motion to dismiss the action, U.S. District Judge Rosemary Collyer ruled that an unassessed potential penalty does not create an "obligation" to pay the federal government under the reverse false claims provision and that the law firm's attempt to characterize alleged unreported substantial risk information as "property" also could not establish FCA liability.

Kasowitz Benson Torres has moved for reconsideration of that opinion.

"Most importantly, we were clearly right on the law and the proper statutory interpretation of the reverse FCA," said Latham & Watkins partner Anne Robinson, one of the firm attorneys representing Dow in the case. "It's clear based on both the statutory language, but also the legislative history that the reverse False Claims Act provision does not encompass unassessed penalties."

Permitting such actions "would impede prosecutorial discretion of agencies like EPA," Robinson noted. If a judge found that penalties should have been assessed and then calculated the amount of those penalties, the court would be performing the functions of the EPA, Robinson said.

"One is the separation of powers problem where EPA is the one charged with the prosecutorial discretion, not the judiciary, and secondly, it's an expertise issue," Robinson said. "These are highly complex sets of regulations and EPA has the technical expertise to best address those."

Dow and fellow defendants BASF Corp., Covestro LLC — formerly Bayer MaterialScience LLC — and Huntsman International LLC were accused of owing \$175 billion in damages and penalties, Robinson said.

Beyond that potential financial hit for the companies, a victory for Kasowitz Benson Torres would have led to similar litigation, she said.

"Had the court determined that this type of complaint stated a viable False Claims Act claim," Robinson said, "it would have opened a flood gate of new False Claims Act lawsuits under any statute that provided for potential penalties."

--Additional reporting by Tom Zanki, Dorothy Atkins, Evan Weinberger, Stan Parker and Daniel Wilson.
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