

FCPA Powerhouse: Crowell & Moring

By Scott Flaherty

Law360, New York (May 29, 2013, 12:35 PM ET) -- With Foreign Corrupt Practices Act experience tracing back to the firm's founding in the late 1970s, Crowell & Moring LLP has continued to make its mark in the arena, recently guiding Ralph Lauren Corp. and a Lindsey Manufacturing Co. executive to successful outcomes in FCPA cases.

Crowell — one of 10 **FCPA Powerhouse Firms** recognized by Law360 for their prowess in FCPA matters — represented Ralph Lauren before the U.S. Securities and Exchange Commission and the U.S. Department of Justice in connection with allegations that the apparel company bribed officials in Argentina in an effort to ship merchandise into that country without proper customs clearance.

With Crowell's guidance, Ralph Lauren managed to reach unprecedented settlements with the federal agencies, which both cited the company's self-reporting of the alleged violations and high level of “real-time” cooperation with regulators as reasons for not pursuing their cases further. The **company agreed** to disgorge \$700,000 to settle with the SEC and reached another \$882,000 agreement with the DOJ, but, notably, also negotiated nonprosecution agreements with the two agencies.

Those deals put Ralph Lauren in a novel position for an FCPA defendant — not only was it the first-ever nonprosecution agreement handed out by the SEC, it was also the first time any company facing FCPA allegations had reached **double nonprosecution deals**, according to Crowell partner Tom Hanusik, a former DOJ attorney who served as a lead attorney for the retailer.

In another of Crowell's other recent successes in the FCPA arena, the firm represented Lindsey Manufacturing's Chief Financial Officer Steve K. Lee in one of the only FCPA cases to ever make it to trial.

Prosecutors alleged in the case that to secure contracts from Mexico's state-owned electrical utility, Lindsey Manufacturing, its president Keith Lindsey and Lee paid a Mexican company to bribe officials at the utility. After a more than five-week trial, a California federal jury in May 2011 convicted the company and the two executives on six counts each, including violations of the FCPA and conspiracy.

But attorneys for Lindsey Manufacturing and the executives — which included Janet Levine and others from Crowell, who represented Lee, and Jan Handzlik of Venable LLP, who represented both the company and its president, Lindsey — urged the court to throw out the indictment, arguing that prosecutors had engaged in an array of misconduct, including the concealment of false grand jury testimony by a Federal Bureau of Investigation agent.

In December 2011, U.S. District Judge A. Howard Matz **vacated the convictions** of Lindsey Manufacturing, Lee and Keith Lindsey, dismissed the indictments against them, and blasted prosecutors for having gone “badly awry” in their pursuit of the case. The ruling was a black eye for the DOJ, but a success for Crowell, which had vindicated Lee.

As one of few attorneys to ever take part in a trial of an FCPA case, Levine said the representation of Lee presented challenges that were as exciting as they were unprecedented.

“It was really like doing something for the first time,” she said.

Though the representations of Ralph Lauren and Lee are two of several recent accomplishments Crowell has had in FCPA cases, the firm's work in the area stretches back to the late 1970s, when the FCPA was first passed and when Crowell was initially founded. In the early days of the FCPA, Hanusik said, the law was most often enforced against government defense contractors, a sector from which Crowell, in its own early days, drew a significant number of its clients.

“This is not a flavor of the month for us; this is a longstanding practice,” Hanusik explained.

As the decades have passed — and in particular during the past eight years or so — the federal government's enforcement of the FCPA has expanded, and because Crowell places a premium on responding to its clients' needs, the firm has taken on more FCPA work in recent years as a result, according to Hanusik.

“You really have an enormous amount of resources being dedicated to this area by the United States government,” he said. “That just means there are more cases.”

As of now, the firm has about 40 attorneys that work on FCPA cases, a group comprising members of Crowell's white collar and regulatory enforcement group, as well as attorneys in other practices, such as international trade, government contracts and litigation. Crowell has attorneys based in Washington, New York and Southern California who have worked on FCPA cases, the firm said.

Over the past five years, Crowell's attorneys have handled FCPA cases in Europe, North and South America, and Sub-Saharan Africa, as well as in the Middle East and Asia-Pacific regions, according to the firm. The firm has a number of high-profile attorneys, including Hanusik, who formerly served as the assistant chief of the fraud section of the DOJ's Criminal Division.

In fact, Hanusik is one of eight former DOJ attorneys that handle FCPA matters for Crowell, and the firm has other lawyers with high-level government experience, including Kelly Currie, a former deputy criminal division chief in the U.S. Attorney's Office for the Eastern District of New York, and Daniel Zelenko, a former branch chief of the SEC's enforcement division. Crowell also has several attorneys who

have focused much of their careers on defense work, such as Levine, who is based in the firm's Los Angeles office, and Jeffrey Rutherford, a former deputy federal public defender in the Central District of California.

The mix of former prosecutors and longtime defense attorneys is one factor that goes toward explaining Crowell's continued success in the FCPA world, according to Hanusik. On the one hand, he said, former government attorneys "freshen the knowledge base" of enforcement priorities at the various federal agencies, while on the other, attorneys who have focused on defense throughout their career have "different experiences that complement" those of former prosecutors.

"I think that we have really demonstrated a strong track record of understanding what the stakes are for our clients," Hanusik said. "Sometimes what works for one is not going to work for another."

That sentiment was echoed by Levine, who said the range of experiences within the firm gives its attorneys a "more robust view."

"It's always good to have both sides picking it apart, and we like to do that," she said. "If we can go in looking at it from all sides ... I think it helps us answer all of our clients' questions."

--Editing by Lindsay Naylor.

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