

White Collar Group Of The Year: King & Spalding

By Phillip Bantz

Law360 (March 9, 2023, 2:02 PM EST) -- King & Spalding LLP had a hand in some of the highest profile and most complex white collar cases of the past year, including ongoing actions against Nissan ex-chairman Carlos Ghosn and Archegos Capital Management, securing the firm's place among Law360's 2022 White Collar Groups of the Year.

The firm also helped California recover billions in fraudulent unemployment benefit claims filed at the peak of the COVID-19 pandemic.

King & Spalding's white collar practice group has grown more than 60% since 2018, expanding from 90 to 145 lawyers working in 14 stateside and international offices, the largest of which are in Atlanta, New York and Washington, D.C., according to Mark Jensen, managing partner of the firm's D.C. office and leader of its white collar practice.

The firm sees new and expanding markets for its white collar practice in Austin, Los Angeles, Miami and Virginia, and overseas in Singapore and Paris, where partner Jean Tamalet is leading a team of three other lawyers and a consultant representing Ghosn.

Japanese authorities arrested Ghosn in 2018, alleging that the auto industry titan misused Nissan company funds and underreported his income. Ghosn, who has denied wrongdoing, fled house arrest in Japan in 2019, when he infamously hid inside a box that was loaded onto a private jet and was whisked off to Lebanon, where Ghosn has citizenship.

He now faces arrest warrants in Japan and France while "stuck in Lebanon," which does not extradite its citizens, Tamalet said. He also said French and Japanese authorities have refused to share their criminal files on Ghosn with Lebanese authorities to make a case for his extradition, resulting, essentially, in a stalemate.

"This situation where he's blocked and unable to defend himself is absolutely scandalous," Tamalet said. "When it's time for the case to be judged in front of the courts, if it happens one day, we will destroy all of the accusations."

Another prominent businessman in the midst of a crisis, Bill Hwang, founder and head of Archegos, turned to King & Spalding for help in March 2021, as his private investment fund began to



collapse after failing to meet a margin call.

Federal prosecutors allege that Hwang and three co-conspirators manipulated securities prices by secretly buying stocks through "swaps," or special contracts with banks and brokers, in a scheme that collapsed when the market plunged. Hwang has pled not guilty to fraud and racketeering conspiracy charges.

"The crisis was pretty extensive — there was not just the high-profile nature of the matter, but also \$36 billion that just went into thin air, the winding down of the fund and a lot of issues that had to be resolved on top of inquiries from multiple regulators," said New York-based King & Spalding partner Carmen Lawrence.

Lawrence and fellow partner Bill Johnson lead a core team of a dozen attorneys in New York representing Archegos in criminal and civil probes involving an alphabet soup of regulatory and prosecutorial agencies, including the Securities and Exchange Commission, the Commodity Futures Trading Commission and the U.S. Attorney's Office for the Southern District of New York.

"The key, novel issue here is the theory of open-market manipulation," Lawrence said. "The SEC takes the position that you can engage in legal trading activities in the open market. But if you have manipulative intent, that constitutes manipulation.

"We disagree with that theory," she added. "We believe the law requires some sort of deception. There has to be a signal that is sent to the market or an artificial price that results from the activity."

Johnson also stressed that this was a unique market manipulation case because the government had not accused Hwang of making swap trades with the intention of manipulating the market. Instead, Johnston said, Hwang "simply liked the stock and bought a lot of it."

If the government's theory of open-market manipulation prevails, "it will give pause to a lot of market participants," according to Lawrence.

Johnson added, "It would be a big wake-up call for all market participants who want to purchase any kind of large quantity in an investment and hold it for the long term, because they could open themselves up to not only enforcement investigations but potential civil and criminal market manipulation claims."

In the California case, Greg Scott, former U.S. attorney for the Eastern District of California and now a Sacramento-based partner at King & Spalding, led a team that helped the state's Employment Development Department recover \$1.4 billion in payments from fraudulent unemployment benefit claims.

Since the department announced the recovery in June, Scott and his team of six lawyers have been working with Bank of America to recover what they anticipate to be about \$3 billion in additional fraudulent benefit payments from frozen debit cards.

The firm also defended global executive search firm Egon Zehnder International against allegations of tax fraud totaling \$13.3 million in a whistleblower suit in New York federal court, where the matter was settled in August for \$100,000.

The state attorney general's office initially declined to intervene in the case, but later stepped in to propose the settlement, over objections from the whistleblower, who had claimed more than \$40 million in liabilities, including treble damages, interest and penalties.

"When you convince the government that a case is not worth taking forward, you still have to deal with an aggressive plaintiffs' bar, which can result in some difficult policy outcomes through litigation that may not be supported by the actual owners of the claim and the pertinent federal or state government agencies," said Jensen, the practice leader.

"We're seeing these types of common themes across many of our large topical areas of expertise — whether it's financial institutions, life sciences, technology, Foreign Corrupt Practices Act, False Claims Act or sanctions and money-laundering matters — and that's one of the things that makes the team so strong," he added. "This broad perspective allows us to see around corners and predict a lot of these trends, because we're living it in all of these different contexts."

--Editing by Karin Roberts.