

## FCPA Powerhouse: WilmerHale

By **Bill Donahue**

*Law360, New York (June 10, 2013, 12:28 PM ET)* -- With decades of experience tackling Foreign Corrupt Practices Act cases and a deep bench of attorneys who each handle both counseling and investigation, WilmerHale has become a go-to firm for foreign bribery matters.

One of Law360's FCPA Powerhouse Firms, the firm has 40-plus FCPA attorneys representing more than 60 regular corporate clients in financial services, aerospace and defense, technology, pharmaceuticals and various other sectors. And at present, the group is handling 24 pending matters before the U.S. Department of Justice, the U.S. Securities and Exchanges Commission and the World Bank.

The lawyer headcount is high for an FCPA group, but the quantity of both clients and active cases is “kind of staggering,” according to group leader Roger Witten. It's a factor that Witten said gives his team a unique finger-on-the-pulse vantage point in the world of anti-corruption enforcement.

“We see an awful lot out there,” Witten said of the number of matters the firm handles. “We are really in the mix, and able to see trends as they emerge in both the corporate and government worlds and then bring that to bear in our counseling and litigation work.”

Aiding that perspective is the group's integrated structure. Unlike some firms that split their FCPA work into counseling — helping clients avoid violations and risks — and enforcement, WilmerHale's attorneys each handle both types of work on a regular basis.

The approach — “all of us do all of it,” as Witten phrased it — gives the firm's attorneys a big picture view of FCPA law that pays dividends for clients on both ends of the court, according to partner Jay Holtmeier.

“On the compliance side, understanding what the government is interested in [from handling enforcement work] is obviously very valuable,” Holtmeier said. “Back on the investigation side, it's valuable knowing all the myriad ways these things come about. It lets you dive right in.”

Another benefit of the unified approach is the fact that a client's trusted counsel at WilmerHale doesn't have to hand them off to a new attorney when an enforcement or investigation issue arises.

"You're delivering advice for years," Witten said. "When [the clients] have a problem, you don't want to have to introduce them to a stranger."

All of this has produced some great results in recent years for WilmerHale's clients.

Last year, the firm negotiated a settlement for Lufthansa Technik AG and subsidiary BizJet International Sales and Support Inc. over alleged bribes to Latin American officials for business contracts. Through extensive cooperation with the government, Holtmeier and other WilmerHale attorneys won reduced fines and charges, and an agreement to defer prosecution for BizJet. The parent company Lufthansa received a nonprosecution deal.

The government has since praised the way BizJet — and thus WilmerHale — handled the investigation, and touted it as a prime example of the kinds of rewards companies can receive for voluntary cooperation with government probes.

"We don't think every case should be voluntarily disclosed, but once you go that route, the government is looking for a company to go all in," Holtmeier said. "This is one they can point to and say that the deal BizJet got was better than how they would have done otherwise by a fair amount."

The firm also reached favorable settlements with both the DOJ and SEC in the complex FCPA matter that arose out of BAE Systems PLC's acquisition of Armor Holdings in 2012, and negotiated a noncriminal resolution for former Innospec Inc. CEO Paul Jennings on allegations that the company made illegal payments to Iraqi and Indonesian officials to win oil and gas contracts.

And, like any good FCPA practice, WilmerHale's group has a large number of cases that are nonpublic — government declinations, internal investigations, and so on.

"It's hard to convey the breadth and scope of our practice when so much of it is under wraps," Witten said, noting that more than half of the firm's major work is entirely confidential.

The story of how Witten and the group got to where they are today ranges back to 1977, when the FCPA was first enacted. Early on, the anti-corruption statute spawned far less work than today, but the WilmerHale group slowly established itself as one of a small group that knew the area.

Then came what Witten described as the watershed moment: The firm worked an FCPA case for a major contractor in the early 1990s, defending against claims that it had violated the law in relation to the sale of jet engines to the Israeli air force.

"Through that, we became well known to the DOJ, to the SEC and to the client base, and better known among lawyers that dabbled in this area," Witten said.

It was just in time. In 1997, the Organization for Economic Cooperation and Development brokered its international treaty on bribery and corruption, leading to more vigorous enforcement of the FCPA.

“While it took international enforcement awhile, the convention brought renewed attention to the problem of corruption, making it a priority to US government in a way that it just wasn't before,” said partner Kimberly A. Parker.

The U.S. has also had remarkable success in promoting self-disclosure when it comes to FCPA violations, leading to even more internal investigation and voluntary notices to regulators.

According to Witten, the changes lead to a deluge of activity for which WilmerHale's long-established FCPA practice was perfectly positioned, leading to the powerhouse group that he heads today.

“We caught the wave,” Witten said. “It wasn't because we were lucky, but because we had been doing it for a long time. And it's been a big wave.”

--Editing by Lindsay Naylor.

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