

## Practice Group Of The Year: Morrison & Foerster

By **Eric Hornbeck**

*Law360, New York (January 17, 2014, 12:21 PM ET)* -- Morrison & Foerster LLP's white collar attorneys have twice defeated Manhattan's feared federal prosecutors at trials over a semiconductor company CEO's alleged stock-options backdating and pursued MF Global Holdings Ltd.'s leadership after the brokerage's collapse, earning the firm a spot among Law360's Practice Groups of the Year.

Perhaps the firm's most impressive victory was deadlocking two Manhattan federal juries who were considering whether the founder and former CEO of Vitesse Semiconductor Corp., Louis Tomasetta, had improperly backdated stock options and cooked the company's books from 2001 to 2006.

New York's Southern District prosecutors are well known for their near-unblemished record of criminal trial victories, including its much-publicized wins against Raj Rajaratnam, the Galleon Group LLC founder, and Rajat Gupta, the former McKinsey & Co. executive and Goldman Sachs Group Inc. director.

But Morrison & Foerster's Dan Marmalefsky, who led Tomasetta's defense, managed to fend off the formidable foe in two jury trials, ultimately securing a probation-only sentence for Tomasetta last year.

Marmalefsky said that while the charges against his client dated back to 2001, an indictment didn't come until 2010, meaning that many documents were unavailable and witness memories were hazy — which was particularly problematic for the government, he said, because it had relied heavily on Vitesse internal investigations and therefore missed some of the data when it was building its case. By the time the case got to trial, jurors heard witnesses easily rattle off recollections for the government who then couldn't remember much when cross-examined, undermining their testimony.

More importantly, Tomasetta was also facing a parallel U.S. Securities and Exchange Commission proceeding over the same allegations, which gave Marmalefsky and his team the ability to serve subpoenas and take depositions they couldn't pursue in the criminal proceeding, giving them more ammunition to bolster their case, he said.

Marmalefsky also said that the firm had peppered prosecutors with pretrial motions, including one that sought to tease out the stock-options backdating charges and alleged accounting irregularities into two separate conspiracies. The government opposed that motion and won, but that victory might have been a Pyrrhic one because the government was restricted about what theories it could argue during the trial. The Morrison & Foerster attorneys also repeatedly insisted that the case didn't belong in New York, an argument they didn't win but that helped them knock out many of the allegations in the first trial.

"I think being persistent in bringing motions, even though we were unsuccessful before trial, was ultimately beneficial when the case was tried," Marmalefsky said.

The Tomasetta case illustrated the firm's fearlessness about taking a case to trial, a tenacity that attracts both clients and former prosecutors making the jump to the private sector, according to Carl H. "Chip" Loewenson Jr., who co-chairs the Morrison & Foerster practice group that includes white collar attorneys.

"We let it be known that we're ready, willing and able," Loewenson told Law360.

Of course, white collar work these days is not all about courtroom advocacy. Corporate investigations can span continents and prosecutors in several countries could be conducting probes simultaneously. A prime example has been the firm's representation of some of Barclays PLC's top brass during probes into alleged manipulation of the London Interbank Offered Rate, a key benchmark used to set interest rates worldwide.

"Globalization is very real," Loewenson said. "Because we're a global firm, we benefit from having lawyers in a lot of the places they're needed for white collar cases."

"Working with cross-border parallel proceedings is really the bread and butter of our white collar group," he said.

The firm's 30 or so white collar attorneys, part of the firm's 120-attorney securities litigation, enforcement and white-collar defense group, are spread throughout the world, including all the firm's U.S. offices plus London, Tokyo, Hong Kong, Singapore and Berlin.

That worldwide reach has helped the firm as it's tackled far-flung white collar matters like Libor but also Foreign Corrupt Practices Act investigations and a growing amount of anti-corruption work in Latin America, according to Loewenson.

That worldwide, cross-border approach was also on view in the firm's work on the MF Global bankruptcy and its aftermath.

Morrison & Foerster partner Adam Hoffinger has led a team representing the brokerage's bankruptcy trustee, former FBI Director Louis J. Freeh, and now its post-bankruptcy litigation trust in **litigation** against its CEO, the former New Jersey governor Jon Corzine, and other executives.

Representing a bankruptcy trustee isn't necessarily traditional white collar work, but it shows just how varied the firm's practice is and how it can leverage its firmwide capabilities to come to bear in white collar cases, Hoffinger said.

The MF Global work — which included the still-pending lawsuit against the executives as well as an investigative report presented to the bankruptcy judge — meant the firm had to rely on its white collar, securities, bankruptcy, tax and corporate capabilities across the U.S. and in London, all while balancing Freeh's duties to investigate the collapse and also pursuing any claims he uncovered.

"We do cross-border, cross-office and cross-discipline. And this case illustrates all of those elements coming together," Hoffinger said.

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