

MoFo Snags Longtime Top DOJ Cartel Enforcer

By **Matthew Perlman**

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Morrison & Foerster LLP said Wednesday that the longtime chief of national criminal enforcement for the U.S. Department of Justice's antitrust division has joined the firm as a partner in Washington, D.C., to work on international cartel matters and other white collar investigations.

Lisa M. Phelan joined MoFo's global antitrust law practice and its investigations and white collar group Monday after serving 32 years at the DOJ, half as chief of the antitrust division's Washington Criminal I Section, which was formerly known as the National Criminal Enforcement Section. In that role, Phelan supervised and coordinated investigations and litigation work on international and national criminal cartel cases, often working with enforcers from around the world.



Lisa Phelan

She previously served as a senior criminal litigator for the antitrust division, where she prosecuted high-profile cases, including an early international cartel case that required cooperation from Japan.

Rony Gerrits, co-chair of MoFo's antitrust practice, told Law360 that once the firm heard Phelan was looking to enter private practice, it jumped at the chance to bring her on board.

"There's very few people in the world that have the experience Lisa has, and being able to offer that to our clients, we see that as a great opportunity for the firm and a great advantage," Gerrits said. "We think we'll all benefit from her insights and we think her clients will really appreciate her being around."

The National Criminal Enforcement Section changed names in 2014 after the antitrust division opened a second office in Washington, D.C., but its role as the section handling large national and international criminal antitrust actions remains the same. Under Phelan's leadership, the section investigated major bid-rigging and price-fixing schemes in the ocean freight, generic pharmaceutical and air cargo industries that all resulted in criminal charges.

The criminal section also launched a long-running investigation into price-fixing in the automotive parts industry under Phelan's leadership that now includes around 50 automotive components and as many manufacturers and executives. That investigation has resulted in nearly \$3 billion in criminal fines so far, and Phelan told Law360 that it kept the section busy for a while.

“That sort of swallowed the section, almost, for a few years. It took a little while to repopulate the docket after that,” she said.

One of her first tastes of international cooperation in the antitrust realm came while working on an investigation into the price fixing of thermal fax paper in the early 1990s as a litigator. She said that because many of the meetings that helped facilitate the price coordination occurred in Japan, the DOJ had to ask the Japanese government for help executing search warrants.

Phelan led a case against Nippon Paper Industries Co. Ltd. resulting from that probe, which was dismissed by the district court because the meetings had taken place outside of the U.S. But the First Circuit reversed that dismissal after finding that what mattered was the activity’s impact in the U.S., not where the meetings happened.

After that, Phelan said, working with foreign enforcers became the norm for the antitrust division.

“That was kind of the start of an increasing trend towards making international assistance requests,” she said. “For a period of years there, I felt almost as much like a diplomat as I did a prosecutor, constantly on the phone with jurisdictions all around the world.”

Her experience working with international enforcers has given her an understanding of the different regulatory and law enforcement systems in other jurisdictions, but more importantly, Phelan said, she’s been able to forge relationships with people at those agencies. She said this will help her in private practice, as will her knowledge about leniency programs and other opportunities for clients that some defense attorneys may not be fully aware of.

“I thought that I could be very effective in that way because I think I have a pretty uniquely expansive understanding of how these investigations go, how prosecutors think,” Phelan said.

While at the DOJ, Phelan said she also made a point of trying to help put women in a position to succeed in the cartel space, where she said they have not historically been prominently represented. She did this by encouraging young women attorneys and by making sure they had the litigation experience they needed to advance in their careers.

“I hope to bring that to private practice as well, and I feel like MoFo is a place that is excited about me doing that and encourages me to do it,” Phelan said.

She received her law degree from American University Washington College of Law, and her bachelor’s degree from American University.

--Editing by Adam LoBelia.