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DOJ Fraud Section Roars Back From Pandemic Conviction Dip

By **Jack Queen**

Law360 (February 15, 2022, 9:30 PM EST) -- The U.S. Department of Justice Fraud Section came thundering back from a pandemic slowdown in 2021, securing 50% more convictions and nearly double as many trial wins compared to 2020, according to an annual report released Tuesday.

Fraud Section prosecutors secured 329 individual convictions last year, up from 213 in 2020, and trial wins soared from 16 to 30. The surge was fueled primarily by the Health Care Fraud and Market Integrity unit and the Major Frauds unit, while the Foreign Corrupt Practices Act unit also contributed with a modest increase in convictions.

The jump indicates the Criminal Division has become more efficient at navigating pandemic-related disruptions, including a wave of omicron variant cases that disrupted its in-person work. The bumper crop of trial wins suggests the courts have also become more nimble at navigating virus restrictions.

"I'm really impressed by the amount of work they were able to get done during another year of the pandemic," Morrison & Foerster LLP partner and former MIMF chief Brian K. Kidd told Law360. "You're also always curious about whether people leaving under a new administration will have an effect. It clearly didn't."

Convictions dipped 31% from 2019 to 2020, but the Fraud Section more than made up for the difference last year. That's an indication that the Criminal Division's added emphasis on prosecuting individuals in recent years continues to bear fruit, according to Kidd.

Corporate resolutions slid in 2021, with eight deals yielding $3.3 billion in payments to civil and criminal authorities worldwide. That compares to 13 resolutions totaling nearly $9 billion in 2020, though those figures were inflated by unusually high FCPA settlements with Airbus SE and Goldman Sachs Group Inc.

"The shift to individuals is pretty clear," Paul Hastings LLP partner and Fraud Section alum Nathaniel Edmonds told Law360. "Comparing eight corporate resolutions with 300-plus individuals convicted, that's a dramatic difference in terms of how they're allocating resources."

Corporate resolutions are nonetheless expected to rise after the down year. Those cases can take years to investigate, and a flurry of trial activity in 2019 and 2020 likely swallowed up resources that could have otherwise been put to new investigations. Tougher corporate enforcement policies unveiled by Deputy Attorney General Lisa Monaco last year are also likely to fuel an uptick.

"There's been a lot of strong messaging about a very aggressive approach to corporate enforcement, and they won't want to shy away from that," Morgan Lewis & Bockius LLP partner and former Fraud Section chief Sandra Moser told Law360.

Continued prosecutions of Paycheck Protection Program and CARES Act fraud also tipped the scales toward individual prosecutions. In 2021, the Fraud Section charged 58 people in PPP-related cases, alleging attempted frauds totaling more than $81 million. Since 2020, the section has notched 107 convictions stemming from attempted thefts totaling nearly $400 million.

The added pandemic relief fraud workload didn't dampen the fraud section's numbers in other areas, however, and attorneys said they were impressed by the group's ability to take on the extra work in stride. Morrison & Foerster's Kidd said he was especially impressed with the Health Care Fraud unit's ability to tackle a steadily growing list of responsibilities.

Those include a telemedicine fraud initiative that last September pulled off an operation charging 43 people for alleged fraudulent billing schemes totaling $1.1 billion, as well as a data analytics team that made 385 investigative referrals across the Justice Department last year.

The MIMF unit, meanwhile, nearly doubled its year-over-year individual prosecutions and led the way on corporate resolutions with six deals. Those included a deferred prosecution agreement with The Boeing Co., which paid a more than $2.5 billion criminal penalty for deceiving regulators about the capabilities of computer systems on its troubled 737 MAX jet.

MIMF prosecutors also scored another trial win in their anti-spoofing push, securing the convictions of two ex-Deutsche Bank traders for manipulating the precious metals futures markets. Together with the U.S. Securities and Exchange Commission and Commodity Futures Trading Commission, the unit also reached a $130 million deferred prosecution agreement with Deutsche Bank over spoofing charges. Attorneys expect the commodities enforcement blitz to continue under acting MIMF chief Avi Perry, who has ample experience in that realm.

Pandemic restrictions have been particularly disruptive to the FCPA unit, which relies heavily on international travel and in-person investigation. The unit scored 19 convictions and reached three corporate resolutions totaling more than $262 million in criminal penalties in 2021, and while that was a significant slowdown, attorneys expect busy days ahead for the unit as restrictions ease and an anti-corruption push unveiled by President Joe Biden last year turbocharges investigations.

The Fraud Section likely owes its banner year in part to a steady stream of hires that offset high turnover accompanying the transition to a new administration. The section added 33 new attorneys last year — essentially an entire FCPA unit worth of people. Many additional resources went to the section's litigation support and corporate enforcement, compliance and policy arms, which Morgan Lewis' Moser said is a wise strategy.

"It's nice to see them building out those capabilities in other areas," she said. "It shows a lot of foresight."

The Fraud Section's Litigation Unit — which provides trial and appellate support as well as training to line prosecutors — underwent a major expansion last year and oversaw 130 criminal appeals, compared to 11 in 2020. The Special Matters Unit, specializing in legal ethics and attorney-client privilege issues,

also grew its ranks significantly as the government is increasingly beset by shortcomings in its filter team protocols.

In addition to the new hires, the Fraud Section also promoted 28 prosecutors to leadership positions last year. Moser said that's an encouraging sign that the Fraud Section has the resources to carry out the Biden administration's growing list of white collar enforcement priorities.

"Whether it's people working from one-bedroom apartments or the warriors masked and gloved all day going into the Bond Building, they've been finding a way," she said. "It's a bunch of tremendously hard workers, and luckily for them, they've got a new influx of people who want to join that effort."

--Editing by Emily Kokoll and Kelly Duncan.

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