

Litigator of the Week: The Debevoise Partner Who Inked Major White Collar Settlements for 2 Name Brands on Back-to-Back Days

Helen Cantwell of Debevoise & Plimpton closed deals this week wrapping up federal investigations into Capital One and Toyota without any criminal charges against her clients.

By Ross Todd
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White collar defense lawyers can go a career without landing a favorable public settlement for a brand name client. **Helen Cantwell** of **Debevoise & Plimpton** landed two such settlements on back-to-back days last week.

Last Thursday, federal prosecutors in New York announced they'd entered a consent decree with Toyota of North America. The automaker agreed to pay \$180 million to settle claims that it violated emissions reporting requirements under the Clean Air Act by failing to notify the Environmental Protection Agency about emissions control defects in its vehicles in a timely manner between 2005 and late 2015.

Then on Friday, the Financial Crimes Enforcement Network announced a \$390 million civil penalty against Capital One related to failures in the anti-money laundering program in its check-cashing business, which the company voluntarily shuttered in late 2014.

Cantwell's work putting the wraps on two wide-ranging, federal investigations resulted in zero criminal charges against her clients. That, in turn, landed her Litigator of the Week honors.

Who were your clients? And what was at stake for each of them?

Capital One, N.A., and Toyota Motor Corporation and Toyota North America. In both cases our clients faced significant fines and enforcement actions.

How did you and the firm get brought into these matters?

Debevoise has long-standing relationships with Capital One and Toyota that are based on trust and extend

throughout their legal teams. Capital One has been a client for eight years, and Debevoise has represented Toyota on white collar matters since the investigation into claims of unintended acceleration arose in 2009. I have been the lead litigation partner for both clients for several years.

Who all was on your teams and what were their roles?

We provided a strategic framework for everyone to put their best foot forward. These were true partnerships with the in-house teams and the other law firms.

Debevoise led the factual investigations into both cases, which drove the strategy.

For Capital One I was joined by litigation partner **David Sarratt**, and we worked with Capital One's Chief Litigation Counsel **Steve Otero**, as well as in-house counsel **Jon Campbell** and **Thomas Hall**, with **Richard Cullen** and **John Adams** of **McGuireWoods** providing strategic advice. It was a remarkably collaborative group, thanks in large part to the one-team mindset we brought to the assignment and which was supported by Steve Otero.

For Toyota, I worked with many Debevoise lawyers over the years, including partner **Courtney Dankworth** and litigation associate **Noelle Lyle Gibson, Dunn &**



Helen Cantwell of Debevoise & Plimpton

(Photo: Courtesy Photo)

Crutcher's Raymond Ludwiszewski and King & Spalding's Granta Nakayama provided subject matter expertise. Toyota's in-house team was led by General Counsel Sandra Phillips Rogers, with Elizabeth Gibson and Kim Udovic. Debevoise partner Michael Gillespie co-leads the long-time Toyota relationship for the firm.

How did the pandemic affect your ability to get these matters teed up for settlement? And how did it affect the actual mechanics of getting the respective deals signed with the government?

We held almost all of our key negotiation meetings by Zoom, even with senior decision makers. It was definitely a challenge to have to "read the room" when you're looking at people in a one-inch video square, and trying to assess whether you're being persuasive.

I'm sure there was a certain amount of pressure to get both of these deals tied up before the change in administration this week.

Both matters had already lasted through two administrations. That wasn't our focus. We wanted the fair results dictated by the facts of each matter. The pressure came from our commitment to taking an unwavering stand against the weight of the federal government over so many years. I had brought a shared philosophy to two very different conflicts: We will fight on any battlefield, in any administration, even with one hand tied behind our backs due to a deadly pandemic—because in both cases, many of the allegations were not supported by the facts.

What was it like having two matters of this size and scope moving toward settlement concurrently?

Debevoise has a premier White Collar practice that provides a strong platform for my practice, and it's not unusual to have two large cases underway at the same time. Having said that, it was awesome to bring both to successful resolutions in the same week. It was enormously satisfying to have the government go out of its way to acknowledge our clients' determination to move forward correctly. And it was gratifying to work with two superb and diverse client legal teams led by women.

Make the case to me for how paying a \$180 million fine, the largest civil penalty ever levied for a breach of federal emissions-reporting requirements, is a good outcome for Toyota here.

The settlement we secured resulted in a \$180 million fine that was a fraction of the potential penalties while bringing an end to the DOJ's civil suit. We defeated any allegations

of criminal activity—that Toyota did not commit. The resolution we achieved enables Toyota to put this matter behind them.

In the case of Capital One, the U.S. Department of Justice and the Manhattan DA's office had previously closed investigations into the bank's anti-money laundering program prior to the announcement of the civil penalty from the Financial Crimes Enforcement Network. How were you able to limit your client's exposure to just the \$390 million civil money penalty from FinCEN?

We conducted a meticulous and thorough investigation that showed that no Capital One employee had engaged in criminal conduct—and we stood by the results of the investigation. This gave us the footing we needed to relentlessly negotiate with the government. Our strategy paid off. In 2019, the Department of Justice and the Manhattan DA's office both decided to close their investigations after nearly six years, and the final regulator, FinCEN, followed last week with a fine that was a fraction of what it could have been. FinCEN even recognized in their announcement that Capital One had long since exited the check cashing business and had made significant improvements to its anti-money laundering (AML) program in recent years.

What will you remember most about each of these matters on their own merits? And what will you remember most about them both reaching their conclusions on back-to-back days?

A non-criminal disposition for a large corporate client is rare. Scoring two in one week is truly memorable. And it is not common enough to see a woman's name as the lead outside counsel on such a resolution.

Companies often weigh the litigation and reputational costs of government prosecutions and prefer to pay almost any price to walk away. But we had the facts on our side, and I advocated tirelessly for them until the government agreed to a favorable settlement. It's good to see that the time-tested strategy of persistent determination can still pay off.

Everyone on each team stepped up to the plate when it was their turn to knock it out of park. You can only do that when you know clients this well.

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