

White Collar Group Of The Year: Kramer Levin

By Jake Maher

Law360 (March 6, 2024, 2:27 PM EST) -- Kramer Levin Naftalis & Frankel LLP won strong outcomes last year for clients including former New York Lieutenant Gov. Brian Benjamin in a prosecution over bribery charges, a Deerfield Management Co. LP analyst accused of insider trading, and a regional bank facing the collapse of a merger agreement, earning the team recognition as one of Law360's 2023 White Collar Groups of the Year.

Paul Schoeman, co-managing partner of the firm and co-chair of the white-collar and litigation team, in an interview with Law360 said: "What distinguishes our practice — that has always distinguished our practice for many years, but really has come to the forefront again — is that we're built around the ability to do trials and to attract the high-profile trial work for people who have the most difficult, challenging, complex cases."

Kramer Levin successfully averted a trial in its defense of Brian Benjamin in a case that underscored the firm's ability to handle high-stakes defense work with potentially broad consequences.

Prosecutors alleged in April 2022 that while sitting as a state senator and considering a run for New York City comptroller, Benjamin accepted a campaign contribution from a real estate developer in exchange for steering a grant toward the developer's education nonprofit.

A district judge in the Southern District of New York dismissed the bribery charges stemming from that deal in December 2022, determining there had been no explicit quid pro quo and the government's case failed to amount to bribery. Prosecutors have since appealed the trial court's decision, and Kramer Levin is continuing to represent Benjamin before the Second Circuit.

Kramer Levin highlighted the "extremely rare" result of a pretrial dismissal of that indictment.

"We focused on the threat that the prosecution of Brian Benjamin posed to our democratic system of government," said Dani James, co-chair of the practice group and one of Benjamin's defense attorneys on the case, in an email to Law360.

"If a public official could be prosecuted for simply accepting campaign contributions from a constituent who benefited from his policies, prosecutors would be able to threaten virtually any public official with prosecution and thereby cast a chill on our representative democracy," James added.



"Given that at the time the charges were brought, they were against a sitting lieutenant governor," Schoeman added, "to be able to show that those charges had legal infirmity was very significant."

Kramer Levin's work in 2023 also included fighting off insider trading charges brought against Deerfield analyst Theodore Huber in a case with a lengthy litigation history and cutting-edge legal issues at play.

Prosecutors charged Huber with theft of government property and other charges under Title 18, as well as securities fraud under Title 15, over his alleged involvement in a ring consisting of himself, another trader and a government insider who provided them with inside knowledge of Medicare and Medicaid pricing changes.

This application of Title 18 was an attempt to avoid the stricter requirements of Title 15 securities fraud, according to Kramer Levin. Huber was ultimately acquitted of the Title 15 charges but **convicted** of the Title 18 charges at trial.

On appeal, that conviction was at first upheld by the Second Circuit. However, the U.S. Supreme Court issued a ruling in a separate case, U.S. v. Kelly, related to the Bridgegate scandal in New Jersey that refined the definition of government "property."

Based on that decision, the justices vacated the decision to affirm Huber's and the others' convictions and ordered the court to reconsider.

The Second Circuit then determined that the information allegedly misappropriated by Huber did not meet the Supreme Court's updated definition of property — a decision prosecutors agreed with — and the court overturned his conviction. Prosecutors ultimately dropped the charges.

Schoeman said Kramer Levin's work on the case demonstrated the firm's commitment to pursuing its theory of the case — that prosecutors were stretching laws about government property past the breaking point — in the face of skepticism, until that theory was ultimately borne out.

"We started working on that case a number of years ago, and the theory under which the Supreme Court and ultimately the Second Circuit then vacated the conviction was a theory that wasn't obvious and was a testament to the creativity of our lawyers to identify this issue and raise it and press it, and press it for many, many years," Schoeman said.

"When the government overreaches or extends the statute beyond what it was meant to cover, you have to have the courage of your conviction to push back and see the case through to the end," he added.

Dani James was also one of the attorneys on Huber's defense.

"This long-sought victory proved what we said at the very outset of the case, over seven years ago, that this was a misguided insider trading case where the prosecution had no evidence and could not prove that Mr. Huber engaged in insider trading or did anything else wrong," James told Law360 Pulse.

Kramer Levin also spotlighted its work in the past year defending Usama Malik, the former chief financial officer of the biopharmaceutical company Immunomedics charged with securities fraud and insider trading related to a scheme in which he allegedly gave his girlfriend a stock tip about his own company that netted her over \$200,000.

Malik pled guilty in May 2023, but at sentencing in September, he avoided any prison time, instead being sentenced to six months of home confinement and a \$15,000 fine.

Schoeman said it is "incredibly rare for someone who was prosecuted federally for insider trading to receive a sentence that does not include any incarceration."

"You don't get a result like that without just first-rate advocacy," he added.

Kramer Levin also highlighted its work representing the regional bank First Horizon Corp. after a proposed merger with TD Bank fell through under scrutiny from federal regulators. Kramer Levin was able to negotiate a deal for a \$200 million cash payment for First Horizon and a statement from TD Bank explaining that the deal's failure was unrelated to First Horizon.

Looking to the future, Kramer Levin is representing Bill Hwang, founder of Archegos Capital Management, defending him from a market manipulation case brought by the U.S. Securities and Exchange Commission — "arguably the largest and most complex current white-collar proceeding in the country," according to Kramer Levin.

The blockbuster case centers on claims that Hwang used Archegos' status as a private business and a trading strategy based on total return swaps to build Archegos' market position out of public view. However, the fund was left vulnerable to fluctuations in stock prices, and when prices fell, over \$100 billion in market capitalization was wiped out — and Archegos collapsed.

Kramer Levin has been representing Hwang since May 2023, when his motion to dismiss the suit was denied. The case is scheduled to go to trial in May; Kramer Levin leaders declined to comment on the ongoing proceeding.

Schoeman said the cases highlighted by the firm illustrate a "pattern" of clients choosing Kramer Levin for complex, high-stakes defenses.

"We are among the go-to firms for these high-profile, insider-trading kinds of cases," Schoeman said.

--Editing by Dave Trumbore.