

Gov't Contracts Group Of The Year: Constantine Cannon

By **Daniel Wilson**

Law360 (February 14, 2020, 2:33 PM EST) -- Constantine Cannon LLP represented whistleblowers in several high-profile recent cases including the first-ever cybersecurity-related False Claims Act settlement and the largest-ever antitrust-related whistleblower recovery, earning the firm a place among Law360's 2019 Government Contracts Groups of the Year.

Founded primarily as a plaintiffs-side antitrust firm, the firm branched out with a whistleblower practice roughly eight years ago, and now has two dozen whistleblower attorneys spread across offices on both coasts, making it the largest such practice in the U.S. It's also the only one with an international presence, with a U.K. office as well, London-based partner Mary Inman said.

That gives Constantine Cannon the resources and expertise to take on important cases that other plaintiffs firms may not be able to, such as representing former U.S. Department of Energy photographer Simon Edelman, fired after releasing photos of former Energy Secretary Rick Perry discussing policy with a coal industry executive, and a whistleblower pursuing a case over Boeing's trouble-plagued 737 Max, which has been grounded after being involved in two deadly crashes, San Francisco-based partner Eric Havian said.

"I refer to it as the 'not just the money' segment of our practice," he said. "Don't get me wrong, we want to protect taxpayer funds and that's the meat and potatoes of our business, [but] we have a number of cases — and we search these out — and they don't always pay money out, but they have an impact. I really am especially proud of that aspect of our practice that involves things where more than just money is at stake."

The firm's experience in antitrust work also opened up an unusual, recent high-profile opportunity, Havian noted, allowing it to represent the whistleblower in a record-breaking bid-rigging case targeting a decadelong scheme by oil companies selling fuel to U.S. military bases in South Korea.

The five companies involved all pled guilty to criminal charges and agreed to pay a total of \$362 million in criminal fines and civil damages, according to the U.S. Department of Justice, with the final guilty pleas reached in March 2019.



“Our firm is probably uniquely situated in the world to do an antitrust whistleblower case,” Havian said. “It’s not surprising that we were the ones who brought what has become, by a factor of 10 or more, the largest antitrust whistleblowing case in history.”

The case, which required the firm to negotiate geographic, cultural, language and time zone barriers, also helped to spur the DOJ’s formation of its Procurement Collusion Strike Force in November to crack down on similar behavior, Havian said.

“They cite our case when they say why they developed this initiative, this task force to go after antitrust violators who cheat the government,” he said.

Constantine Cannon was also on the cutting edge of FCA law with its representation of relator James Glenn in a case accusing Cisco Systems of selling video surveillance equipment with known software vulnerabilities to the federal government and state and local governments. Its attorneys helped to draw the government’s interest in the case, ultimately leading to an \$8.6 million settlement in July 2019 — the first-ever FCA recovery from a cybersecurity case.

“I think it shows the viability of claims that are contending that you’re selling government technology that doesn’t meet the mandated cybersecurity standards,” partner Michael Ronickher, who works in Washington, D.C., said. “Being able to strike that first blow in the context of the False Claims Act was very meaningful for us.”

But the firm is also active in whistleblower cases outside of the False Claims Act arena, with its attorneys helping to steer clients toward the most appropriate path to address their concerns, according to New York associate Hamsa Mahendranathan.

“Our attorneys have a lot of perspective on what it’s like to be a whistleblower and the hurdles and the upsides, and are helpful in deciding what path is the right path for the whistleblower to take,” she said. “It’s not always the right path to file a False Claims Act complaint.”

That work outside of the FCA includes its ongoing representation of Tyler Shultz, who spurred the Securities and Exchange Commission to take action against Theranos over what the agency has called an “elaborate, years-long fraud” by senior officers at the prominent biotech startup, misleading investors about its blood testing technology and financial performance.

That case touched a chord with the public that few whistleblower cases do, showing that even a company with a “gold-plated” board of directors like former Secretary of State Henry Kissinger and then-retired Marine Corps General James Mattis — later to become defense secretary — wasn’t immune to fraud, Inman said.

“I feel like not since Enron have we seen a case that has resonated with the American public as one of those cases of excess,” she said. “We were a small piece of that story — an important piece in representing Tyler — but I feel like it was a privilege and continues to be because of culturally where this case seems to stand in our country as far as a modern-day Enron.”

--Editing by Jack Karp.