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MVP: Moore & Van Allen's John A. Fagg Jr.

By Lynn LaRowe

Law360 (November 2, 2023, 1:07 PM EDT) -- John Fagg Jr. of Moore & Van Allen PLLC achieved an acquittal at the end of a historic third federal trial for a retired Pilgrim's Pride CEO accused of conspiring to fix chicken prices and then quickly pivoted to help Bank of America resolve a U.S. Commodity Futures Trading Commission matter, earning him a spot as one of **Law360's 2023 White Collar MVPs**.





John A Fagg Jr.

Moore & Van Allen

His biggest accomplishment:

Fagg spent nearly a year away from his home in Charlotte, North Carolina, to defend William Lovette, a retired Pilgrim's Pride CEO, who was facing criminal charges stemming from a U.S. Department of Justice investigation into alleged price fixing in the U.S. meatpacking industry.

"We tried the case not once, not twice, but three times," Fagg said, noting that the trial work began in December 2021 and did not wrap up until July 2022 when a third jury returned with a verdict of acquittal.

Fagg said that after Lovette's first two juries were unable to reach a verdict and two mistrials were declared, a federal judge in Denver asked the prosecution if they intended to go forward and questioned the government's decision to proceed with a third trial.

"It was unbelievably grueling," Fagg recalled. "Each of these trials lasted over a month and a couple stretched more than two months. I have not met or spoken to another lawyer who has had to defend a third trial after two mistrials. We know it was the first in the history of the antitrust department."

Fagg said the government's commitment to go forward a third time "gave us a lot of extra momentum and a lot of energy."

"It was the hardest anybody on my team has probably ever worked," Fagg said. "We wanted to move quickly because our client had the possibility of prison time hanging, we thought unjustly, over his head."

His proudest moment:

Fagg said his proudest moment came when he heard the words "not guilty" pronounced in Lovette's third federal trial.

"Knowing that an innocent person wasn't going to be wrongly convicted was definitely my proudest moment," Fagg said. "When you're facing the federal government and your client is facing a possible

prison term, you feel the weight of that responsibility."

Fagg said it "seemed like an eternity" passed from the time he learned the jury had returned a verdict in the third trial to the moment the decision was announced, freeing his client from the worry and anxiety he had faced since his indictment in the fall of 2020.

Fagg added that it was the work of every member of his team that led to the positive result for his client.

"I didn't win this case for our client, our team won this case for our client," Fagg said. "From the partners, to the associates, to the paralegals, to the trial support personnel, they all played very critical roles. They were the glue in this matter, and they helped us all stay focused and stay balanced."

Why he's a white collar attorney:

Fagg said he didn't consider being a trial lawyer when he was finishing up law school in the late '90s during the "tech bubble" and that he didn't follow the "traditional path" most white collar attorneys do.

During summer programs while attending Wake Forest University School of Law, Fagg realized he was "drawn to litigation" and that after law school, while an associate at Spriggs & Hollingsworth in Washington, D.C., he "had the privilege of working on some white collar matters."

"I loved the pressure," Fagg said. "I loved that the stakes were as high as they could get."

After Fagg followed his wife from Washington, D.C., to Charlotte and joined Moore & Van Allen in 2007, Jim McLoughlin Jr., a partner at the firm, encouraged Fagg to help start a white collar practice.

"He didn't care that I was an associate, he didn't care that I wasn't a former assistant U.S. attorney, he knew that we were both very passionate about white collar defense work and being an integral part of the justice system," Fagg said, noting that he co-leads the firm's white collar practice with Valecia McDowell.

"I'm immensely grateful to Jim for that mentorship and for supporting us the last 15 years," Fagg said. "Our white collar team has represented clients in many of the most significant government investigations and proceedings across the financial services industry. A very small percentage of our work is actually in Charlotte, we're across the country and across the globe."

Fagg said he loves his work and that it has taken him to the United Kingdom, Europe, Latin America, Africa and Asia. He said he also enjoys the professional relationships he's developed with government and enforcement attorneys who are often on the other side of a matter.

"We might disagree and argue about an issue, that's what we love to do," Fagg said. "But you can do it in a way that lets them know, at the end of the day, you're an honest broker. If you don't have their trust, you're doing your client a disservice. I want them to be able to trust me even if we're trying to get to different places."

Fagg said that cultivating trust with prosecutors and regulators can translate into big benefits for the clients he is hoping to keep out of prison or from other unpleasant consequences.

"Some of our biggest cases never see the light of day," Fagg said. "Over the course of the last two years, we've represented a number of senior executives who were facing criminal investigation or investigation by the [U.S. Securities and Exchange Commission] or CFTC, and we've been able to persuade the government that our client did nothing wrong. I love those quiet victories. You don't have the same moment of impact that you do when you have a not guilty jury verdict, but the result is probably better for everybody."

His biggest challenge:

Fagg said that "after trying the [Lovette] case three times for the better part of 10 straight months," he had to "switch gears" quickly from his representation of an individual to resolving a matter for Bank of America with the Commodity Futures Trading Commission.

"Immediately on the heels of [Lovette], I had to go from representing an individual, which takes one skill set, to representing a corporation in navigating parallel resolutions that resulted in very substantial fines," Fagg said, referring to an SEC investigation Bank of America was facing at the same time.

The CFTC case involved a "sweep" of large financial services firms regarding "off-channel" communications on personal devices. Fagg led the Moore & Van Allen team that represented Bank of America with the CFTC while another firm handled the SEC matter for the bank, Fagg said.

He helped the bank negotiate a \$225 million resolution between the CFTC and SEC investigations, according to the firm.

"When representing an individual, it is frequently very adversarial with the federal government," Fagg said. "But when you're representing corporations it requires a different tone and a different touch."

His advice for young lawyers:

Fagg said he tells junior attorneys, "Your reputation is everything."

"You don't want to do anything that will cause people to question your credibility or create distrust, particularly in the white collar space," Fagg said. "I also encourage them to try new things, so they can find what it is that they really love to do. If you find an aspect of the law that you're passionate about, you're going to be a much better lawyer for your clients and to the benefit of your career."

Fagg said he urges young attorneys to "speak up, because everybody has good ideas, especially when you're going to trial."

"I also encourage them to be the person who knows the facts better than anyone else," Fagg said. "If you really know the facts, it will open doors because you're able to spot things others will not. That's something we emphasize on our white collar team to our younger lawyers, and when they do it, we give them the opportunities that they've earned."

-- *As told to Lynn LaRowe*

Law360's MVPs of the Year are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals, and complex global matters. A team of Law360 editors selected the 2023 MVP winners after reviewing more than 900 submissions.