

Transportation Group Of The Year: Sullivan & Cromwell

By **Mike Curley**

Law360 (February 15, 2023, 2:03 PM EST) -- Sullivan & Cromwell LLP shepherded Electrify America and Volkswagen Group through a \$450 million investment, warded off antitrust claims against Volkswagen, and advised Canadian Pacific Railway in its \$31 billion acquisition of railroad Kansas City Southern last year, earning it a spot as one of Law360's 2022 Transportation Groups of the Year.

Partner Suhana Han told Law360 that the firm's generalist approach had been key to making these deals and winning cases, as the attorneys have a far-reaching knowledge and understanding of their clients that lets them address not just legal issues but business considerations, and gives them an advantage in advising their clients.

She pointed to the Electrify America investment, saying the firm's creativity allowed it to turn a consent decree with federal and California regulators over the 2015 emissions scandal into an opportunity for Volkswagen, and the firm is proud of the result.

Volkswagen created Electrify America with a \$2 billion commitment as part of a settlement deal with the U.S. Environmental Protection Agency and others to resolve claims that it had violated federal law with so-called defeat devices that let cars pass emissions tests.

"We think that it represents, very much, creative thinking on the part of the company in response to a consent decree that the company entered into, arising out of the diesel emissions issue," she said. "This is an example of making lemonade out of lemons, and as a result of that decision to enter into this space, we're very proud of the work we have done on behalf of Electrify America."

And just as the firm helps Volkswagen with its investment into Electrify America, attorneys with Sullivan & Cromwell warded off a pair of antitrust suits from automotive supplier network Prevent Group. In November 2021, the Sixth Circuit upheld the dismissal of the claims, finding that the suit properly belonged in German courts.

Han told Law360 that the case presented an opportunity for the firm to learn how Volkswagen does business in Germany and understand the intricacies of German litigation. The U.S. attorneys worked with another firm in Germany on the cases.

"Our generalist model is a strength of the firm," she said. "If you look at the lawyers who represented



Volkswagen on the Prevent cases, we do a variety of cases, not just antitrust. And it's our far-reaching knowledge and understanding of the way in which Volkswagen does its business that allows us to address not only legal issues of the company, but also business considerations."

Han said the firm was first brought in to represent Volkswagen during the emissions scandal in a limited role, but the generalist approach allowed the firm to react quickly and be proactive in that crisis, and the firm expanded its role in advising the automaker.

That case built up Volkswagen's faith in the firm, which led to Sullivan & Cromwell's being brought in on the antitrust suits, Han said, and the generalist approach allowed the firm to approach the case with a bird's-eye view.

Partner Andrew Gerlach, who advised Canadian Pacific on the Kansas City Southern acquisition, said that deal stood out and was fascinating because of its potential impact on shipping and transport in North America.

Gerlach said Canadian Pacific had initially signed a deal in March 2021 to acquire Kansas City Southern, but rival railroad Canadian National topped the bid and Kansas City Southern decided to go with Canadian National instead.

But Canadian Pacific believed that it had the better regulatory position, and Sullivan & Cromwell attorneys were able to show that Canadian Pacific could convince the Surface Transportation Board, which oversees competition in the freight rail industry, to let it use a voting trust and get around tougher railroad merger rules.

This was the first Class 1 rail consolidation in decades, Gerlach said, so it was not a given that anyone could use that trust structure. It would allow Canadian Pacific to close on the deal faster than Canadian National, which wasn't able to use the trust and would have had to delay closing until regulatory approval.

As a result, he said, Canadian Pacific was able to go back to Kansas City Southern's board, revise the offer and close by the end of 2021.

Here, too, Sullivan & Cromwell's generalist structure helped seal the deal in a seamless fashion, with the firm's broad expertise allowing it to look at the deal from different perspectives and in the context of different types of law.

"We're generalists who work together all the time to bring our experience to bear in these kinds of deals, and I think it really showed here," he said.

--Editing by Karin Roberts.