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# CORPORATE CRIME REPORTER

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## MOLOLAMKEN AND THE TRANSFORMATION OF WHITE COLLAR PRACTICE

Who says that white collar practice has to be defense side only?

Not Steven Molo.

Molo is a partner in the law firm of MoloLamken.

Molo, a former federal prosecutor and partner at Winston & Strawn, joined with former Baker Botts partner Jeffrey Lamken and in 2009 launched their new firm with five lawyers. Four years later they are at 21 lawyers and growing.

But while they practice traditional white collar defense, they also do plaintiffs side whistleblower work.

“There is opportunity out there,” Molo told *Corporate Crime Reporter* in an interview last week. “There are economic advantages. You can take more risk. Some of the cases are 100 percent contingent fee. That’s one reason. Also, it’s fun and interesting to be on the plaintiffs side. You are able to advance new theories and push the law forward.”

“We love being lawyers. We enjoy what we do and we enjoy being advocates. I don’t know whether it’s just inertia or easier for people to fall into a particular kind of practice, be very good at it and say -- why change it, whether that’s solely defense or solely plaintiffs side. We enjoy all aspects of our practice. That’s why we formed the firm. And that’s why we take on the kinds of cases we do now.”

MoloLamken is involved with a False Claims Act case in Boston, a securities whistleblower case before the Securities and Exchange Commission and a number of Foreign Corrupt Practices Act (FCPA) cases.

At the same time, the firm is juggling a number of traditional white collar criminal defense cases.

“We’ve had some great successes on the defense side,” Molo said. “This last year, we had a couple of big declinations. We represented a Japanese executive in a big cross border antitrust case. We had a public corruption case that was declined in New York. We had a mixed verdict in a health care trial in Florida earlier in the year. And

then later in the year, we had an unsuccessful outcome in an obstruction case. But the last verse is not yet written on that one.”

It’s the kind of mix you don’t see at big white collar law firms.

“You would not see that at a big firm,” Molo said. “But it makes perfect sense for us to do that. We have the expertise. We understand the issues. And if someone comes to us with a case, we can more easily determine whether or not it has legs. We think it is an area that we are going to continue to do a lot more work in. It dovetails real well with the existing practice and the existing expertise that we have. It’s a growing area of our practice.”

“We are relatively small,” Molo says. “There is no question that there is an esprit de corps that you have in a smaller institution, especially one that tends to go to trial and engage in the kinds of battles that we engage in on behalf of our clients. And that’s an exciting opportunity for a younger lawyer. There are a lot of great large law firms in the world. They provide their opportunities. But we provide younger people who come to us with an opportunity to work very closely with senior experienced people, to get their hands dirty from the start, digging into the matters that we are handling. It’s not uncommon for somebody to see their name on a brief to the Supreme Court of the United States within a few months of joining us.”

“Last year, there was an associate who joined us in March, and he put on a couple of witnesses in a criminal trial that he tried with me and another partner in December. So, those kinds of experiences are harder to come by in larger law firms.”

Given the firm’s recent success, why won’t it continue to grow into a big law firm?

“We have always thought that once you got to around 40 or 50 lawyers, the character of the place would probably change,” Molo said.

“We like what we have been building so far in terms of the culture and quality of the people and the mix of cases. Being at 21 lawyers has given us some advantages in terms of the variety of matters we have been able to take on. You are able to take more risk on the plaintiffs’ side of cases. I would be very surprised if we were ever to be larger than 50 lawyers. But I suppose there is always a chance that

for some reason or another you will get bigger. But it won't be through a merger. We are just not interested in that."

## **INTERVIEW WITH STEVEN MOLO, MOLOLAMKEN, NEW YORK, NEW YORK**

In October 2009, Steven Molo and Jeffrey Lamken started their boutique white collar firm MoloLamken with five lawyers.

They are now up to 21 lawyers and growing.

They are succeeding in a space dominated by large corporate criminal defense law firms.

We interviewed Steven Molo on February 10, 2014.

**CCR:** You graduated from the University of Illinois Law School in 1982. What have you been doing since?

**MOLO:** I began my career as a prosecutor in Chicago. I then spent quite a while with Winston & Strawn, where I was litigation partner and member of the executive committee. I then spent five years with Shearman & Sterling in New York where I was a litigation partner.

In October 2009, Jeff Lamken and I formed this litigation boutique, MoloLamken. We started out with five lawyers at that time. And we are now twenty-one.

**CCR:** What is the focus of your practice?

**MOLO:** We do three things. We do business litigation, broadly defined, with a lot of work in the plaintiffs securities area. We do intellectual property litigation. And we do white collar defense and investigations. We do those three things at the trial and appellate levels.

**CCR:** You are four years in now. In retrospect, what are the benefits of a boutique law firm over a big law firm practice?

**MOLO:** Without question, the absence of conflicts is a huge advantage to us. We are able to be adverse to financial institutions, which is something that at a large law firm you really can't do. We have done that.

We have sued a number of banks over the course of the four years we have been in business. Certainly, large law firms tend not to do contingency cases, or they tend not to do them well. Because of the way large law firms bill, they aren't

able to take those cases.

Through a more efficient structure and having only experienced lawyers, we are able to take on matters like that.

We are able to attract and train truly outstanding younger lawyers and have them develop skills we feel are important to succeed in a litigation practice like ours.

**CCR:** What part of your practice is plaintiffs side compared to defense side?

**MOLO:** It depends on the month, the week, the day. Of course, criminal work is defense side. Last year we were involved in two significant criminal trials.

On the civil cases, we tend to be more on the plaintiffs side than on the defense side, although we do defense side civil work as well. I would estimate that last year it was 60 percent to 70 percent plaintiffs side work and the rest defense.

**CCR:** Big law firm white collar is primarily defense side.

**MOLO:** Correct. More and more lawyers that go to large law firms tend to do just the white collar work or the related regulatory work -- parallel investigations and things like that. So, those people find themselves 100 percent on the defense side.

**CCR:** For a young lawyer, what's the difference between the culture of a big law firm and a firm like yours?

**MOLO:** We are relatively small. There is no question that there is an esprit de corps that you have in a smaller institution, especially one that tends to go to trial and engage in the kinds of battles that we engage in on behalf of our clients.

And that's an exciting opportunity for a younger lawyer. There are a lot of great large law firms in the world.

They provide their opportunities. But we provide younger people who come to us with an opportunity to work very closely with senior experienced people, to get their hands dirty from the start, digging into the matters that we are handling. It's not uncommon for somebody to see their name on a brief to the Supreme Court of the United States within a few months of joining us.

Last year, there was an associate who joined us in March, and he put on a couple of witnesses in a criminal trial that he tried with me and another partner in December. So, those kinds of experiences are harder to come by in larger law firms.

**CCR:** What part of your practice is corporate versus

individual?

**MOLO:** On the criminal side, probably more individual than corporate, but we do represent corporations in criminal matters. Certainly more than 50 percent of criminal matters tend to be for individuals.

**CCR:** What are the chances that your firm will morph into a big firm?

**MOLO:** Very little chance.

**CCR:** You went from five to 21 in four years, why not 20 to 100 in a couple more?

**MOLO:** It's unlikely that will happen.

**CCR:** Do you have a hard limit on the number of lawyers?

**MOLO:** We have always thought that once you get to around 40 or 50 lawyers, the character of the place would probably change.

We like what we have been building so far in terms of the culture and quality of the people and the mix of cases. Being at 21 lawyers has given us some advantages in terms of the variety of matters we have been able to take on. You are able to take more risk on the plaintiffs' side of cases. I would be very surprised if we were ever to be larger than 50 lawyers. But I suppose there is always a chance that for some reason or another you will get bigger. But it won't be through a merger. We are just not interested in that.

**CCR:** What part of the business litigation practice is representing whistleblowers?

**MOLO:** We have right now a large case pending in Boston. We had a matter that we brought to the SEC.

**CCR:** Is the case before the SEC an FCPA whistleblower case?

**MOLO:** That one happens to not be an FCPA whistleblower case. But we do have some FCPA whistleblower cases pending. And that is going to be an area that is going to grow tremendously.

**CCR:** Is the Boston case a False Claims Act case?

**MOLO:** It is.

**CCR:** You are doing FCPA whistleblower, SEC whistleblower, False Claims Act whistleblower cases. You would not see a big firm taking these kinds of cases.

**MOLO:** You would not see that in a big firm. It makes perfect sense for us to do that. We have the expertise. We understand the issues. And if someone comes to us with a case, we can more easily determine whether or not it has legs.

We think it is an area that we are going to continue to do a lot more work in. It dovetails real

well with the existing practice and the existing expertise that we have. It's a growing area of our practice.

**CCR:** At the same time you are doing white collar criminal defense.

**MOLO:** Yes, but that's because we are usually representing individuals in those cases. We are not representing a company. If it is a different company or different industry, we don't see that as a problem from a conflict perspective. And clients on either side haven't raised it as it an issue.

**CCR:** Do you get referrals from large law firms?

**MOLO:** We do. Probably sixty percent of our work comes from referrals from other lawyers. It could be a large law firm or a smaller law firm. Sometimes we get hired either directly by a company or individual that learns of us by reputation. But probably 60 percent comes from other lawyers, lawyers who we have worked with and know, as co-counsel, former partners, or sometimes from opposing counsel.

**CCR:** How many boutique white collar defense firms are there?

**MOLO:** There have always been boutique white collar defense firms and some great ones at that. And that has been true in all parts of the country. Where we are a little bit different is that we have done a broader range of work beyond the white collar area.

The legal profession continues to be in a dynamic state. There's a lot of change going on. Just this morning I read where that this time of year is an anxious time for partners at the big firms.

They are looking at their profitability and deciding whether people are going to be moved out of the firm, or their status will change from equity to non-equity. We have a very clear vision of what we want to do. And we have from the time that we began. We had the advantage of not having all the problems associated with large law firms.

There is room for other firms to do what we do. And the change that's going on now within the profession will promote that.

**CCR:** Let's look at the question of big companies partnering with the Justice Department to resolve these mega cases. And as a result, executives often get tossed under the bus.

**MOLO:** Deferred prosecution agreements seem to be here to stay. We see with the Antitrust Division a carve in, carve out policy. We see what's happening with prosecutions in some of the other areas, including the FCPA area.

It's troubling to see a private law firm go out, do an investigation, come to its conclusions, and have someone be thrown under the bus as a result of that kind of investigation without all of the protections inherent in an actual criminal investigation. But that's here to stay.

**CCR:** When those executives are tossed out, sometimes you are approached to represent them. What kind of disadvantage does it put you at -- facing down both the government and the company?

**MOLO:** Each case has its own set of facts. The size of our law firm doesn't disadvantage us in any way. The white collar criminal statutes that we see all the time are broad statutes subject to broad application.

There is a lot of discretion that goes into the decision to charge somebody with most of those crimes in most instances. The government has a lot of leverage initially in these cases. But we are advocates.

That's the nature of what we do. Whether it's trying to persuade the government not to charge someone, or persuading a jury not to convict someone after they have been charged, that's what we do. That's the role that we play in this whole process.

**CCR:** What's been your track record so far in criminal cases?

**MOLO:** We've had some great successes. This last year, we had a couple of big declinations. We represented a Japanese executive in a big cross border antitrust case. We had a public corruption case that was declined in New York. We had a mixed verdict in a health care trial in Florida earlier in the year. And then later in the year, we had an unsuccessful outcome in an obstruction case. But the last verse is not yet written on that one.

**CCR:** What part of your practice is courtroom action, trial work, compared to settlement work?

**MOLO:** The fact remains that most criminal and civil cases today are resolved short of trial. But we are certainly in court a heck of lot more than most lawyers in this practice.

We have a very active docket of cases that are brought to us. Maybe the client recognizes that they want people with more trial experience involved, or maybe they want new counsel on appeal. So, we are in both the appellate and trial courts a lot. That's what we enjoy doing.

**CCR:** Let's talk revolving door. We just saw the top FCPA prosecutor go to Morrison and Foerster. The top SEC enforcement person went to Milbank. No

way we're going to see those is people go to smaller boutique firms, right?

**MOLO:** At that level, people are getting into a situation, they are not just getting a job. You mentioned the top FCPA prosecutor.

That person is going to be, in most instances, more valuable to a large global law firm, with clients that have internal investigations throughout the world. That doesn't mean they couldn't have a very successful practice at a smaller firm. But their highest and best use may be at a larger place.

We were just very fortunate to persuade Andy DeVooght, a well respected prosecutor from the U.S. Attorney's office in Chicago, to join us. Andy had clerked for Justice Rehnquist and for Judge Michael Kanne on the Seventh Circuit. Andy was a partner at Winston & Strawn before he went to the U.S. Attorney's office. He spent four years at the U.S. Attorney's office and then joined us. Having a serious prosecutor join a smaller firm isn't unheard of. Two years ago, Justin Shur joined us after being the deputy chief at the Public Integrity Unit at Main Justice.

A firm like ours presents opportunities to get into court. We are on the plaintiffs' side of some interesting cases. Right now we represent investors in mortgage backed securities cases. We have eight of these cases pending.

These cases deal with the whole mortgage crisis. Those are the kinds of cases on the plaintiffs side that you are not going to get a chance to do at the larger law firms. For the right individual who has that desire to be entrepreneurial, to get into court, to be on the plaintiffs side on some of these things, you can't do that in a large law firm.

**CCR:** After a big drum roll over the FCPA whistleblower cases, we haven't heard much. What's going on?

**MOLO:** Some of these FCPA whistleblower cases are starting to mature. They have paid out a few of the SEC whistleblower cases already, not so much in the FCPA area.

But I know, based on what I've seen in terms of my own practice and what I hear from other people out there, there are a lot of people poking around. These are potentially very large dollar cases. There is a big emphasis on enforcement related to corruption around the world. Brazil just passed their clean company act.

Two years ago, Mexico enacted their version of the FCPA. A number of other countries around the

world are moving that direction. But more importantly than just those laws, we are seeing this concerted effort for the countries law enforcement authorities to work together to investigate and prosecute these cases. There is an appetite for the cases.

The conduct clearly is going on. And I think we will see some very big FCPA prosecutions and whistleblower payouts over the next few years.

**CCR:** Will the FCPA whistleblower cases ever rival the False Claims Act?

**MOLO:** The structures are different. And that makes it a little less lucrative in the SEC area. But you will see the activity. On the bribery front alone, there is enough activity.

But you will also see them in the context of activity in the securities business. There is no shortage of wrongdoing whenever there is a lot of money involved in an industry. And the securities business is one that has had its shares of scandals over time. We will see more and more SEC related activity.

**CCR:** Have you ever worked with governments to bring prosecutions?

**MOLO:** We have not yet worked for the federal government in that capacity. We have been from time to time approached by state governments on a consultative basis.

There is certainly precedent for it. Look at the tobacco cases, where a group of state Attorneys General hired private lawyers. Same for private antitrust cases. It would have been an interesting approach to have dealt with some of the issues that were raised in the financial crisis.

Of course, now the statute of limitations has run on a number of these issues. And the attention and the focus has moved elsewhere as well. But there are certainly opportunities there. And creative use of private lawyers is something the government should probably think about more.

**CCR:** Why aren't there more practices like yours that walk both sides of the street?

**MOLO:** Both Jeff Lamken and I were pretty established in our careers when we left our old firms to form this firm.

**CCR:** You both came out of defense side work. What made you look at plaintiffs work?

**MOLO:** There is opportunity out there. There are economic advantages. You can take more risk. Some of the cases are 100 percent contingent fee.

That's one reason. Also, it's fun and interesting to be on the plaintiffs side. You are able to advance

new theories and push the law forward.

We love being lawyers. We enjoy what we do and we enjoy being advocates. I don't know whether it's just inertia or easier for people to fall into a particular kind of practice, be very good at it and say -- why change it, whether that's solely defense or solely plaintiffs side. We enjoy all aspects of our practice. That's why we formed the firm. And that's why we take on the kinds of cases we do now.

**CCR:** Are your 21 lawyers all situated in your office in New York?

**MOLO:** No. We have offices in New York, Washington, D.C. and Chicago.

**CCR:** In the modern day law practice, does the physical office matter?

**MOLO:** It matters less. We have three offices in the United States, but our clients are literally all over the world. We represented the government of Laos. It was a civil case in New York.

It matters that people share a culture. It matters that we are together from time to time. We work on our cases across offices. We staff matters across offices. It's not uncommon for a case to be staffed from across all three offices.

If you were to go into any of our three offices, you will see that they have a similar feel to them. They tend to be a bit more open than offices in traditional large law firm. The carpet, furniture are all the same.

Physically they are similar. But more importantly, we have this very clear feel for who we are. Everyone goes off to the deposition and trial practice course within a short time of joining us.

We have just invested in a very sophisticated whiteboarding and video conferencing system that allows all three offices to be connected in a high end virtual way that promotes communication. You have to make sure that collaboration and shared values and a shared vision for the firm are front and center.

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