



TRACE ANTI-BRIBERY SPECIALIST ACCREDITATION

**The Other Anti-Bribery Litigation:
UNDERSTANDING RISK & EXPOSURE
UNDER THE FALSE CLAIMS ACT**

November 12, 2014

Speaker Bios



SAVARIA HARRIS is an experienced litigator with trials in state and federal courts as well as with government and internal investigations in the white collar context. Her practice centers on providing clients with an integrated approach to addressing fraud, whistleblower and government actions under the False Claims Act and its local equivalents. She is experienced in risk assessments, internal investigations, ethics and compliance training, as well as litigation and trial representation. In addition to her practice, Savaria is an adjunct professor of Workplace Ethics at Georgetown University, a member of the Advisory Council for the Association of Certified Fraud Examiners and a member of the NYU Program on Corporate Compliance and Enforcement.



DEBORAH R. MESHULAM chairs DLA Piper's Securities Enforcement practice. Based in Washington, DC, she has more than two decades of securities enforcement experience trying the full range of cases arising from allegations of securities law violations and related breaches of fiduciary duty. In addition, she represents clients in SEC and Department of Justice (DOJ) investigations relating to claims of securities law violations, FCPA violations and counsels clients on compliance, regulatory and corporate governance matters, including issues relating to the Dodd Frank whistle blower program. She also represents clients in Public Company Accounting Oversight Board (PCAOB) investigations and in Exchange delisting hearings.

Recent Press

COMPLIANCE WEEK

THE LEADING INFORMATION SERVICE ON CORPORATE GOVERNANCE, RISK, AND COMPLIANCE

BLOGS

EVENTS

WEBCASTS

JOBS

THOUGHT LEADERSHIP

DaVita Healthcare to Pay \$350 Million for False Claims Act Violations

Jaelyn Jaeger | November 4, 2014

DaVita Healthcare Partners, a dialysis services provider, agreed last month to pay \$350 million to the Department of Justice to resolve claims that it violated the False Claims Act.

Bloomberg
BNA

LEGAL & BUSINESS

TAX & ACCOUNTING

ENVIRONMENT, HEALTH & SAFETY

HUMAN RESOURCES

DOJ's New 'No Decision' Tactic In 'Qui Tam' Cases Leaves Counsel Guessing

Friday, August 1, 2014

By R. Scott Oswald and David L. Scher

In 2013, a record 753 new *qui tam* matters under the False Claims Act ("FCA") were opened at the U.S. Department of Justice, marking a 15.5 percent increase in volume over 2012 and illustrating the steady growth in this fast expanding area of law.

The growth was even higher in cases involving the Department of Health and Human Services as the "primary client agency," with a 20.5 percent

ST. LOUIS POST-DISPATCH

Boeing pays \$23 million to resolve False Claims Act allegations

October 10, 2014 6:26 pm • From Staff Reports

Boeing has paid \$23 million to resolve allegations that the company submitted false claims for labor charges on maintenance contracts with the U.S. Air Force for the C-17 Globemaster III.

The Department of Justice announced the settlement for maintaining and repairing the aircraft.

"Today's settlement demonstrates the Department's commitment to holding companies accountable for submitting false claims for labor charges on maintenance contracts with the U.S. Air Force for the C-17 Globemaster III."

THE WALL STREET JOURNAL

U.S. NEWS

Invoking Anti-Fraud Law, Louisiana Doctor Gets Rich

Serial Whistleblower William LaCorte Wins \$38 Million; Losing a 'Threadbare' Lawsuit

By PETER LOFTUS

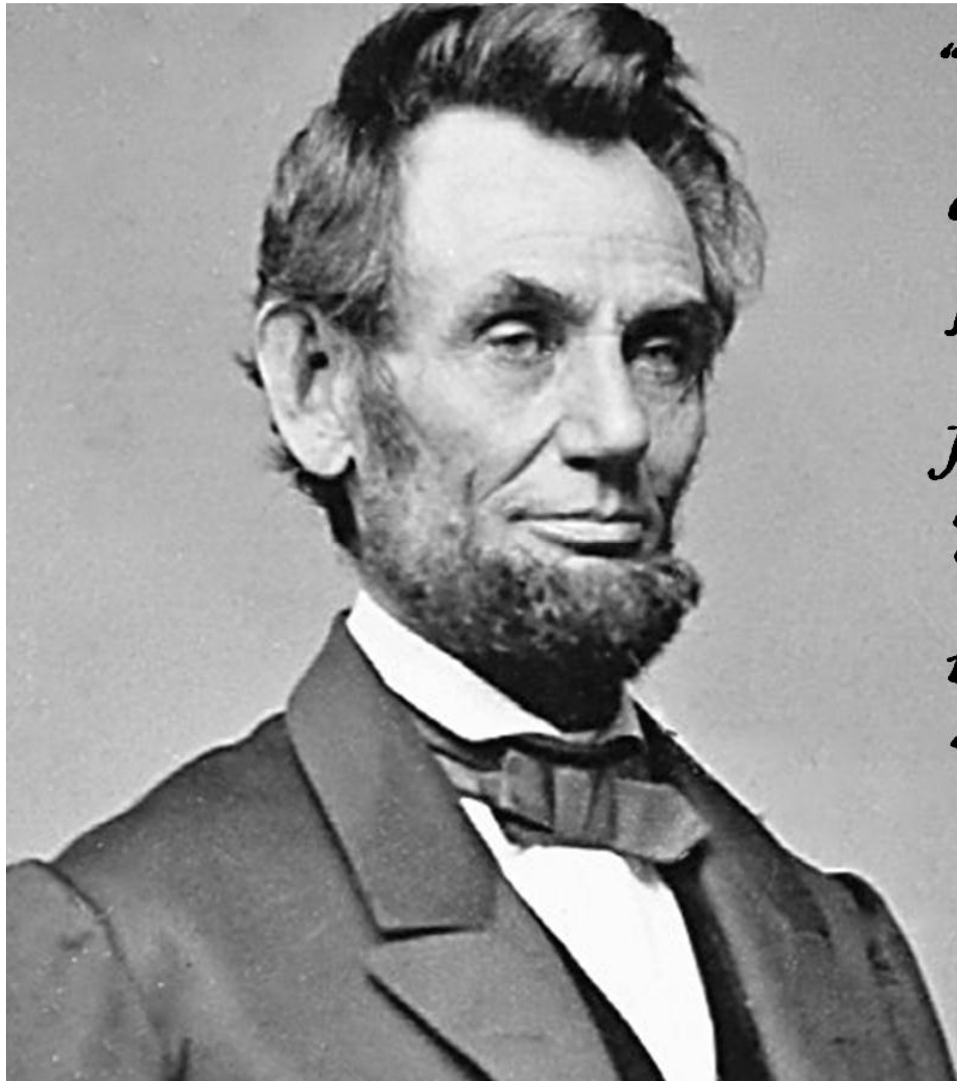
CONNECT

Updated July 24, 2014 11:39 a.m. ET



Dr. William LaCorte, shown sorting legal documents in his medical offices, has received \$38 million under a federal law that encourages fraud reporting. *William Widmer for The Wall Street Journal*
METAIRIE, La.— William LaCorte keeps a half-dozen marble paperweights at his medical practice in this New Orleans suburb.

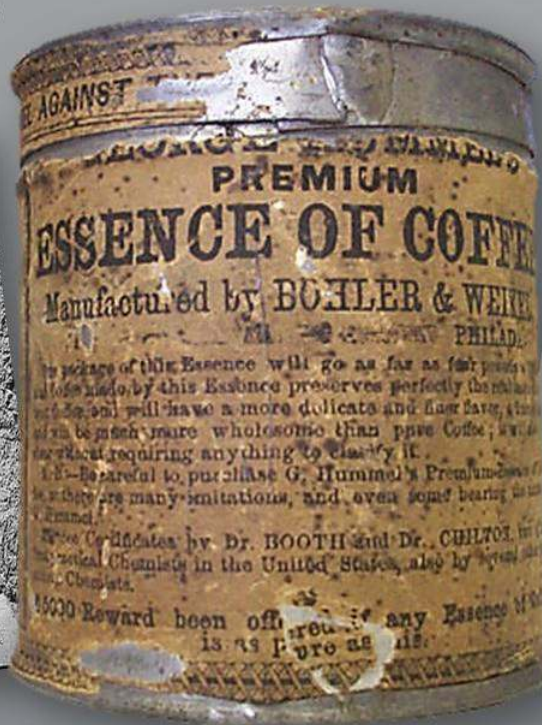
Introduction to **False Claims Act**



*"Worse than traitors in arms
are the men who pretend
loyalty to the flag, feast and
fatten on the misfortunes of the
Nation, while patriotic blood
is crimsoning the plains of the
South, and their countrymen
moldering the dust."*

Abraham Lincoln

1863



Wrongdoers liable for double damages and fined \$2,000 for each false claim; citizens bringing *qui tam* actions received 50 percent of government award

Modern Amendments to Federal FCA



1943

Reduced reward; prohibited *qui tam* actions based on information already in the possession of the government even if the whistleblower was the source of the government's knowledge

1986

Whistleblowers entitled to 15-30 percent of award; recovery and attorneys' fees; treble damages and \$5,000 - \$10,000 for each false claim; SOL extended; burden of proof eased; whistleblower protections added; eased restriction on cases about which the government possessed information

2009

Overruled judicial decisions that had limited False Claim Actions; expanded anti-retaliation protections

2010

Lowered "public disclosure" standard; broadened "original source" provisions, liability for AKS violations; liability for failure to return overpayments

State FCAs



- The 2005 Deficit Reduction Act created incentives for states to develop their own false claims acts.
- Currently, 30 states have FCA statutes
- Some states have “Medicaid only” FCAs
 - 18 states have been deemed by HHS to have false claim statutes at least as strong as the FCA
 - ▶ Provisions rewarding and facilitating *qui tam* actions
 - ▶ Allow actions to be filed under seal for 60 days with review by the State AG
 - ▶ Civil penalties equal to or greater than the FCA
- May be more expansive than the Federal FCA
 - New York State FCA covers tax violations
 - California case against a credit rating agency based on allegations that agency inflated ratings of finance securities to influence state pension funds to purchase the securities



The False Claims Act



Bribery of a **domestic government official** to influence transactions in the **private sector** or bribery of others in the **private sector** to influence the receipt of **government funds** (e.g. bid rigging, kickbacks). Primarily occurs with respect to government kickbacks.

LAW

THE FALSE CLAIMS ACT

- a. Primary tool in combating fraud against federal government.
- b. As of 2014, thirty states and the District of Columbia have also created false-claims statutes, which are modeled on the federal False Claims Act.

CONSEQUENCES

- Civil and criminal penalties assessed against those who are found to have knowingly submitted a false claim to the government.
- a. Civil penalties are up to three times the *actual* amount suffered by the government, between \$5,500 and \$11,000 for *each* false claim, and reasonable attorney's fees and costs.
 - i. Penalties are mandatory.
 - b. The courts may also impose criminal penalties for willful violations.
 - c. Other penalties:
 - i. Suspension
 - ii. Debarment

Expanded definition of a “Claim”



Traditionally used against government defense contractors starting in mid-1980s due to rampant fraud:



Extended use of FCA against healthcare industry in late-1990s due to growing concerns about healthcare fraud

Now applied to a growing number of industries including financial services, technology, telecommunications, food & beverage, education, and import/export

Types of “claims” expanded

- Avoiding obligation to pay money
- False certifications material to obligation to pay money
- Failure to return overpayments
- Indirect suppliers

Expanded Definition of a Claim



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Columbia University to pay \$9 million to end U.S. lawsuit over AIDS grants

By **Nate Raymond**
October 28, 2014 5:48 PM

By Nate Raymond

NEW YORK (Reuters) - Columbia University has agreed to pay more than \$9 million to resolve a lawsuit by the U.S. government accusing it of submitting false claims in connection with grants the Ivy League school obtained to fund AIDS- and HIV-related work.

The settlement, announced by Manhattan U.S. Attorney Preet Bharara on Tuesday, will resolve a civil lawsuit unveiled the same day that sought damages and penalties under the federal False Claims Act.

The lawsuit centered on Columbia University's role as grant administrator for its International Center for AIDS Care and Treatment Programs



Preet
New Y

Risk & Compliance Journal.

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October 22, 2014, 7:19 AM ET

The Morning Risk Report: Whistleblower Verdict is False Claims Act Wake-Up Call

By **RACHEL LOUISE ENSIGN** [CONNECT](#)

Wall Street Journal

The \$175 million penalty handed down by a federal jury Monday in a case brought by a whistleblower is notable not just for its size, but for the fact that the government has not intervened in the case.

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Guardrail maker Trinity faces \$525 million judgment after whistleblower trial win

By **Richard L. Cassin** | Tuesday, October 21, 2014 at 10:08AM



A Texas jury Monday awarded a whistleblower \$175 million in his False Claims Act suit against Trinity Industries for faulty guardrails. Under federal law, the award will be trebled to \$525 million.

Joshua Harman, a competitor of Trinity, alleged that Trinity changed its guardrail head design in 2005 but didn't ration as required.

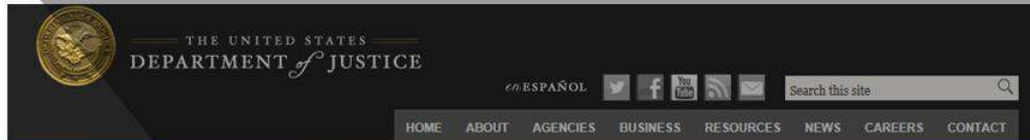
governments which in return received

lit between the United States Treasury

Ongoing Trend



Justice Department Recovers \$3.8 Billion from False Claims Act Cases in Fiscal Year 2013



Home » Office of Public Affairs

JUSTICE NEWS

Department of Justice
Office of Public Affairs

FOR IMMEDIATE RELEASE

Friday, December 20, 2013

Justice Department Recovers \$3.8 Billion from False Claims Act Cases in Fiscal Year 2013

The Justice Department secured \$3.8 billion in settlements and judgments from civil cases involving fraud against the government in the fiscal year ending Sept. 30, 2013, Assistant Attorney General for the Civil Division Stuart F. Delery announced today. This dollar amount, which is the second largest annual recovery of its type in history, brings total recoveries under the False Claims Act since January 2009 to \$ 17 billion – nearly half the total recoveries since the Act was amended 27 years ago in 1986.

The Justice Department's fiscal year 2013 efforts recovered more than \$3 billion for the fourth year in a row and are surpassed only by last year's nearly \$5 billion in recoveries. As in previous years, the largest recoveries related to health care fraud, which reached \$2.6 billion. Procurement fraud (related primarily to defense contracts) accounted for another \$890 million – a record in that area.

FRAUD STATISTICS - OVERVIEW

October 1, 1987 - September 30, 2013
Civil Division, U.S. Department of Justice

FY	NEW MATTERS ¹		SETTLEMENTS AND JUDGMENTS ²			
	NON QUI TAM	QUI TAM	NON QUI TAM	QUI TAM		
			TOTAL	WHERE U.S. INTERVENED OR OTHERWISE PURSUED	WHERE U.S. DECLINED	TOTAL
2008	161	379	319,283,480	1,038,828,558	12,578,936	1,051,507,496
2009	132	433	469,334,681	1,957,410,366	33,776,480	1,991,186,845
2010	140	574	639,462,795	2,275,004,265	136,491,841	2,381,496,107
2011	124	635	241,225,996	2,645,095,115	173,113,339	2,818,208,454
2012	143	652	1,808,112,862	3,198,968,892	127,795,019	3,326,763,911
2013	93	753	829,912,477	2,870,141,363	109,229,614	2,979,370,977
TOTAL	4,522	9,244	11,740,002,708	26,210,508,743	991,079,038	27,201,587,782

FY	NON QUI TAM	QUI TAM
2008	161	379
2009	132	433
2010	140	574
2011	124	635
2012	143	652
2013	93	753

Benchmarking Against the Foreign Corrupt Practices Act



FRONTLINE

the business of BRIBES

BAE Will Pay \$450 Million to Settle Long-Running Bribery Case

BY JACKIE BENNION

FEBRUARY 5

Reactions

In a corruption case that has spanned multiple countries and more than two decades, BAE Systems, Britain's largest defense contractor, has pleaded guilty to two criminal charges and agreed to pay several hundred million dollars in penalties.

In settlements announced simultaneously in Washington and London, the defense giant and a major contractor to the Pentagon, agreed to pay \$400 million in the U.S. and nearly \$50 million in Britain.

In charges brought by the U.S. Department of Justice, BAE will plead guilty to one count of conspiring to make false statements in its failure to comply with tough U.S. antibribery laws. The charge relates to a multibillion-dollar arms deal with Saudi Arabia, and smaller deals with the Czech Republic and Hungary.

The Justice Department delivered its most stinging criticism of BAE's efforts to undermine U.S. laws in criminal court documents released Friday. It accused the British manufacturer of "intentionally failing to put appropriate anti-bribery preventative measures in place," even though the company had assured the government it was taking significant new steps to meet the highest ethical standards.

While making those assurances, court documents said, the company proceeded to make "hundreds of millions of dollars in payments to third parties," despite knowing there was "high probability" the money would be passed on to influential foreign officials who would "favor BAE" in awarding defense contracts. The DOJ said some of those payments were made through intermediaries using offshore shell companies set up by BAE.

In a much smaller UK settlement involving a 1999 contract to supply Tanzania with a radar system, BAE denied there was corruption but admitted it failed to keep accurate accounts of the contract. The British case ends a long and politically charged inquiry into the company's business dealings.

BAE's stock jumped on the news as many observers had expected the penalty to be much closer to \$1 billion in fines. But the plea bargain dismayed some advocates who have long fought to bring BAE to court.

The social justice group [Connerhouse](#) and the [Campaign Against Arms Trade](#) both said

BAE will plead guilty to conspiring to make false statements in its failure to comply with tough U.S. antibribery laws.

RELATED STORIES From our Files & Beyond

Government condemned for failure to tackle bribery

UK government receives hard-hitting condemnation for failing to implement the OECD's "anti-bribery convention," into enforcement more than a decade ago. The OECD launched its review of the UK in the wake of the 2006 decision of the Serious Fraud Office to drop an investigation into BAE Systems over a arms deal with Saudi Arabia.

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Ex-BizJet Official Pleads Guilty in Foreign Bribe Scheme

By Joel Rosenblatt | Jul 24, 2014 5:12 PM ET | [0 Comments](#) [Email](#) [Print](#)

A former executive at Lufthansa Technik's BizJet International Sales & Support, a U.S. unit of Deutsche Lufthansa AG, pleaded guilty to conspiring to bribe government officials in Mexico and Panama.

Bernd Kowalewski, 57, the former president and chief executive officer of BizJet, is the third most senior executive of the company to plead guilty in the case, the **Justice Department** said in a statement. He pleaded guilty today in federal court in Tulsa, **Oklahoma**, to conspiracy to violate the Foreign Corrupt Practices Act, the department said.

The government in March 2012 announced a deferred prosecution agreement with BizJet and an \$11.8 million monetary penalty to resolve charges related to the FCPA. The FCPA prohibits bribing foreign government officials to gain a commercial advantage.

Kowalewski paid bribes to officials in exchange for their assistance in securing contracts for BizJet, according to charges filed in federal court in Tulsa in January 2012. Kowalewski was arrested in Amsterdam and appeared in court today, according to the statement.

Peter DuBois, the former vice president of sales and marketing, and Neal Uhl, a former vice president of finance, pleaded guilty to the same charge in 2012, according to the statement.

Jald Jensen, a former sales manager at BizJet, has been indicted for conspiracy as well as **money laundering** and is believed to be living abroad, according to the statement.

Electronic court records for the case didn't identify the lawyers for the former executives.

Bribery of Foreign Officials

LAW

- a. Primary US international anti-bribery statute.
- b. Prohibits the use of any means of inter-state or inter-country commerce to make **an offer or payment, or promise to pay or authorize the payment of, any money, gift or other thing of value**, to a foreign official, foreign political party or candidate for foreign political office with the **intent to influence an official act or decision of the recipient**, or induce the recipient into violating their duties or using their influence in order to obtain, or retain, business.
- c. **Separate basis of liability under “books and records,”** which applies to issuers of US securities that are registered with the Securities and Exchange Commission (SEC), in the event that prohibited payments are not accounted for properly in the company’s books and records and/or internal control procedures are inadequate.

CONSEQUENCES

- a. **Anti-bribery provisions:**
Corporations are subject to criminal fines of up to US\$2 million per violation.
- b. **Books and records provisions**
Corporate criminal fine can range up to US\$25 million or, under the Alternative Fines Act, up to twice the amount of the benefit sought or obtained by making, or promising to make, the corrupt payment.
- c. **Suspension or Debarment**
Corporate criminal can range up to US\$25 million or, under the Alternative Fines Act, up to twice the amount of the benefit sought or obtained by making, or promising to make, the corrupt payment.
- d. **Other Penalties**
 - i. Compliance monitor
 - ii. Asset forfeiture
 - iii. Shareholder derivative class actions

Resources for Comparison

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October 1, 1987 - September 30, 2013

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2013

- **Archer-Daniels-Midland Co.** - SEC charged the Illinois-based global food processor for failing by foreign subsidiaries to Ukrainian government officials in violation of the FCPA. ADM agree to settle the SEC's charges. (12/20/13)
- **Weatherford International** - SEC charged the Swiss-based oilfield services company with aut travel and entertainment for foreign officials in the Middle East and Africa to win business. V than \$250 million to settle cases with the SEC and other agencies. (11/26/13)
- **Stryker Corporation** - SEC charged the Michigan-based medical technology company with vi doctors and other government officials in five countries to obtain or retain business and mak Stryker agreed to pay more than \$13.2 million to settle the SEC's charges. (10/24/13)
- **Diebold** - SEC charged the Ohio-based manufacturer of ATMs and bank security systems wit officials at government-owned banks with pleasure trips to popular tourist destinations in or Diebold agreed to pay \$48 million to settle SEC and Justice Department cases. (10/22/13)
- **Total S.A.** - SEC charged the France-based oil and gas company for paying bribes to interme official who then exercised his influence to help the company obtain valuable contracts to de agreed to pay \$398 million to settle SEC and criminal charges. (5/29/13)
- **Ralph Lauren Corporation** - SEC announced a non-prosecution agreement (NPA) with Ralph company will disgorge more than \$700,000 in illicit profits and interest obtained in connecti subsidiary to government officials in Argentina from 2005 to 2009. (4/22/13)
- **Parker Drilling Company** - SEC charged the worldwide drilling services and project manag by authorizing improper payments to a third-party intermediary in order to entertain Nigeria the company's customs disputes. Parker Drilling agreed to pay \$4 million to settle the SEC's
- **Koninklijke Philips Electronics** - SEC charged the Netherlands-based health care company wi improper payments made by employees at its Polish subsidiary to health care officials in Pol



Comparison of Enforcement Activity



Year	FCA Actions	FCPA Actions Initiated by DOJ/SEC
2009	565	40
2010	714	74
2011	759	48
2012	795	23
2013	846	27

Comparison of Recoveries



Year	FCA Actions	FCPA Recoveries*
2009	\$2.5 billion	\$644 million
2010	\$3.0 billion	\$1.8 billion
2011	\$3.1 billion	\$508.6 million
2012	\$4.9 billion	\$259.4 million
2013	\$3.8 billion	\$731.1 million

* Does not include recoveries against individuals

Intersection between FCA and FCPA



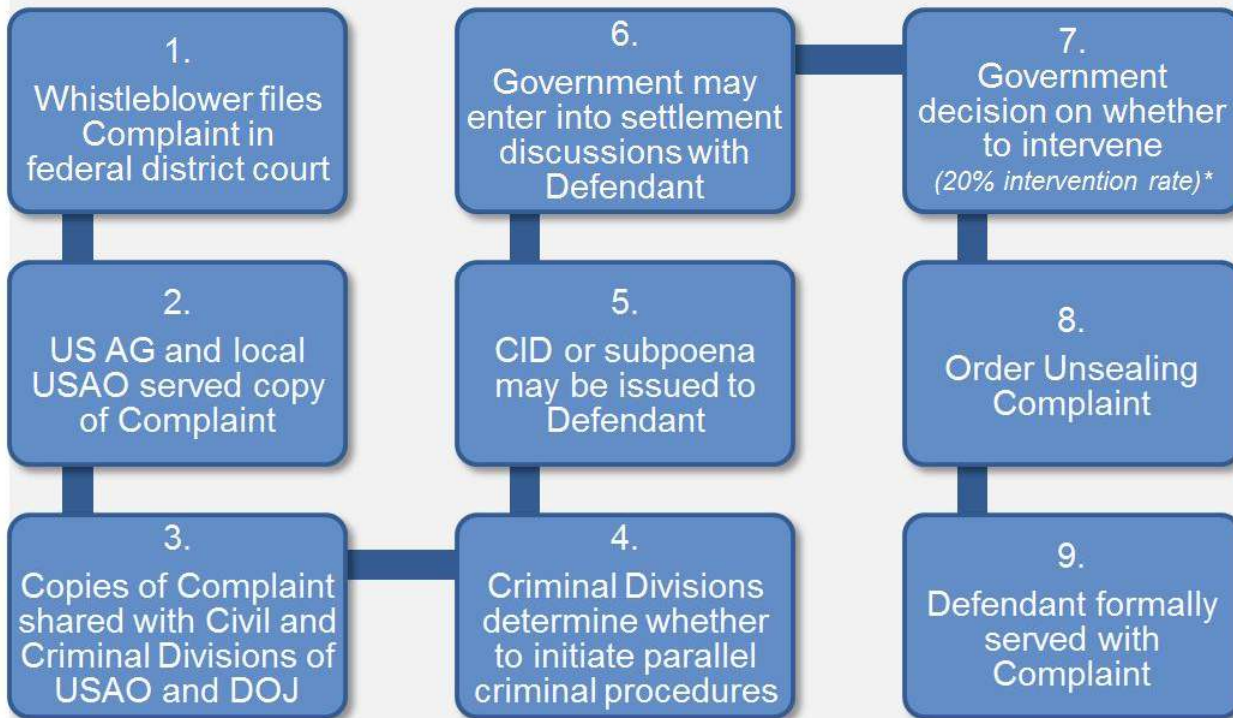
Both FCA and FCPA are Anti-Bribery Statutes

FCPA violations can implicate the False Claims Act

- Invoices including improper payments treated as false claims/false statements
- False compliance certifications are a basis for FCA violations
- Example: US Government contractor working overseas submits claims for reimbursement of payments that included bribes

FCA Litigation Process

A Mature Whistleblower Regime



*See Press Release, Office of Pub. Affairs, U.S. Dept of Justice, Acting Assistant Attorney General Stuart F. Delery Speaks at the American Bar Association's Ninth National Institute on the Civil False Claims Act and Qui Tam Enforcement (June 7, 2012), <http://www.justice.gov/iso/opa/civil/speeches/2012/civ-speech-1206071.html>

MAIN JUSTICE
POLITICS, POLICY AND THE LAW

DOJ Criminal Division Will Increase Scrutiny of False Claims Act Lawsuits for Criminal Prosecution

By Mary Jacoby | September 17, 2014 8:17 pm

The Justice Department's Criminal Division will be increasing its scrutiny of whistleblower complaints alleging fraud against the government.



Leslie Caldwell (Getty)

In a speech before the Taxpayers Against Fraud Education Fund conference in Washington, D.C. on Wednesday, "We plan and we will bring that expertise to bear by increasing our focus on referrals from allegations in False Claims Act lawsuits."

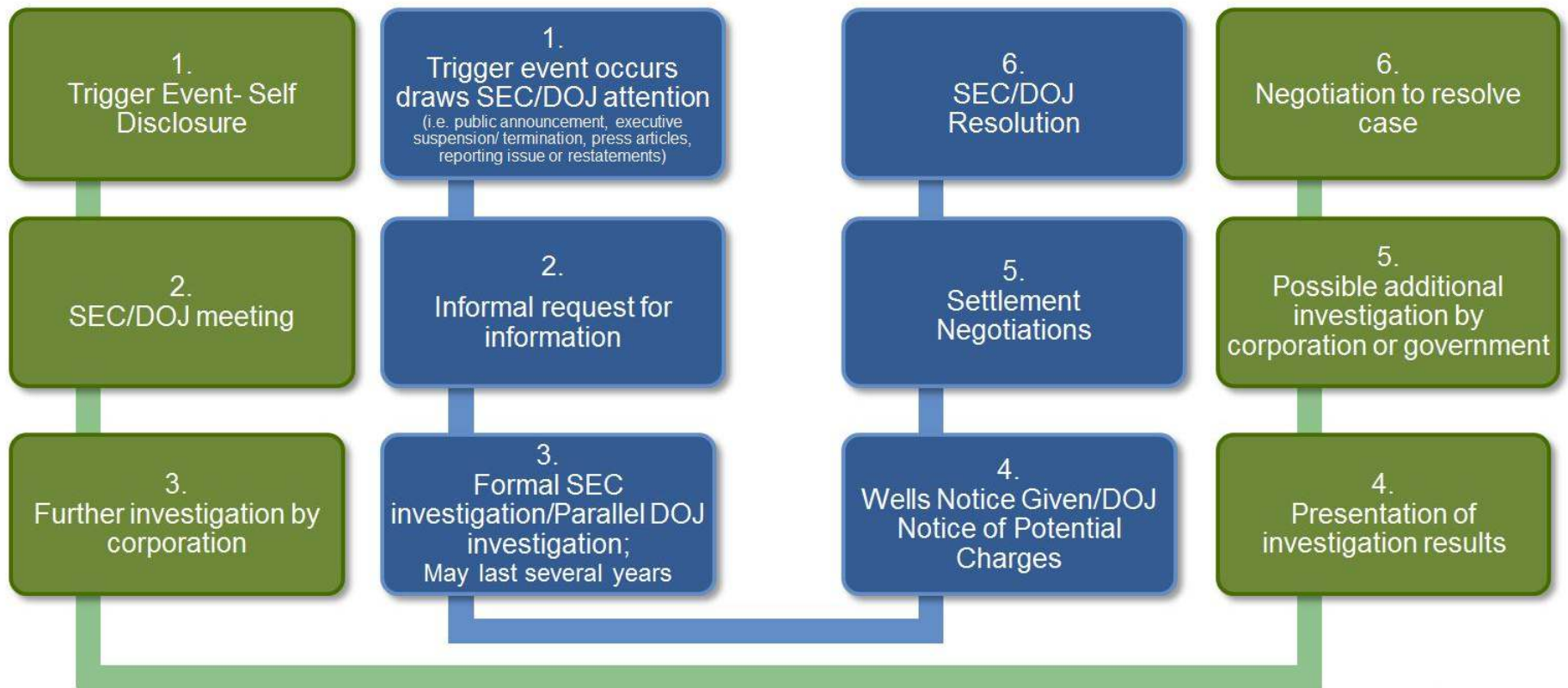
False Claims Act lawsuits give private citizens incentives to report fraud against the government, awarding them a percentage of any recoveries the government obtains through their actions.

By department policy, the Justice Department's Civil Division oversees all False Claims Act cases with damages exceeding \$1 million, according to the United States Attorneys' Manual. The U.S. may join those suits judged most likely to succeed. The Civil Division refers False Claims Act cases, also known as qui tam claims, to the Criminal Division for possible prosecution.

An announcement today by Assistant Attorney General Leslie Caldwell that her team will be "stepping up" its analysis of False Claims Act cases for potential criminal prosecution formalizes a practice that began in the health care context several years ago.

FCPA Litigation Process

Traditional Process



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Who We Are

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False Claims Act

Whis

Blowing the Whistle From Abroad: A Guide to the U.S. False Claims Act and U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act

Posted by: Staff On: January 12th, 2012 | Number of Comments: Comments Off

By Jay W. Eisenhofer, Reuben A. Guttman and Justin K. Victor

The United States Government has established laws providing for bounties to be paid to those who report certain types of fraud. **Even foreign citizens are eligible to receive these monetary awards, which are paid under the False Claims Act ("Federal False Claims Act" or "FCA") and through the Dodd-Frank Wall Street Reform and Consumer Protection Act.** While the False Claims Act provides for redress against those entities or individuals that cheat the United States Government or its agencies, the Dodd-Frank Act provides for bounties to be paid to individuals reporting violations of U.S. Securities Laws including, the Foreign Corrupt Practices Act ("FCPA"), which makes it unlawful for covered companies to bribe foreign officials in order to secure business.



SEC | U. S. SECURITIES AND EXCHANGE COMMISSION Office of the Whistleblower

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“[I]nformation from a whistleblower . . . can be among the most powerful weapons in the law enforcement arsenal of the [SEC].”

“[W]histleblowers can help the Commission identify possible fraud and other violations much earlier than might otherwise have been possible.”

Welcome to the Office of the Whistleblower

Assistance and information from a whistleblower who knows of possible securities law violations can be among the most powerful weapons in the law enforcement arsenal of the Securities and Exchange Commission. Through their knowledge of the circumstances and individuals involved, whistleblowers can help the Commission identify possible fraud and other violations much earlier



Sean McKessy

Chief, Office of the Whistleblower

Plaintiffs' Firms and the Whistleblower

Plaintiffs' Firms



Federal And State Whistleblower Laws

The following statutes are the focus of virtually all successful Whistleblower/Qui Tam actions:

- [The Federal False Claims Act](#)
- [State False Claims Acts](#)

Programs

False Claims Act

Berger & Montague's Whistleblower, Qui Tam & False Claims Act Group uses the False Claims Act to seek legal redress against companies who have defrauded the Government through any number of fraudulent schemes. Successful whistleblower



What is Qui Tam Litigation?

Federal And State Whistleblower Laws

- Healthcare, Pharmaceutical And Medical Device Fraud
- Defense Contractor Fraud
- Tax Fraud
- Securities And Commodities Fraud
- Other Fraud Types

Our Law Firm's Approach To Whistleblower Cases

What Whistleblower Clients Can Expect From Our Lawyers

Whistleblower Litigation Trends

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Twenty to One
\$20 back for every \$1 invested



False Claims Act law enforcement now returns \$20 back for every \$1 invested in health care related cases.

Source: Fighting Healthcare & Medical Fraud: The Return on Investment from False Claims Act Penalties. By Jack A. Meyer, Managing Principal, Health Management Associates. Published by Taxpayers Against Fraud Education Fund, October 2013.

Incentivizing Integrity

Whistleblower laws are about incentivizing integrity in order to efficiently ferret out fraud. Incentivized whistleblower programs forge public-private partnerships between whistleblowers, their attorneys, and the government to combat fraud. The success of the False Claims Act, the oldest incentivized whistleblower law in the United States, has spurred passage of similar laws in 29 states and the District of Columbia, as well as whistleblower-incentive programs at the Securities Exchange Commission, the Internal Revenue Service, and the Commodities Future Trading Commission.

Think You Have a Case?

If you think you have a case, it's important that you talk with someone with expertise in the arena of False Claims Act, IRS, SEC, and CFTC whistleblower law. Getting the right lawyer, and not making a mistake when filing, are key steps in winning a case.

Why Whistleblower Laws Work

Incentivized whistleblower laws work because whistleblowers bring hidden information to the government's attention and their lawyers act as "force multipliers" when cases are investigated and prosecuted. Because successful whistleblowers are awarded 10 to 30 percent of the sum recovered, whistleblowers and their lawyers are incentivized to investigate fraud in a timely manner, to find as much fraud as possible, and to present evidence of fraud to the government in way in which it can be easily understood and prosecuted. Unlike a government hot line, a False Claims Act, SEC, IRS, or CFTC whistleblower case must be investigated; they cannot be ignored.

Resources for Whistleblowers

False Claims Act Whistleblowers
The False Claims Act is the single most effective tool U.S. taxpayers have to recover money stolen from the Government through fraud.

IRS Whistleblowers
The IRS Whistleblower program is designed to ferret out fraud and underpayment in excess of \$2 million dollar per taxpayer liability.

SEC Whistleblowers
The SEC whistleblower program is designed to ferret out securities fraud in which over \$1 million in sanctions is ordered.

Commodity Futures Trading Commission Whistleblowers
The CFTC whistleblower program is designed to ferret out commodities futures trading fraud in which over \$1 million in sanctions is ordered.

Resources for Whistleblowers



False Claims Act Whistleblowers

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Commodity Futures Trading Commission Whistleblowers

The CFTC whistleblower program is designed to ferret out commodities futures trading fraud in which over \$1 million in sanctions is ordered.

Reasons Regulators Rely on Whistleblowers

Whistleblower involvement in an SEC or DOJ investigation is associated with:

\$90-92M

greater penalties against companies



\$50-56M

greater penalties against executives/employees



21-27

months longer prison sentences



Many accounting scandals were first identified and disclosed internally by whistleblowers.



A lesson of the bank failures in 2007-08 was that even with accounting controls, many of the accounting financial transactions were **too complex for those outside** of the financial services community **to sufficiently comprehend the risk.**

The New York Times

JULY 24, 2012

Has Sarbanes-Oxley Failed?

INTRODUCTION



The collapse of Enron in late 2001 and other accounting fiascoes led to the Sarbanes-Oxley law in 2002. Richard Carson/Reuters

Sunday will mark 10 years since the Sarbanes-Oxley accounting law was enacted, after the scandals at Enron, WorldCom and elsewhere. Many in the business world said complying with the law would be expensive and burdensome, and others called it ineffective. Indeed, since those crises other huge corporations have impl...

Whistleblowing: A Survey of Literature

SUMMARY

Corporate whistleblowing can play a crucial role in protecting shareholder interests. When an employee of an organization makes public, any illegal or illegitimate act of the organization, undesirable public scrutiny, legal action and regulatory act may result. Regardless of an enormous increase in whistleblowing activities in organizations recently, little research has been done about the types...

EXCERPT

Introduction

The number of whistleblowing activities in the US and elsewhere has increased evidently in the recent years. Apart from the Cynthia Cooper and Sherron Watkins (whistleblowers at WorldCom and Enron, respectively), there has been an increase in the exposure of current potential wrongdoings to supervisory bodies and enforcement agencies across the world (Bowen et al., 2010). The term whistleblowing originated from the practice of English policemen who blew their whistle when they observed the happening of some crime. The blowing of whistle alerted other law enforcement officers and the general public that a crime was being committed. A standard definition of whistleblowing over the years has been adopted by various authors doing research in this field. According to this definition whistleblowing is, "The disclosure by organization members (former or current) of illegal, immoral and illegitimate practices under the control of their employers to persons and organizations that may be able to effect action" (Near and Miceli, 1985).

For an act of whistleblowing to happen, it must involve at least four elements, (1) the person who is blowing the whistle or the whistleblower, (2) the complaint or the wrongdoing that is being reported, (3) the organization in general or an individual or a group of people working in the organization who is/are committing the wrongdoing and (4) the party who is receiving the complaint of wrongdoing from the whistleblower (Near and Miceli, 1985 and 1996; Dworkin and Near, 1997; and Rocha and Klener, 2005). The act of whistleblowing is not meant to cause harm to the organization, rather, it is to facilitate the exposure of committing questionable acts by a party that may harm the interests of the organization and such an act is also against the values of the organization (Miceli and Near, 1988).

credibility

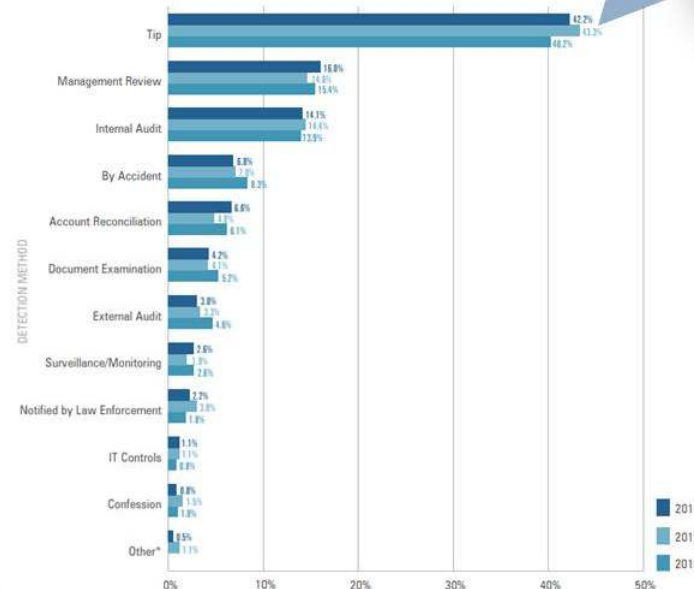
Whistleblowers gain credibility with certain common traits.

- positive feelings about their jobs
- good job performance
- professional positions
- highly educated
- higher-level or supervisory positions
- senior tenure with the company
- part of a large group within the organization
- believe the company will be responsive
- view whistle-blowing as integral to their role



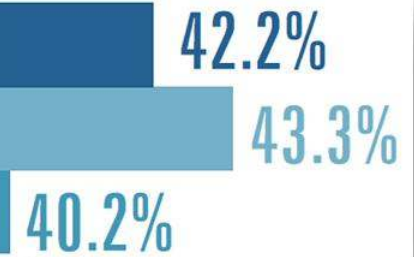
tips

Figure 11: Initial Detection of Occupational Frauds



Other category was not included in the 2010 Report

PERCENT OF CASES



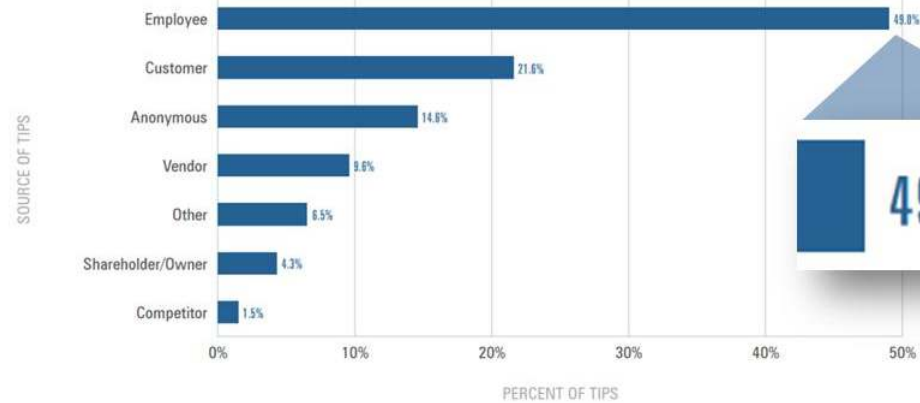
- consistently the most successful method for detecting occupational fraud
- more effective than combined management review, internal and external audits
- 72% of tips warranted investigation: 44% of investigations resulted in corrective action



employees

- Employees were the source of almost half of all tips that led to successful fraud detection.
- Next are customers (21.6%), anonymous (14.6%) and vendors (9.6%).

Figure 13: Source of Tips





reporting

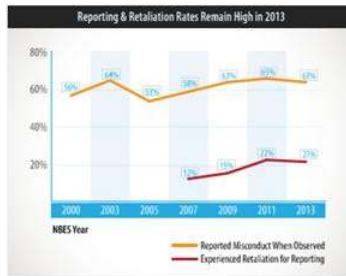
- Corporations may lack effective internal reporting channels.
- Lack of reporting systems and incentives

Figure 26: Frequency of Anti-Fraud Controls



3 REPORTING & RETALIATION TWO KEY OUTCOMES DO NOT IMPROVE

Despite the positive news about declines in observed misconduct and pressure to compromise standards, the results for two other key measures of ethical performance were less encouraging. Both the number of workers who reported the bad conduct they saw and the number who experienced retaliation after they reported showed no improvement in 2013.



retaliation

HIGH RETALIATION RATE: A Cause for Concern



More than 1 in 5 U.S. workers

[21%] who reported misconduct said they experienced **6.2 million** retaliation. That is about **Americans.**¹¹

11. Calculations based on the Bureau of Labor Statistics Employment Situation as reported in November 2013, and considers only those: 18 years or older, currently employed in the agricultural and private workforces (not government) and not self-employed or in private households. <http://www.bls.gov/news.release/empsit.t08.htm>

How can companies take advantage of whistleblowing?

- Establish Tone at the Top
- Put Clear Procedures In Place
 - Anonymous hotline, investigated by independent counsel, reporting directly to independent directors
- Ensure Timely Response
- Implement Internal Controls
 - Failure to follow internal controls will work as a “red flag” to help employees spot and report potential wrongdoing
- Establish Anti-Retaliation Policy
 - Many people do not report misconduct due to fear of retaliation
- Positive Recognition and Incentives for Successful Whistleblowing

Audits Are Not Enough

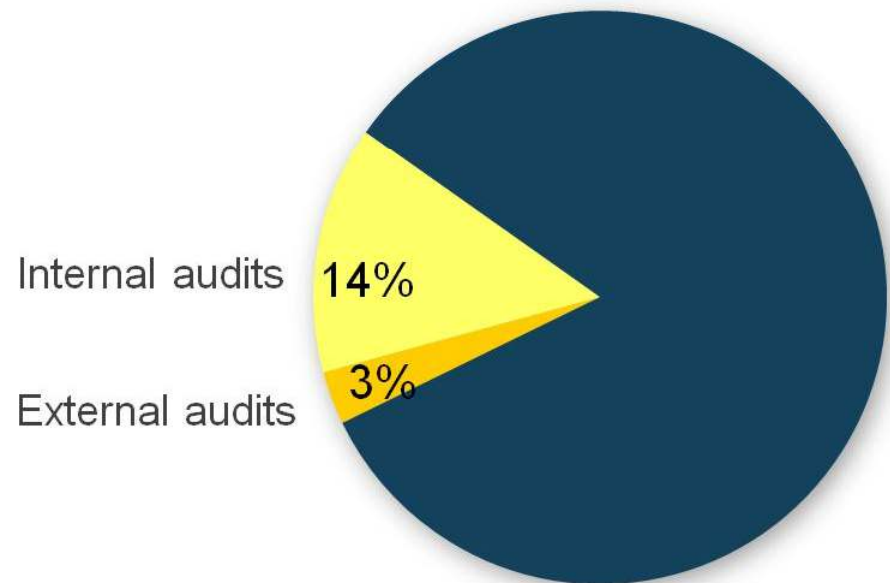
FRAUD IS A COMPANY'S "MOONWALKING BEAR"

Why Audits Aren't Enough

Audits are only part of the solution for detecting occupational fraud.

Why audits are not enough:

- Fraud is hidden
- Audits use sampling
- Auditors are not police investigators
- Insiders have the ability to override controls
- Audits are limited in scope
- Audits are non-adversarial
- Auditing is distinct from a fraud examination



Compliance

Compliance Programs



THE UNITED STATES
DEPARTMENT *of* JUSTICE

“On the flip side, compliance programs that have **widespread prophylactic and training mechanisms** – as well as **procedures designed to uncover wrongdoing** and expose individuals responsible for criminal behavior – are the most effective.”

Marshall L. Miller
*DOJ Criminal Division, Principal
Deputy Assistant Attorney General*

“But at the same time, **I need to be clear that we have brought – and will continue to bring – actions against legal and compliance officers when appropriate.** This typically will occur when the Division believes legal or compliance personnel have affirmatively participated in the misconduct, when they have helped mislead regulators, or **when they have clear responsibility to implement compliance programs or policies and wholly failed to carry out that responsibility.**”

Andrew Ceresney
Director of the SEC Division of Enforcement

Key elements of compliance program:

- Code of conduct & compliance policies
- High-level management oversight
 - Periodic review and testing of compliance program for gaps and strengths
- Training & education
- Effective communication of compliance standards
- Internal monitoring, auditing and reporting systems
 - Risk Assessment focused on receipt and handling of government funds
 - Policies and procedures for the return of overpayments
- Enforcement and discipline mechanisms
- System to respond to offenses
- Ability to evolve as risk profile changes



WHODUNNIT?

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