Your Corporate Compliance and the Corporate Integrity Agreement

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When management follows its compliance regime to speedily investigate and address alleged violations involving goods or services provided to the government, the company has a good chance of keeping the problem and its solution out of the headlines.

On the other hand, management that turns deaf ears when subordinates report false billing or illegal marketing in dealing with federal or state governments can unleash a torrent of financial and reputational harm on the company. Indeed, that scenario is just the sort of situation that can turn into a full-blown, multi-million-dollar whistleblower settlement brought by a company insider under *qui tam* provisions of federal and state False Claims Acts ("FCAs").

Along with the huge cost of settling FCA cases and their attendant expenses, the government likely will impose its own, separate corporate integrity agreement ("CIA") on the company. The CIA will be utilized by the government to continue to monitor the company's compliance long after the FCA case is settled.

So, addressing possible False Claims Act violations at their early stages is paramount. When dealt with in a timely manner, these internal problems are quietly cured, self-reported to the government, refunded, and reasonably fined. This is exactly why a company's internal compliance regime is so important.

If such violations are not addressed by the company and the frustrated insider has blown the internal whistle to no avail, he or she may seek a lawyer to file a whistleblower lawsuit. This is especially likely if the insider has experienced (or perceives that he/she has experienced) retaliation for reporting the fraud. Once the compliance issue has festered to this point, it can end up costing many times more than it would have were the compliance issue to have been handled properly internally. Millions, even hundreds of millions of dollars, can be paid out by the company when a whistleblower is represented by an attorney who knows how to get governmental authorities to investigate, intervene and settle *qui tam* fraud allegations. Besides "winning" and helping the government to recover perhaps millions of dollars for taxpayers, what can the whistleblower get? He or she may be entitled to between 15 percent to 30 percent of the settlement.

Commonly, companies that deal with federal and state governments have a written policy within the employee handbook that prohibits fraud on the government and purportedly encourages employees with knowledge of fraud to come forward. The gist of such a company policy is simple:

Thou shall not commit fraud on the government, and any employee aware of such fraud should report it to a supervisor immediately.

It should be that simple, but often it is not. Conscientious employees may want to do the right thing but are sometimes afraid to report fraud to management for fear of losing his or her job. This fear is especially high in tough economic times when jobs are scarce.

So, the key to compliance is not merely having a written policy but maintaining a corporate culture that encourages fraud reporting and acting affirmatively to address such reports. In other words, does the company mean what it says in the company policy or is the verbiage just "lip service" on paper?

The pressure on private and public companies to produce bottom-line results has never been greater. There are various ways to produce good financial results. Unfortunately, cheating Uncle Sam has emerged as a widespread bottom-line enhancer.

Fraud on the government is exemplified in Medicare and Medicaid billing, defense contracting, for-profit education and in federal research grants. Without question, cheating can be lucrative for a company…until it gets caught; then cheating can be very, very costly. According to the national *qui tam* attorneys' bar, Washington, D.C.–based Taxpayers Against Fraud Education Fund, more than $4 billion was recovered in FCA Settlements in 2011 alone.

Whistleblowers come forward for a variety reasons – for spite, for moral and ethical concerns, even for financial gain. But regardless of their motivation, once the whistle is blown, the process is likely to be lengthy and expensive. And, with litigation, a company is assured of incurring attorney fees and costs. Further, the company will possibly suffer nationwide public embarrassment and stockholders' ire by paying a huge settlement, which could include compensatory sums, fines, penalties, opposing counsel's attorney fees, costs and so on.

Moreover, the CIA gives the U.S. Department of Justice an intrusive mechanism to monitor the company long after a False Claims Act case has settled. Sometimes the CIA can be aimed at a particular individual or number of people in the company. However, the CIA commonly is broad and may involve various aspects of a company's business.

How costly can CIAs be in addition to the huge cost of settling a whistleblower case? For an example, consider this verbiage the website of the Office of the Inspector General of the U.S. Department of Health and Human Services concerning a CIA in the context of a health care fraud scenario:

> *"OIG negotiates corporate integrity agreements (CIA) with health care providers and other entities as part of the settlement of Federal health care program investigations arising under a variety of civil false claims statutes. Providers or entities agree to the obligations, and in exchange, OIG agrees not to seek their exclusion from participation in Medicare, Medicaid, or other Federal health care programs.*
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> *CIAs have many common elements, but each one addresses the specific facts at issue and often attempts to accommodate and recognize many of the elements of preexisting voluntary compliance programs. A comprehensive CIA typically lasts 5 years and includes requirements to:*

> - *Hire a compliance officer/appoint a compliance committee;*
> - *Develop written standards and policies;*
> - *Implement a comprehensive employee training program;*
> - *Retain an independent review organization to conduct annual reviews;*
> - *Establish a confidential disclosure program;*
> - *Restrict employment of ineligible persons;*
> - *Report overpayments, reportable events, and ongoing investigations/legal proceedings; and*
> - *Provide an implementation report and annual reports to OIG on the status of the entity's compliance activities."*

Without question, complying with the terms and conditions of a CIA is an expensive and arduous undertaking. So, there are lots of reasons for a company to foster a corporate culture of compliance that discourages fraud, encourages reporting and acts on such reports.

Merely having a written policy against fraud is clearly not enough. Companies must decide – do they mean it or not?

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About the Author

Whistleblower attorney **Lane Siesky**, AV® Preeminent™ Peer Review Rated by *Martindale-Hubbell*®, practices in Indiana, Illinois, and federal courts across the U.S. Evansville, Indiana-based Siesky Law Firm, PC concentrates its practice on False Claims Act cases, personal injury, employment, workers compensation, and disability law.

Siesky represented the relator ("realtor" is the legal term for a whistleblower under qui tam provisions of the False Claims Acts) in the groundbreaking $5.3 million Oakland City University whistleblower case, the first settlement in the nation in which a post-secondary institution resolved allegations that it paid recruiters incentives contingent upon the number of students they signed up, in violation of U.S. Department of Education rules for institutions that receive federal funding.