



Compliance & Enforcement

What you do before, during and after you are alerted to a problem makes a difference

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Note: The content of this presentation is for general informational purposes only and is not a substitute for seeking legal advice about specific compliance issues.



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- Prosecuted Corporate Fraud, Corruption and False Statements
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- Seattle University School of Law Adjunct Prof.
- Advise companies regarding compliance and government investigations
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Compliance Saves the Day: What you do before, during and after you are alerted to a problem makes a difference.

It's as Easy as One, Two, Three

1. **BEFORE** = Have a Meaningful Pre-existing Compliance Program
2. **DURING** = Timely Investigation and Voluntary Disclosure of Problems
3. **AFTER** = Take Remedial Action to Fix the Problem and Prevent Future Ones



Compliance Facts

The U.S. Department of Justice has spoken . . .

U.S. Department of Justice Statements

- **Bad things happen to good companies**
 - Reward companies that try in good faith to deter crime, and that develop compliance programs that can:
 - Prevent and detect problems (and stop them from spreading)
 - Investigate misconduct, voluntarily report and cooperate
 - Implement appropriate remedies
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Numbers tell the story . . .

2018 Statistics

- \$2.9 Billion recovered by DOJ from companies that do business with the government
- More than 750 new False Claims Act cases

2017 Statistics

- \$3.7 Billion recovered by DOJ from companies that do business with the government
- Health Care was vast majority

\$60 Billion recovered from companies since 1986

How Investigations Begin . . .

1. Whistleblowers
2. Internal audits and voluntary disclosure
3. Government audits and oversight
4. Law enforcement initiatives
5. Competitor complaints
6. Anonymous tips

ETHICS Hotline



Each employee is the [i] in [i]ntegrity.

I have a concern



- Employee
- Vendor
- Client



1.866.513.7078

<https://bbnc.ethical-advocate.com/>

- Create log-in and file report.
- Later, log-in for communications regarding your report or to see the status.

Report goes to BBNC and is assigned to appropriate department or subsidiary.

Fact Gathering • Investigation • Resolution

HOW TO FILE A REPORT

- BBNC's Ethics Hotline provides an anonymous method to report a concern.
- Call the hotline or file online 24/7.
- Create a secure log-in to file a report.
- Use secure log-in to get updates throughout the process.
- Notification will be posted when the investigation is complete.
- BBNC has a zero-tolerance policy against retaliation.



1-866-513-7078



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UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 NOBLE DRILLING (U.S.) LLC,)
)
 Defendant.)
 _____)

Case Study

United States v. Noble Drilling (U.S.) LLC



Offshore Oil and Gas Exploration



Compliance Considerations

Aggravating Factors

- Failure to identify problems & investigate incidents.
- Failure to self-report violations.
- Multiple violations over time in different areas.
- Safety issues were involved.
- Lack of compliance addressing “collateral” parts business/operations.

Mitigating Factors

- Company cooperated with government investigation.
- Company accepted responsibility/senior levels took ownership.
- Company did not seek to retaliate against whistleblower and agreed to comprehensive compliance program applying to fleet of 35 ships.

Outcome

Investigation

- 75+ comprehensive interviews.
- 900,000 documents collected and reviewed.
- Investigation lasting over 1 year.

Company Convictions

- 8 corporate felony offenses
- \$12.2 million in fines
- 4 years of probation

Corporate Compliance Plan

- Fleet-wide Environmental Compliance Plan
- Compliance requirements that apply to all environmental categories
- Court supervision
- All paid by company



Enforcement Policies

Department of Justice - Prosecution Principles

Principles of Federal Prosecution of Business Organizations (Justice Manual 9-28.010)

Foundational Principles

- Protecting consumers, investors and business entities against competitors who gain unfair advantage by violating the law.
- Discouraging business practices that would permit or promote unlawful conduct at the expense of the public interest.

Department of Justice – Prosecution Factors

Principles of Federal Prosecution of Business Organizations (Justice Manual 9-28.300)

Factors to be Considered

1. Adequacy and effectiveness of corporations compliance program at time of the offense, and at time of charging decision
2. Timely and voluntary disclosure of wrongdoing
3. Remedial actions, including upgrading compliance program, replacing responsible management, discipline wrongdoers, paying restitution

Department of Justice – Compliance Principles

Principles of Federal Prosecution of Business Organizations (Justice Manual 9-28.800)

Compliance Programs

- Compliance programs established to prevent and detect misconduct
- Ensure corporate activities are conducted within applicable civil and criminal laws, regulations and rules
- Is the program a “paper tiger”
- Is the program designed to detect the particular types of misconduct most likely to occur in the line of business

See also U.S. Sentencing Guidelines § 8B2.1(a) and DOJ Evaluation of Corporate Compliance Programs.

False Claims Act – New Guidelines

DOJ Civil Litigation - Justice Manual 4-4.112

Guidelines for taking disclosures, cooperation and remediation into account in **False Claims Act** matters:

1. Voluntary Disclosure – government wants to incentivize companies to disclose false claims (proactive, timely & complete).
2. Cooperation – disclosing facts, collecting and preserving documents, access to systems, information regarding third-parties, disclosing wrongdoers.
3. Remedial Measures – analyzing root cause and implementing improvement, including enhanced compliance and taking disciplinary action.



Final Tips

Compliance Checklist

Key Compliance Components

- ✓ Senior Leadership Support & Oversight
- ✓ Autonomy & Resources
- ✓ Tailored Policies and Procedures
- ✓ Internal Controls
- ✓ Training & Communication
- ✓ Audits & Updates
- ✓ Action & Accountability
- ✓ Includes Managing Third-Party Relationships

Compliance Response

- Respond quickly to minimize damage
- Identify and prepare your team in advance
- Consider Attorney-Client Privilege
- Preserve Evidence
- Control Information Flow
- Avoid misstatements
- Remember the Human Element

Conclusion . . . Compliance Saves the Day



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