CORPORATE WHISTLEBLOWERS: Changing the Paradigm

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Whistleblower-for-Reward Laws

- False Claims Acts (Federal and 30 States)
  - Fraud on the government, broadly defined
  - *Qui tam* “relators” can receive 15-30% of the recovery

- SEC/CFTC whistleblower programs
  - Violations of securities and commodities laws, including FCPA
  - Whistleblowers can receive 10-30% of the recovery

- IRS Whistleblower program
  - Violations of federal tax laws
  - Whistleblowers can receive 15-30% of the amount collected

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Understand the Issue

Top five misconceptions about corporate whistleblowers

Misconception #1

Whistleblowers are disgruntled employees and their cases are frivolous.
The Facts

- $30.3B of $44.7B recovered by the US in FCA cases 1987-2014 came from *qui tam* whistleblower cases.
- “The volume of tips has been greater and of higher quality than expected when the program was first adopted ... [W]histleblowers increase our efficiency and conserve our scarce resources.”
  - Mary Jo White, SEC Chair, April 2015
- “We are tremendously grateful to whistle blowers who have brought fraud allegations to the government’s attention and assisted us in this public-private partnership to fight fraud.”
  - Asst. AG Tony West, DOJ Press Release announcing $3B in FCA recoveries in FY 2011

Misconception #2

Whistleblower laws encourage employees to by-pass the compliance program in order to collect a reward.
The Facts

- Only 8% of corporate employees who reported wrongdoing went outside the company in the first instance
- Only 20% of those who reported internally ever chose to report externally
- “[W]hen employees reported externally, it was because they needed support and wanted to help stop misconduct or limit its harm”

  - Ethics Resource Center, National Business Ethics Survey of the US Workforce 2013

Misconception #3

Whistleblowers are motivated by revenge
The Facts

• 99.5% of employees said they reported because it was the right thing to do
• 79% said they reported because they believed corrective action would be taken
• “[P]ersonal agency – the idea that ‘I can have an impact’ – motivates reporting.”


Misconception #4

There’s no fraud in this company
The Facts

- 41% of employees said they observed misconduct in the workplace
- 60% of misconduct involved someone with managerial authority from the supervisory level up to top management.

- Ethics Resource Center, National Business Ethics Survey of the US Workforce 2013

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Misconception #5

Whistleblowers are a threat that needs to be managed

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The Facts

- “[T]he most significant factor that encourages potential whistleblowers to expose wrongdoing is ... whether the risk they take will lead to positive change.”
  - “Measuring the Effectiveness of Canadian Whistleblowing Law,” F. St-Martin, Int’l Anti-Corruption Academy, 2014

- Whistleblowers are an opportunity
  - They want to right wrongs
  - They are achievement oriented
  - They strive for results

Change the Paradigm

- “[E]specially in the post-financial crisis era when regulators and right-minded companies are searching for new, more aggressive ways to improve corporate culture and compliance, it is past time to stop wringing our hands about whistleblowers. They provide an invaluable public service, and they should be supported.”
  - Mary Jo White, SEC Chair, April 2015
Companies as Qui Tam Whistleblowers

- The *qui tam* law gives honest companies a powerful anti-fraud weapon against dishonest competitors
- Companies can use the *qui tam* law to expose the corrupt business practices of rivals, level the playing field by eliminating bad actors from the marketplace -- and receive a *qui tam* award.
- The *qui tam* law can be a profit center for companies.

“Competitor” Cases: Examples

- Scantibodies Laboratory: alleged that competitor lab conducting faulty PTH tests. $302M recovered.
- SPIG Industry: faulty guardrails installed on state highways by competitor. $663M jury verdict.
- Hunter Laboratories: Alleged competitor discounting tests below Medicaid rate. $241M recovered.