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# **COMPLIANCE TODAY**

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# feature article

## Meet Tony West Assistant Attorney General, Civil Division, United States Department of Justice

*Editor's note: This interview was conducted by HCCA First Vice President Frank Sheeder in December 2010. Frank Sheeder is a Partner in the Dallas offices of Jones Day and may be contacted by e-mail at [fesheeder@JonesDay.com](mailto:fesheeder@JonesDay.com).*

*Mr. West may be contacted at the US Department of Justice in Washington DC by telephone at 202/514-2000.*

**FS:** On behalf of HCCA, thanks for speaking with me about health care fraud enforcement initiatives. Please tell us a little bit about yourself, your experience, and the path that led you to become the Assistant Attorney General for the DOJ's Civil Division.

**TW:** Thanks for the opportunity. Well, mine has been a career that's seesawed between public and private law practice. Before I was confirmed in April 2009, I was a litigation partner at Morrison & Foerster in San Francisco. Prior to that, I was a senior policy attorney in the California Attorney General's office, and before that I was a federal prosecutor for five years. I actually started my DOJ career almost two decades ago when, about a year out of law school, I joined the Clinton Administration's Justice Department as a special assistant to the Deputy Attorney General.

It's my humble opinion that my current job is probably the best job in the entire Justice Department, which I believe is the best place to work if you're a lawyer, so I consider it a great privilege and honor to serve in this role.

**FS:** Why do you say your job is the "best job in the DOJ?" What makes it so?

**TW:** That's easy. Three reasons: First, I have the pleasure of working with probably more of my colleague Assistant Attorneys General than anyone else, since the Civil Division's work is so broad and diverse. Almost every week brings me into close collaboration with the heads of the Criminal, NSD (National Security Division), Antitrust, Environment, and others, not to mention all of our client agency general counsels.

Second, I can usually figure what my day is going to be like by reading the *New York Times*. It's a good bet that something in those pages will cross my desk at some point during the day.

Last, and best of all, I get to work with



some of the most talented and dedicated public servants I've ever known. I've always been very proud of the fact that I spent five years as a Justice Department career attorney when I was an Assistant U.S. Attorney in the Northern District of California. I've always known Justice Department personnel to be a committed, talented group, and it's a real privilege to work with them in this current job.

**FS:** You have a very impressive background. Are there certain influences that helped to shape your successful career?

**TW:** I credit my parents and the example they set for that. Growing up, they placed a huge emphasis on education and service. My mother, for instance, is a teacher, and both of my sisters became teachers. My dad was

heavily involved in public and community service, serving in a variety of locally elected and appointed posts apart from his day job in management at IBM. And they, of course, were carrying on the tradition of service that they had learned. My maternal grandmother was also a teacher and my maternal grandfather was one of a long line of church pastors in my family. So, even though I was the first lawyer in my family, there's no question that the public service motive that led me to pursue law was one that had deep roots in my background. That, coupled with great teachers and guides along the way who took an interest in helping me—people like Attorney General Janet Reno—all of it serves as a constant reminder of how truly fortunate I've been.

**FS:** Is there an aspect of your current role that was especially surprising to you? What are the greatest rewards and challenges?

**TW:** I think what was most surprising to me when I first started was the large amount of time the head of the Civil Division spends on national security issues. Since my first tour at the Department over 15 years ago, there has been a considerable change in the focus of the Justice Department's work, and appropriately so. September 11th changed everything. And as the federal government's law firm, the Civil Division, of course, deals with many of the issues that reflect that change.

Notwithstanding that reality, I think most outside observers would assume that the Civil Division's national security work is episodic, arising in only a handful of cases. But the reality is, those issues are quite pervasive and constant. Along with National Security Division and the Criminal Division, Civil is a leader in the Department's counterterrorism efforts. For example, approximately 140 habeas corpus cases brought by detainees held at Guantanamo Bay are being litigated by our division. Some of those cases pose difficult

questions of first impression regarding the indefinite detention of individuals held pursuant to the laws of war. We've also defended Executive Branch authority as it relates to our counterterrorism efforts, and our Office of Immigration Litigation works closely with DHS (Department of Homeland Security) to defend removal orders involving terrorist and other national security-risk aliens.

**FS:** The Civil Division is responsible for cases involving national security, the financial crisis, challenges to the health care reform law, health care fraud on the government, defense, stimulus funds, and even the recent oil spill. How do you manage to stay focused on so many important fronts?

**TW:** I have a great team of deputies and counselors who help me stay on top of what's most important. I am a big believer in finding the best people you can, hiring them, and empowering them to do what they do best; and that's what we've done in the Civil Division front office.

**FS:** What are the Civil Division's main initiatives aimed at recapturing taxpayers' dollars lost to health care fraud?

**TW:** In the Civil Division, we're pretty zealous guardians of the "public fisc." We don't like it when taxpayer money is lost to fraud, waste, or abuse. So we've been pretty vigilant when it comes to fighting fraud in all areas—public contracting, grant programs, the housing and mortgage industries, and others—and we've been appropriately aggressive in using the False Claims Act as our primary enforcement tool.

Nowhere is this more evident than in our fight against health care fraud. I deeply believe that Medicare and Medicaid fraud undermines the quality of our health care, the integrity of our public health care programs, and the safety of patients. And early in my tenure, I met with private insurers

who reminded me that health care fraud isn't just a public sector problem; it affects the private sector, as well. So curbing such fraud has been a top priority for the President, the Attorney General, and for me.

And, our focused efforts have yielded success. Since January 2009, the Civil Division, working with US Attorneys' Offices around the country, has opened more health care fraud matters, secured larger fines and judgments, negotiated higher settlements, and recovered over \$8 billion for the taxpayers in health care fraud cases. That's the largest two-year health care fraud recovery in the history of the Department of Justice.

**FS:** What do you see on the horizon? Can you foresee some trends that will develop in the health care enforcement arena?

**TW:** I think we can expect to see continued vigilance when it comes to ensuring our public health care programs are untainted by fraud. We've received some important enforcement tools in the last two years that have enhanced our efforts against health care fraud, and I anticipate we will continue to use those tools to great effect. That means holding both corporations and individuals accountable when it comes to interactions with Medicare and Medicaid, marketing medical products, and securing FDA approvals.

**FS:** As you know, HCCA's members are compliance professionals. How will these trends impact compliance programs and the roles of compliance professionals?

**TW:** I think your members play a central role in promoting the good health and well-being of the American people. You are often the ones that companies and providers turn to in order to negotiate a complicated legal and regulatory landscape. Many rely on you for guidance when it comes to maximizing both compliance and innovation. And I

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know that, as difficult as that can be sometimes, it's a role you take seriously.

The work your organization and your members perform recognizes that fair competition and ethical compliance efforts are the foundation of a vibrant and successful health care services and products market. So I view you as partners in our efforts to curb health care fraud.

**FS:** You mentioned some important enforcement tools that you have received in the past two years. I assume you are referring to the Fraud Enforcement and Recovery Act of 2009 (FERA) and the Patient Protection and Affordable Care Act (PPACA), which amended the False Claims Act (FCA) to give the government and whistleblowers new and strengthened abilities to make and sustain cases under the FCA. How have those tools helped, and do you foresee that recoveries under the FCA will continue to grow beyond the current record levels?

**TW:** Among other important changes, FERA authorized delegation of the Attorney General's authority to issue civil investigative demands (CIDs), which has substantially increased the use of this critical investigative tool in health care and other fraud matters.

PPACA added some significant changes to the False Claims Act. First, it amended the public disclosure bar to eliminate the jurisdictional nature of the bar and narrow the circumstances in which it could apply to bar a relator. Second, it made clear that a violation of PPACA can be the predicate for a violation of the False Claims Act. Third, it defined an overpayment in the context of a federal health care program, to assist us in bringing claims under FERA's new False Claims Act provision based on the retention of an overpayment.

**FS:** Can you please give your perspective on the roles whistleblowers play in connection with the government's current enforcement initiatives?

**TW:** Since 1986, when the False Claims Act was significantly amended to strengthen the *qui tam* (or whistleblower) provisions, approximately 64% of our cases have come to us from whistleblowers who filed actions under the False Claims Act.

The False Claims Act provides that when the United States intervenes in a *qui tam* case, the relators are entitled to receive between 15% and 25% of the amount ultimately recovered by the government as a result of their allegations. When the United States declines to intervene and the relators proceed on their own, they are entitled to receive between 25% and 30% of the recovery. The Department has prepared relator share guidelines that set forth the standards we use in making these determinations. We recognize that many relators shoulder a heavy burden when they report fraud and assist the government in its investigation, often facing retribution from the industries in which they work and from their colleagues.

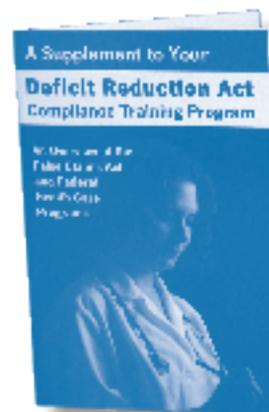
**FS:** What message or advice would you like to give to health care compliance professionals who are committed to keeping their organizations compliant with all applicable standards?

**TW:** We recognize that most health care providers, companies, and individuals who do business with the government are dealing fairly. We know they're playing by the rules and are careful with the taxpayer dollars they receive. Yet, it's also the case that there are others out there who are cutting corners, taking advantage, and putting profits over patient safety—and they are the ones who will continue to attract our enforcement attention.

**FS:** We appreciate your candor, and thank you for speaking with me about these interesting matters.

**TW:** Thank you. ■

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