CORPORATE WHISTLEBLOWERS: CHANGING THE PARADIGM

Understand the Issue

Top five misconceptions about qui tam whistleblowers

Misconception #1

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

- $37B recovered for the US Treasury in *qui tam* whistleblower cases 1987-2016
- $27B recovered in health care fraud cases
- “We are tremendously grateful to whistleblowers who have ... 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
- $584M recovered for investors in SEC whistleblower cases 2011-2016
- “Whistleblowers increase our efficiency and conserve our scarce resources.”
  - Mary Jo White, SEC Chair, April 2015

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 observed 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

Misconception #5

Whistleblowers are a threat that needs to be managed

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

Getnick & Getnick LLP
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 Whistleblowers

- Whistleblower laws give companies and their representatives a powerful anti-fraud weapon
- Whistleblower laws can be used to expose illegal business practices of rivals and level the playing field by eliminating bad actors from the marketplace
- Whistleblower laws can be a profit center for companies.

Companies as Whistleblowers: Examples

- Scantibodies Laboratory: alleged that competitor lab conducted faulty PTH tests. $302M recovered.
- Hunter Laboratories: alleged that competitor discounted tests below Medicaid rate. $241M recovered.