

#### Parallel Government Investigation and Enforcement Actions

- Well-established case law permitting information sharing with parallel proceedings
- United States v. Kordel, 397 U.S. 1, 10 (1970) and its progeny
- Public-private partnership to prevent health care fraud
- Justice Manual, Chapter 1–12.000 Coordination of Parallel Criminal, Civil, Regulatory, and Administrative Proceedings

Indicators of a Government Investigation

- Actual notice (e.g., subpoena, CID)
- Potential violation of law is detected or reported
- Whistleblower activity detected/qui tam case unsealed
- Criminal activity is detected or reported
- Consumer complaints
- Competitor complaints
- Insurance company complaints
- Media reports

3

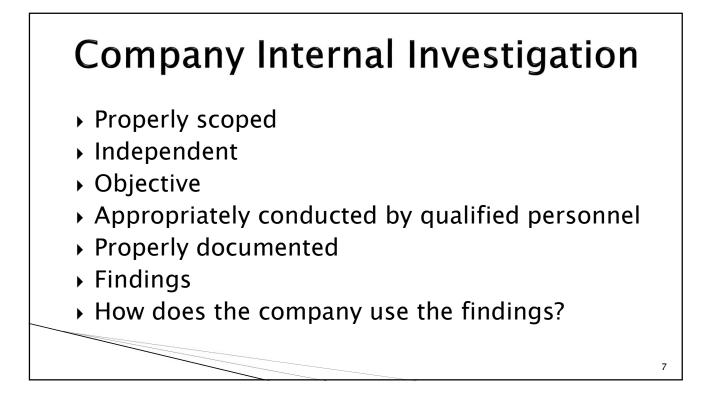
## Due Diligence to Detect Fraud

- Monitoring
- Auditing
- Reasonable steps to have and publicize a company system whereby employees and agents may report potential or actual criminal conduct without fear of retaliation
- Internal investigation

### Who Investigates?

- Nature of report/activity that has been detected
- Civil liability exposure
- Criminal exposure
- Attorney-client privilege considerations

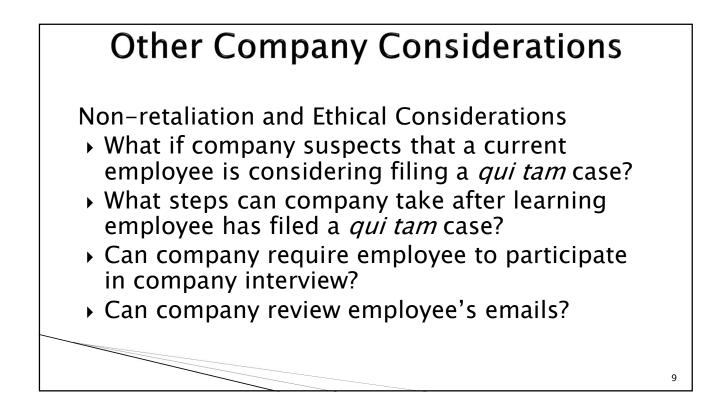
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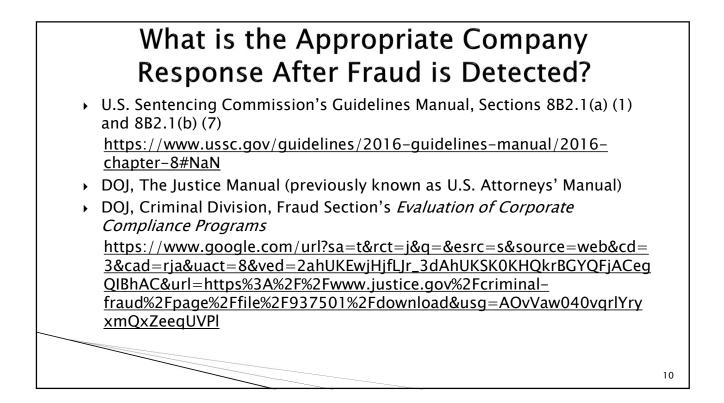


### Investigating Potential Civil False Claims/Fraud

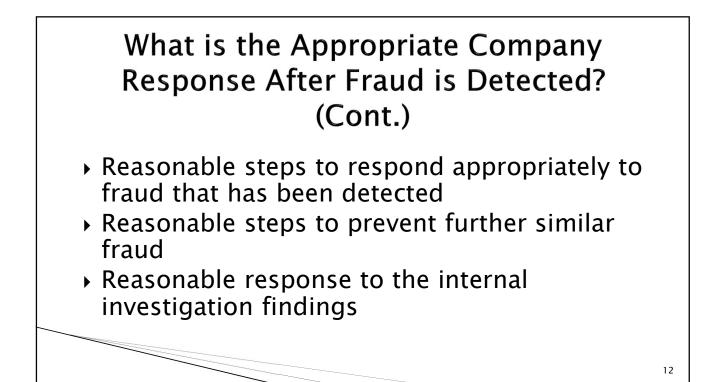
Operational challenges

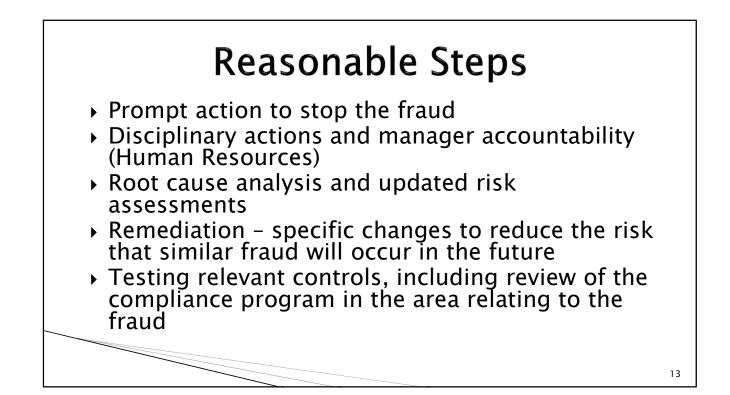
- Document preservation, collection, and production
- Identifying witnesses
- Planning and managing interviews
- Upjohn warnings











#### Representation of Company and Individuals

- Potential conflicts of interest for company's outside lawyers
- Common Interest Agreements
- Former Employees

14

# **Final Resolution**

- Voluntary disclosure
- 60-Day Overpayment Rule
- Civil False Claims Act litigation (dismissal?)
- Settlement of alleged False Claims Act violations
- Criminal defense
- Plea agreement
- Civil or criminal trial