

## White Collar Defense and Investigations Client Service Group

To: Our Clients and Friends

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### **Former In-House Lawyer Acquitted of Federal Charges; Prosecution Still Provides Cautionary Tale**

In a case that had alarmed corporate counsel, a federal judge earlier this week acquitted Lauren Stevens, a former in-house lawyer for GlaxoSmithKline, of criminal charges that she had obstructed a federal investigation and made false statements to Food and Drug Administration (“FDA”) investigators.

U.S. District Court Judge Roger W. Titus for the District of Maryland orally granted a Motion for Judgment of Acquittal filed by Stevens after the prosecution rested its case against her. Granting such a motion in the middle of trial is a rare event and apparently a first for Judge Titus in his seven and a half years on the bench.

“I conclude on the basis of the record before me that only with a jaundiced eye and with an inference of guilt that’s inconsistent with the presumption of innocence could a reasonable jury ever convict this defendant,” announced Judge Titus from the bench.

The indictment charging Stevens arose out of an FDA investigation of Glaxo concerning its marketing of the anti-depressant drug Wellbutrin. The focus of the investigation was whether Glaxo was promoting the drug for “off-label” use as a weight-loss drug or for other unapproved purposes. The indictment accused Stevens of obstructing an official government proceeding, falsifying and concealing documents for the purpose of influencing a government investigation, and making false statements to the FDA.

The prosecution had raised serious concerns in the corporate legal community, as the charges related to Stevens’s conduct in her capacity as an in-house lawyer responding to an investigation, producing documents, and providing legal advice to her client, Glaxo. With Tuesday’s complete acquittal of Stevens, some of these concerns have been allayed. Yet the warning bell still rings clear.

In-house lawyers, as well as outside counsel who handle government investigations on behalf of their corporate clients, should take note of the following points central to Judge Titus’s ruling:

- Regarding the counts for obstruction and falsification and concealment of documents, Judge Titus ruled that Stevens’s actions were proper under a safe harbor provision found in the U.S. Criminal

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Code at 18 U.S.C. § 1515(c). The Court stated that even though the responses Stevens provided to the FDA “may not have been perfect,” they were made “in the course of her bona fide legal representation of a client and in good faith reliance” on both external and internal lawyers. Because of this, the Court found, the safe harbor provision served as “an absolute bar” to her conviction on these charges.

- With respect to the counts for making false statements, Judge Titus ruled that Stevens “obtained the advice of numerous lawyers,” including other in-house lawyers at Glaxo as well as at its outside law firm, King & Spalding, and “made full disclosure” to such lawyers concerning all of the statements she made to the FDA. Thus, the Court found, regardless of whether they were “literally true,” the statements were made in good faith, negating the requisite element of criminal intent for the charges.
- Judge Titus also reinforced the important protections provided by the attorney-client privilege. During trial, the prosecution had relied upon various privileged documents to support its case, documents which Glaxo had been ordered to produce by another judge based on the crime-fraud exception to the privilege. Criticizing the order in question, Judge Titus stated that “access should not have been granted to [the documents] in the first place.” The Court found that the crime-fraud exception did not apply: “GlaxoSmithKline did not come to Ms. Stevens and say, assist us in committing a crime or fraud. It came to her for assistance in responding to a letter from the FDA.”
- Finally, Judge Titus reiterated the importance of a lawyer’s duty to provide clients with zealous representation and the court’s role in ensuring that lawyers are able to carry out this duty without fear of prosecution. “A lawyer should never fear prosecution because of advice that he or she has given to a client who consults him or her, and a client should never fear that its confidences will be divulged unless its purpose in consulting the lawyer was for the purpose of committing a crime or fraud,” Judge Titus stated. “The Court should be vigilant to permit the practice of law to be carried on, to be engaged in, and to allow lawyers to do their job of zealously representing the interests of their client,” he added.

Judge Titus’s ruling reinforces safeguards that are vital to every lawyer’s role as an advocate in an adversarial system. The ruling also reinforces the long-held principle protecting the flow of communications from attorney to client, and vice versa.

Nevertheless, lawyers who represent clients in government investigations should still take heed of this case. Most notably, that a lawyer is merely speaking to the government on behalf of his or her client does not “immunize” that lawyer from potential prosecution for obstruction or making false statements. If a lawyer intentionally makes false statements concerning a matter under federal investigation for the purpose of misleading investigators or obstructing their investigation, that lawyer can certainly still be prosecuted, and convictions for these types of crimes carry significant potential prison sentences. Of course, whether a misstatement is intentional or due to mistake may be difficult to discern.

The Court’s ruling in the Stevens case was based on the evidence (or lack of evidence) that was presented in that case and should not be interpreted to mean that future prosecutions will not be brought where the government believes the conduct warrants it. If there is a lesson to be learned here, it is that government investigations are serious business, both for the targets of the investigation as well as the lawyers

representing them, and that it is critical to flesh out the true facts before making any representations to the government about them, or at least make sure there is a good faith basis for any such representations.

For questions or further information, please speak to your Bryan Cave contact, a member of our [White Collar Defense and Investigations Group](#) or the author of this client alert:

R. Joseph Burby, Partner  
Atlanta, Georgia  
(404) 572-6815  
[joey.burby@bryancave.com](mailto:joey.burby@bryancave.com)