

New Civil Enforcement Efforts Key for Federal Law Enforcement in Western Pennsylvania

Author: Efrem M. Grail, Partner, Pittsburgh, Philadelphia

Author: Tonya Sulia Goodman, Associate, Pittsburgh

Publication Date: January 05, 2011

New U.S. Attorney, in Briefing for Defense Counsel, Warns Emphasis on "Bringing Money In" From Government Contractors, Health Care Providers, and Energy/Environmental Concerns

The new United States Attorney for the Western District of Pennsylvania, David J. Hickton, is ramping up civil enforcement efforts to collect money from area businesses and individuals. For the first time in decades, the federal government in Western Pennsylvania will focus on pursuing noncriminal violations of the law and assessing civil monetary penalties, instead of focusing enforcement efforts on federal prosecution of criminals. Chief among the tools for this initiative of the local Department of Justice office will be the federal "whistleblower" laws for fraud, and also environmental protection enforcement statutes, most notably in connection with Marcellus Shale gas developments.

To be sure, this does not mean the federal prosecutors' office is deemphasizing criminal prosecution as the core of its mission. But in recent briefings, Mr. Hickton, President Obama's appointee as the chief federal law enforcement official in Western Pennsylvania, has announced that initiating cases and assessing fines in civil enforcement matters would become his "high priority."

Sometime after a closed-door swearing-in this past August, Mr. Hickton instructed his new First Assistant, Soo Song, that "bringing money in" would be a primary focus of his administration. Ms. Song announced at a November 23, 2010 meeting of local federal criminal practitioners and judges that Mr. Hickton was reinvigorating the U.S. Attorney's Civil Division. Mr. Hickton has appointed a new Chief of the Office's Civil Division, Michael Comber, and has created a new, specialized Affirmative Civil Enforcement Section ("ACE") aimed at civil fraud enforcement.

The ACE unit is designed to bring "parallel" civil matters with prosecutions of companion criminal cases, and also to file stand-alone civil cases.

Chief among these will be a new focus on cases under the federal False Claims Act, aimed at government contractors (and now, especially health care providers under Medicare, Medicaid, other federally funded programs) who allegedly make false claims for payment (or make false statements in connection with claims for payment) to the federal government. Remedies under the False Claims Act are traditionally compensatory and civil in nature, but its multiple (treble) damages provision has punitive and deterrent characteristics as well. The U.S. Attorney's Office also has available other civil monetary recovery statutes and can enjoin financial crimes and the disposing of property obtained through financial crimes.

Already, the U.S. Attorney's Office has posted a job vacancy/hiring notice, seeking an experienced trial lawyer to handle affirmative civil enforcement actions in the ACE Unit. Sources close to the U.S. Attorney's Office report that Mr. Hickton will formally "roll out" this new civil enforcement initiative in a presentation in February.

In tandem with its new focus on collecting civil fines in fraud-based cases, Mr. Hickton declared in a speech to criminal defense lawyers during a December 9 forum on "Environmental Compliance and Criminal Enforcement," which primarily focused on Marcellus Shale drilling activities, that environmental enforcement has been designated as a "high priority, especially for disadvantaged and disenfranchised communities who are exposed to health risks."

Mr. Hickton's decision to focus efforts on collecting fine money may be part of a larger agenda set by Washington. On December 16, 2010, the Department of Justice launched a media "blitz" touting billions of dollars seized by the Department of Justice in fiscal year 2010. On that day, 32 of the 94 U.S. Attorney's Offices around the country issued simultaneous press releases announcing their share of collections in fiscal year 2010, which all together reached an all-time high of \$6.68 billion in criminal and civil actions, and an additional \$1.8 billion in asset forfeiture. Mr. Hickton's individual press release that day announced the collection in 2010 of \$10,567,977.65 through criminal and civil actions, and \$8,864,060 through criminal and civil asset forfeiture.

The importance of the new chief federal prosecutor's pronouncements is clear and significant. For the first time, companies in Western Pennsylvania that do business with the federal



government or that operate in highly regulated industries will be significant targets for federal law enforcement investigations seeking to recover big-dollar money damages. Whistleblower suits and citizen complaints to police and federal law enforcement agencies will apparently now have the institutional support and backing at the highest federal level in Pittsburgh for investigation and prosecution. Companies seeking to develop Marcellus Shale should make no mistake that the federal government is looking to assess hundreds of thousands, if not millions, of dollars in fines for violations of environmental laws.

Increased compliance with federal sourcing and procurement laws for government contractors, with anti-kickback and regulatory adherence for health care providers, and with environmental mandates for energy companies, is now more important than ever. Reed Smith will continue to monitor this evolving situation. If you have any questions or require assistance, please contact the Reed Smith attorney with whom you regularly work, or either of the authors, below.

The authors, Mr. Grail and Ms. Goodman, defend entities and individuals in government regulatory enforcement matters, and "White Collar" criminal investigations and prosecutions.

About Reed Smith

Reed Smith is a global relationship law firm with more than 1,600 lawyers in 23 offices throughout the United States, Europe, Asia and the Middle East.

The information contained herein is intended to be a general guide only and not to be comprehensive, nor to provide legal advice. You should not rely on the information contained herein as if it were legal or other professional advice.

The business carried on from offices in the United States and Germany is carried on by Reed Smith LLP of Delaware, USA; from the other offices is carried on by Reed Smith LLP of England; but in Hong Kong, the business is carried on by Reed Smith Richards Butler. A list of all Partners and employed attorneys as well as their court admissions can be inspected at the website <http://www.reedsmith.com/>.

© Reed Smith LLP 2011. All rights reserved.