

## **Real Estate, Trial Lawyers and FCPA Compliance**

What do real estate, trial lawyers and Foreign Corrupt Practice Act (FCPA) compliance have in common? One of the maxims you hear about the real estate business, even in the depressed market over the past 18 months, is that the three most important things are: (1) location, (2) location and (3) location. This commentator was a trial lawyer, on the civil side, for about 18 years of his legal career and it was drilled into him that the three most important things a trial lawyer brings to a lawsuit are: (1) venue, (2) venue and (3) venue.

It was then with some interest that this commentator saw a video on the Project Counsel website (a great resource—they not only blog with summaries of speakers at significant legal conferences but also present interviews with conference speakers on its website), where Project Counsel Managing Director Greg Bufithis, interviewed Tim Parkman, Managing Director of Lessons Learned Ltd, a UK entity which assists companies in implementing compliance and ethics programs. In response to a query by Mr. Bufithis on what was the single most important item for a business which is implementing a compliance and ethics program, Mr. Parkman responded that there were three: “(1) senior management, (2) senior management and (3) senior management.”

Parkman explained his logic behind this statement of triumviratism because employees will pick up on the differences between what senior management says versus the actions that they might take with regard to compliance and ethics. He cited that a prime example of this is what policy does a company take to punish those employees who may engage in unethical and non-compliant behavior in order to meet company revenue targets versus what rewards are handed out to those employees who integrate such ethical and compliant behavior into their individual work practices going forward?

A clear example of this is in the area of annual bonuses. Does your company have, as a component of its bonus compensation plan, a part dedicated to compliance and ethics? If so, how is this component measured and then administered? There is very little in the corporate world that an employee notices more than what goes into the calculation of their bonuses. If a company sets expectations early in the year and then follows through when annual bonuses are released, it can send a powerful message to employees regarding the seriousness with which compliance is taken at the company. There is nothing like putting your money where your mouth is for people to stand up and take notice.

Parkman goes on to say that if you have an employee who meets, or exceeds all his sales targets, but does so in a manner which is opposite to the company's stated compliance and ethics values, employees will watch and see how that employee is treated. Is that employee rewarded with a large bonus? Is that employee promoted or are the employee's violations of the company's compliance and ethics policies swept under the carpet? If the employee is rewarded, or in any way not sanctioned for unethical or non-compliant behavior, it will be noticed and other employees will act accordingly.

In the energy industry, (and probably lots of other industries) there is the following archetypal story. It usually is told about a Regional Manager in the Far East or the Middle East who is alleged to have said some along the following lines, “If I violate the Code of Conduct I may or may not get caught. If I get caught I may or may not be disciplined. But if I don’t make my revenue numbers for two quarters I will be fired”. If such a story is allowed to percolate throughout the company, employees will feel that all that matters is hitting their revenue targets, not acting in an ethical and compliant manner. Only senior management can directly speak to this issue and senior management must make clear that “hitting the numbers” in a manner which is antithetical to the company’s compliance and ethics program is not acceptable. But this must be done in both words *and* actions.

So does your company only “talk the talk or does it also “walk the walk?”