

**TITLE:** NEW DOJ GUIDANCE TIGHTENS CORPORATE ENFORCEMENT STRATEGY  
**RECORD DATE:** SEPTEMBER 2022

**CAL STEIN:**

HELLO, MY NAME IS CAL STEIN AND I AM A PARTNER IN THE TROUTMAN PEPPER WHITE COLLAR AND GOVERNMENT INVESTIGATIONS PRACTICE GROUP AND I WANT TO WELCOME YOU TO THIS PODCAST. ON SEPTEMBER 15TH, DEPUTY US ATTORNEY GENERAL LISA MONACO DELIVERED REMARKS AND ISSUED A MEMORANDUM ANNOUNCING REVISIONS TO THE DOJ'S CRIMINAL ENFORCEMENT POLICIES. DOJ HAS IN THE PAST ISSUED SIMILAR GUIDANCE AND REVISED ITS CRIMINAL ENFORCEMENT POLICIES, BUT ANYTIME THE DOJ SPEAKS, IT IS WORTH THE DEFENSE BAR LISTENING.

**CAL STEIN:**

IN THIS PODCAST, I, ALONG WITH TWO OF MY TRULY TERRIFIC PARTNERS, MIRANDA HOOKER AND ALLISON DELAURENTIS, ARE GOING TO WALK THROUGH THIS NEW DOJ GUIDANCE. WE WILL SUMMARIZE THE GUIDANCE AND THE REVISIONS IN EACH OF THE AREAS THE DOJ ADDRESSED. AT THE END, WE'RE GOING TO DISCUSS SOME PRACTICAL TIPS AND RECOMMENDATIONS FOR COMPANIES ON HOW THEY CAN MITIGATE THEIR OWN RISKS BY IMPROVING AND ENHANCING INTERNAL CONTROLS AND POLICIES. BUT BEFORE WE GO ANY FURTHER, I THINK SOME INTRODUCTIONS ARE IN ORDER. AS I MENTIONED, MY NAME IS CAL STEIN, I'M A PARTNER IN THE TROUTMAN PEPPER WHITE COLLAR AND GOVERNMENT INVESTIGATIONS PRACTICE GROUP. I AM BASED IN OUR BOSTON OFFICE, AND TODAY I HAVE THE GREAT FORTUNE OF WORKING WITH TWO OF MY WONDERFUL COLLEAGUES IN THAT GROUP, MIRANDA HOOKER AND ALLISON DELAURENTIS. MIRANDA, ALLISON, WHY DON'T YOU BOTH INTRODUCE YOURSELVES?

**MIRANDA HOOKER:**

MY NAME IS MIRANDA HOOKER. I'M A PARTNER IN TROUTMAN PEPPER'S HEALTH SCIENCES LITIGATION AND INVESTIGATIONS AND WHITE COLLAR PRACTICE GROUP, AND I'M BASED IN BOSTON ALONGSIDE CAL.

**ALLISON DELAURENTIS:**

I'M ALLISON DELAURENTIS, AND LIKE MIRANDA, I AM A PARTNER IN TROUTMAN PEPPER'S HEALTH SCIENCES LITIGATION AND INVESTIGATIONS AND WHITE COLLAR PRACTICE GROUPS. AND I AM IN THE PHILADELPHIA OFFICE.

**CAL STEIN:**

BOTH OF YOU GUYS HAVE REALLY SUCH TERRIFIC BACKGROUNDS AND EXPERIENCE IN THIS AREA. I'M REALLY LOOKING FORWARD TO TODAY'S DISCUSSION. WITH THAT, LET'S GET INTO THE RECENT DOJ GUIDANCE AND REVISIONS. MS. MONACO IN HER REMARKS INDICATED THAT THESE REVISIONS WERE AIMED AT STRENGTHENING THE DOJ'S PRIORITIZATION AND PROSECUTION OF CORPORATE CRIME. THE UPDATE ACKNOWLEDGED THE OVERALL DECLINE IN CORPORATE CRIMINAL PROSECUTIONS OVER THE PAST 10 YEARS OR SO AND INCLUDED FIVE AREAS IN WHICH THE DOJ IS STRENGTHENING ITS APPROACH IN AN EFFORT TO "DO MORE AND MOVE FASTER." THOSE FIVE AREAS ARE INDIVIDUAL ACCOUNTABILITY, HISTORY OF CORPORATE MISCONDUCT, VOLUNTARY SELF-DISCLOSURES, INDEPENDENT COMPLIANCE MONITORS, AND CORPORATE CULTURE.

**CAL STEIN:**

WE ARE GOING TO DISCUSS EACH OF THOSE FIVE AREAS INDIVIDUALLY. BUT BEFORE WE DO, WHY DON'T WE START WITH SOME GENERAL CONTEXT FOR THE GUIDANCE, HOW IT CAME ABOUT AND WHAT MAKES IT WORTH PAYING ATTENTION TO? MIRANDA, YOU WORKED IN THE JUSTICE DEPARTMENT BEFORE YOU CAME TO TROUTMAN PEPPER. CAN YOU TELL US A BIT ABOUT HOW GUIDANCE LIKE THIS COMES ABOUT AND THEN WHAT IMPACT IT HAS ON INVESTIGATIONS AND PROSECUTIONS?

**MIRANDA HOOKER:**

SO, DOJ IS QUITE INTENTIONAL ABOUT HOW IT ROLLS OUT NEW GUIDANCE AND POLICIES AND IT'S FREQUENTLY ANNOUNCED AT INDUSTRY CONFERENCES AS WAS THE CASE WITH DEPUTY ATTORNEY GENERAL MONACO'S ANNOUNCEMENT OF REVISIONS TO DOJ'S CORPORATE CRIMINAL ENFORCEMENT POLICY. THESE REVISIONS CAME OUT OF THE CORPORATE CRIME ADVISORY GROUP THAT DOJ FORMED IN 2021. MORE SPECIFICALLY, DOJ'S CORPORATE CRIME ADVISORY GROUP MET WITH VARIOUS STAKEHOLDERS OVER THE LAST YEAR, INCLUDING PUBLIC INTEREST GROUPS, ETHICISTS, ACADEMICS, AUDIT COMMITTEE MEMBERS, IN-HOUSE COUNSEL, FORMER CORPORATE MONITORS AND MEMBERS OF THE DEFENSE BAR AND BUSINESS COMMUNITY TO SOLICIT FEEDBACK ON HOW DOJ SHOULD STRENGTHEN ITS APPROACH TO CORPORATE CRIMINAL ENFORCEMENT, AN ENVIRONMENT WHERE, AS MANY OF US HAVE OBSERVED, THERE'S BEEN AN OVERALL DECLINE OVER THE PAST DECADE.

**MIRANDA HOOKER:**

NOW, IN TERMS OF THE IMPACT ON INVESTIGATIONS AND PROSECUTIONS, THESE REVISED POLICIES ARE QUITE SPECIFIC ON THE EXPECTATIONS DOJ HAS FOR CORPORATE CRIMINAL INVESTIGATIONS AND PROSECUTIONS. IT PUTS A SIGNIFICANT ONUS ON PROSECUTORS TO ENSURE THAT IT'S HOLDING INDUSTRIES' FEET TO THE FIRE DURING THE INVESTIGATION PROCESS AND PUSHING COMPANIES HARDER AND FASTER THAN THEY PREVIOUSLY HAVE.

**CAL STEIN:**

THANKS, MIRANDA. THAT'S GREAT INSIGHT FROM THE DOJ SIDE OF THINGS. ALLISON, LIKE ME, YOU'RE A CAREER PRIVATE PRACTITIONER. WHAT HAVE SOME OF YOUR EXPERIENCES BEEN WITH PROSECUTORS AFTER GUIDANCE LIKE THIS COMES OUT?

**ALLISON DELAURENTIS:**

I AGREE WITH EVERYTHING THAT MIRANDA JUST SAID, AND I THINK ON THE DEFENSE SIDE, WE HAVE SEEN AND EXPECT TO SEE, IN THIS CASE, PROSECUTORS BEING VERY INTENTIONAL ABOUT APPLYING THIS GUIDANCE TO THEIR INVESTIGATIONS MOVING FORWARD. FOR EXAMPLE, IF YOU THINK BACK, THE YATES MEMO, WHICH FOCUSED ON INDIVIDUAL PROSECUTIONS AND ACCOUNTABILITY, CAME OUT IN 2015. AND RIGHT AROUND THAT SAME TIME, WE SAW MULTIPLE DISTRICTS PURSUE THE PROSECUTION OF SEVERAL INDIVIDUALS AT ALL LEVELS OF INSYS THERAPEUTICS. I DON'T THINK THAT TIMING WAS A COINCIDENCE. THAT'S AN EXAMPLE OF HOW I THINK THE JUSTICE DEPARTMENT REACTS ONCE GUIDANCE LIKE THIS COMES OUT.

**CAL STEIN:**

THAT'S SUPER HELPFUL INFORMATION AND I THINK VERY IMPORTANT CONTEXT FOR THE MORE SPECIFIC DISCUSSION OF THE FIVE AREAS OF THIS GUIDANCE THAT WE'RE ABOUT TO HAVE. BUT

---

BEFORE WE GET INTO THE SPECIFICS, LET ME POSE ONE MORE GENERAL QUESTION TO YOU, MIRANDA. IN A PRACTICAL SENSE, HOW IMPORTANT IS GUIDANCE LIKE THIS?

**MIRANDA HOOKER:**

IT'S EXTREMELY IMPORTANT, AT LEAST FOR THE REMAINDER OF THE BIDEN ADMINISTRATION, TO THE EXTENT THAT THIS GUIDANCE DICTATES DOJ'S EXPECTATIONS FOR CORPORATE COOPERATION, STRENGTHENS DOJ'S STANCE ON INDIVIDUAL PROSECUTION. THAT MAKES QUITE CLEAR THAT DOJ IS RAISING THE BAR IN TERMS OF WHAT IT MEANS TO COOPERATE AS A COMPANY WHOSE FACING INVESTIGATION IN TERMS OF PRODUCING DOCUMENTS, IDENTIFYING CULPABLE INDIVIDUALS AND BRINGING FORTH KEY DOCUMENTS AND INFORMATION TO PROSECUTORS. IT WILL AND SHOULD HAVE AN IMPACT ON HOW COMPANIES ENGAGE WITH DOJ IN CORPORATE CRIMINAL INVESTIGATIONS MOVING FORWARD.

**MIRANDA HOOKER:**

ON THE OTHER SIDE OF THE COIN, I THINK IT ALSO IS SOMETHING THAT THAT PLACES A SIGNIFICANT BURDEN ON PROSECUTORS TO ENSURE THAT THEY ARE IN FACT MOVING THEIR CASES FORWARD. IT'S FREQUENTLY THE CASE THAT A PROSECUTOR WILL ISSUE A SUBPOENA AND THEN NOTHING HAPPENS. YOU PRODUCE SOME DOCUMENTS AND THEN YOU NEVER HEAR FROM THE PROSECUTORS EVER AGAIN. I THINK WHAT DOJ IS SAYING TO ITS OWN PEOPLE IS, "MOVE FASTER, WORK HARDER, GET THIS INFORMATION AND RESOLVE CASES QUICKER."

**CAL STEIN:**

THAT'S GREAT INSIGHT. OKAY, NOW LET'S TALK ABOUT THE FIVE AREAS, THE FIVE SPECIFIC AREAS ON WHICH THE DEPARTMENT OF JUSTICE FOCUSED IN THIS NEW GUIDANCE. WE'LL START WITH THE FIRST ONE, WHICH IS INDIVIDUAL ACCOUNTABILITY. NOW, DOJ FOCUSING ON INDIVIDUAL ACCOUNTABILITY IS NOTHING NEW, BUT IT IS STILL BEING DISCUSSED HERE IN THIS NEW GUIDANCE. ALLISON, AGAINST THAT FOUNDATION, WHAT ARE SOME OF THE KEY TAKEAWAYS HERE THAT DIFFERENTIATE THIS GUIDANCE ON INDIVIDUAL ACCOUNTABILITY FROM PAST GUIDANCE THAT HAS ALSO PRIORITIZED INDIVIDUAL ACCOUNTABILITY?

**ALLISON DELAURENTIS:**

THE GUIDANCE IS CLEAR. INDIVIDUAL ACCOUNTABILITY REMAINS DOJ'S TOP PRIORITY FOR CRIMINAL ENFORCEMENT. WITH THAT GOAL IN MIND, WHAT THIS GUIDANCE REALLY DOES IS RAISES THE BAR AS TO WHAT CONSTITUTES COOPERATION. DOJ IS NOW PLACING SIGNIFICANT EMPHASIS ON WHAT INFORMATION COOPERATING COMPANIES PROVIDE AND EVEN MORE EMPHASIS ON WHEN THEY PROVIDE IT.

**ALLISON DELAURENTIS:**

FIRST, GOING FORWARD, DOJ WILL PRIORITIZE RECEIVING DOCUMENTS FROM COMPANIES THAT WOULD BE HELPFUL IN IDENTIFYING INDIVIDUAL CULPABILITY. AND THEN TO AID ITS GOAL OF EXPEDITING THESE INDIVIDUAL INVESTIGATIONS, THIS REVISED GUIDANCE EMPHASIZES THAT COOPERATING COMPANIES HAVE TO QUICKLY DISCLOSE CRIMINAL EVIDENCE TO PROSECUTORS AS OPPOSED TO DELAYING THE PRODUCTION OF THAT INFORMATION WHILE THEY CONDUCT AN INTERNAL INVESTIGATION OR CONSIDER HOW TO MITIGATE THEIR DAMAGES.

**ALLISON DELAURENTIS:**

THEN PROSECUTORS WILL EVALUATE WHETHER AT CORPORATIONS STRATEGICALLY DELAYED PRODUCING RELEVANT DOCUMENTS AND WILL TAKE THAT DELAY INTO ACCOUNT WHEN PROSECUTING OR RESOLVING THE CASE. IF THOSE PRODUCTIONS ARE DELAYED, THE GUIDANCE IS CLEAR THAT COMPANIES WILL NOT RECEIVE FULL COOPERATION CREDIT. WHAT'S INTERESTING IS THE TENSION I'M SEEING HERE IS THAT DOJ IS ASKING COMPANIES TO BE UPFRONT AND MORE EXPEDITIOUS THAN BEFORE WHEN IT COMES TO DISCLOSING KEY INFORMATION AND IDENTIFYING CULPABLE INDIVIDUALS, BUT ALSO IT TAKES TIME TO INVESTIGATE AND LEARN THOSE FACTS. AND DOJ IS ALSO EMPHASIZING THE SPEED ON WHICH THIS INFORMATION IS PROVIDED. SO, THERE'S GOING TO CONTINUE TO BE THIS BALANCE BETWEEN LEARNING THE INFORMATION QUICKLY AND PROVIDING IT ON A TIMELINE THAT SATISFIES DOJ.

**CAL STEIN:**

THAT'S A REALLY GOOD POINT ABOUT THE TENSION AND THE COMPETING FACTORS HERE. ANOTHER PIECE OF THE GUIDANCE ON THIS TOPIC HAS TO DO WITH SOMETHING MIRANDA MENTIONED, WHICH IS TIMING, AND THE ORDER BY WHICH PROSECUTORS ARE GOING TO BE CONDUCTING THESE INVESTIGATIONS. NOW, THE GUIDANCE DIRECTS PROSECUTORS TO SEEK CRIMINAL CHARGES AGAINST INDIVIDUALS PRIOR TO, OR AT LEAST AT THE SAME TIME AS IT ENTERS INTO RESOLUTIONS WITH CORPORATIONS. AND IN THE EVENT THAT THE CORPORATION RESOLVES ITS CASE FIRST, THE DOJ IS NOW DIRECTING PROSECUTORS TO HAVE FULL INVESTIGATIVE PLANS OUTLINING THE REMAINING WORK TO BE DONE ON THE INDIVIDUAL CASES AND TO HAVE A TIMELINE FOR COMPLETING THAT WORK. NOW, ALLISON, WHAT DO YOU THINK IS GOING TO BE THE PRACTICAL EFFECT OF THAT PIECE OF PROSECUTORS SEEKING CHARGES AGAINST INDIVIDUALS FIRST OR AT THE SAME TIME AND THEN HAVING TO HAVE THAT PLAN?

**ALLISON DELAURENTIS:**

PRACTICALLY SPEAKING, I THINK THAT THIS IS WHAT DOJ TRIES TO DO IN MOST INSTANCES. BUT IN CASES WHERE IT HASN'T OR DOESN'T, THE OBVIOUS CONCERN IS THAT IF YOU INVESTIGATE A COMPANY AND THEN EVENTUALLY REACH A RESOLUTION, IF YOU DO THAT WITHOUT HAVING BROUGHT YOUR CASE AGAINST INDIVIDUALS, IT TAKES THE STEAM OUT OF ANY SUBSEQUENT PROSECUTION OF INDIVIDUALS THAT YOU'RE TRYING TO DO. AS THE DEPUTY ATTORNEY GENERAL POINTED OUT IN HER REMARKS, THE MORE TIME THAT PASSES, THE HARDER IT IS, THERE ARE EVIDENTIARY AND STATUTE OF LIMITATIONS ISSUES. THESE INVESTIGATIONS, EVEN WHEN THEY START USUALLY INVOLVE CONDUCT THAT IS AT LEAST A FEW YEARS OLD. THEN WHEN YOU LAYER IN THE TIME THAT IT TAKES TO INVESTIGATE AND RESOLVE A MATTER WITH A COMPANY, IF YOU WAIT UNTIL THE COMPANY RESOLUTION IS COMPLETE TO BEGIN THINKING ABOUT INDIVIDUAL LIABILITY, THERE'RE SURELY GOING TO BE THESE CHALLENGES. AND THAT SEEMS LIKE WHAT DOJ IS TRYING TO PREVENT.

**CAL STEIN:**

YEAH, I THINK THAT'S SOMETHING AS DEFENSE ATTORNEYS THAT WE HAVE ALL SEEN. NOW LET'S SHIFT TO THE SECOND AREA OF THE ENFORCEMENT IN THE DOJ GUIDANCE AND THAT'S OF A CORPORATION'S HISTORY OF MISCONDUCT. HERE, THE DOJ REINFORCED THAT IT WILL CONTINUE TO CONSIDER A CORPORATION'S HISTORY OF CRIMINAL, CIVIL AND REGULATORY MISCONDUCT WHEN DECIDING WHETHER AND HOW TO RESOLVE A CURRENT INVESTIGATION. NOTHING NEW THERE. BUT LET'S START AGAIN WITH THE BIG PICTURE AND DIVE IN A LITTLE DEEPER. MIRANDA, AS I JUST MENTIONED, DOJ CONSIDERING HISTORICAL CONDUCT AND MISCONDUCT IS NOT NEW. WHAT MAKES THIS DIFFERENT?

**MIRANDA HOOKER:**

WHAT'S MEANINGFULLY DIFFERENT HERE IS THAT LAST FALL DOJ SAID IT WAS GOING TO CONSIDER ALL HISTORICAL CONDUCT AND I THINK THE REACTION FROM INDUSTRY WAS, "WELL, WHAT DOES THAT MEAN?" FIRST, AND TWO, "IS THAT AN APPROPRIATE AND JUST APPROACH?" WHAT DOJ'S NOW COMING BACK AND IS SAYING IS WHAT THAT MEANS IS THAT PREVIOUS ACTIONS MAY NOT ALWAYS REFLECT A COMPANY'S CURRENT CULTURE AND COMMITMENT TO COMPLIANCE. WITH THAT IN MIND, DOJ IS PROVIDING PROSECUTORS WITH THREE PRINCIPLES TO USE WHEN ASSESSING THE WEIGHT OF A CORPORATION'S HISTORY OF MISCONDUCT.

**MIRANDA HOOKER:**

FIRST, LOOK AT WHAT IS THE DATED CONDUCT AND THEY'RE DEFINING DATED CONDUCT AS CONDUCT THAT IS 10-PLUS YEARS OLD CRIMINAL RESOLUTIONS OR FIVE-PLUS YEAR OLD CIVIL/REGULATORY RESOLUTIONS WILL BE AFFORDED LESS WEIGHT WHEN LOOKING AT AN OVERALL HISTORIC CULPABILITY. SECOND, THE NATURE AND CIRCUMSTANCES OF THE PRIOR MISCONDUCT WILL BE TAKEN INTO ACCOUNT INCLUDING COMPARING WHETHER THE PRIOR MISCONDUCT SHARES SIMILAR FACTS AND CIRCUMSTANCES WITH THE CURRENT INVESTIGATION AND WHETHER THE SAME CORPORATE LEADERSHIP WAS INVOLVED.

**MIRANDA HOOKER:**

DOJ IS ALSO GOING TO EMPLOY AN INDUSTRY-WIDE STANDARD TO DISCERN WHETHER THE COMPANY IS AN OUTLIER COMPARED TO SIMILARLY SITUATED COMPANIES. WHAT THAT MEANS IN PRACTICAL TERMS IS REALLY ONE OF THE FIRST QUESTIONS THAT I THINK INDUSTRY WAS ASKING WHEN WE HEARD THIS GUIDANCE LAST YEAR WAS IF YOU HAD A TAX ISSUE IN 2005 AND IN 2022 YOU HAVE A HEALTHCARE PROBLEM, WHAT WEIGHT IS THE GOVERNMENT GOING TO GIVE THAT WHEN EVALUATING WHAT HISTORICAL CRIMINAL CONDUCT IS? I THINK WHAT THEY'RE SAYING IS, IF IT'S OLDER AND UNRELATED TO THE CURRENT CONDUCT, IT'S GOING TO BE GIVEN LESS WEIGHT, WHICH IS, MANY OF US WOULD THINK, APPROPRIATE.

**MIRANDA HOOKER:**

THE THIRD PRINCIPLE IS DOJ'S CAUTIONING THAT IT DOESN'T LOOK FAVORABLY UPON EXCESSIVE DEFERRED PROSECUTION AGREEMENTS, OR WHAT'S KNOWN AS DPAs, OR MULTIPLE NON-PROSECUTION AGREEMENTS, ALSO KNOWN AS NPAs, WITH THE SAME COMPANY. THEREFORE, WHAT DOJ IS TELLING ITS PROSECUTORS IS BEFORE YOU EXTEND AN OFFER FOR SUCCESSIVE DPA OR NPA TO A COMPANY, DOJ LEADERSHIP IS GOING TO WANT TO SIGNIFICANTLY SCRUTINIZE THE PROPOSAL AND APPROVE IT BEFORE THAT IS AN OFFER THAT WILL BE EXTENDED.

**CAL STEIN:**

WHAT'S FUNNY, MIRANDA, YOU QUOTED A LINE FROM THE NEW GUIDANCE AND IT'S THE SAME ONE THAT I WROTE DOWN THAT REALLY STUCK OUT AT ME. PREVIOUS ACTIONS MAY NOT ALWAYS REFLECT A COMPANY'S CURRENT CULTURE AND COMMITMENT TO COMPLIANCE. I FOUND THAT TO BE REALLY IMPORTANT AS WELL. DO YOU MAKE ANYTHING MORE OF THAT? MAYBE IS THERE AN EXAMPLE THAT COMES TO MIND THAT MIGHT ILLUSTRATE HOW YOU INTERPRET THAT FROM THE DOJ PERSPECTIVE?

**MIRANDA HOOKER:**

ABSOLUTELY. A GREAT EXAMPLE OF THAT MAY BE A SITUATION WHERE 10 YEARS AGO A YOUNG, NEW-TO-MARKET COMPANY HAD A COMPLIANCE ISSUE AND RESOLVED A DOJ INVESTIGATION AND, IN

THE WAKE OF THAT INVESTIGATION, DEVELOPED AN EFFECTIVE COMPLIANCE PROGRAM. BUT A COMPONENT OF AN EFFECTIVE COMPLIANCE PROGRAM IS ALSO THAT YOU ARE MONITORING AND AUDITING YOUR ORGANIZATION AND SOMETIMES YOU UNCOVER MISCONDUCT. I THINK WHAT DOJ IS SAYING TODAY IS IF THAT SAME COMPANY, FAST FORWARD, HAS A DIFFERENT ISSUE, BUT NEVERTHELESS HAS EVOLVED SIGNIFICANTLY SINCE THE INITIAL MISCONDUCT, DOJ WANTS TO RECOGNIZE AND INCENTIVIZE THAT BEHAVIOR. THAT'S CONSISTENT WITH WHAT WE'VE SEEN IN RECENT YEARS WITH DOJ'S GUIDANCE ON CORPORATE COMPLIANCE PROGRAMS, WHICH IS TO SAY WE WANT COMPLIANCE PROGRAMS TO BE EVOLVING AND BE CONSISTENTLY TAILORED TO WHERE A COMPANY IS IN THEIR MARKET. I THINK DOJ IS JUST REITERATING ITS EMPHASIS ON ITS DESIRE TO INCENTIVIZE STRONG CORPORATE COMPLIANCE PROGRAMS.

**CAL STEIN:**

REALLY HELPFUL AND GOOD EXAMPLE I THINK, BECAUSE AS PRIVATE PRACTITIONERS, I'M SURE ALL THREE OF US HAVE SEEN THAT EXACT PATTERN PLAY OUT WITH OUR CLIENTS. ANOTHER THING THAT I FOUND REALLY INTERESTING IN THIS SECTION OF THE GUIDANCE WAS HOW DOJ NEARLY EXPLICITLY ADDRESSED THE IMPACT OF THIS NEW GUIDANCE ON THE MERGERS AND ACQUISITIONS MARKET. DOJ SAID IT WAS NOT INTENDING TO DISCOURAGE ACQUISITIONS THAT WOULD RESULT IN ENHANCED COMPLIANCE IF A COMPANY WITH A RECORD OF COMPLIANCE OUGHT TO ACQUIRE A COMPANY WITH A RECORD OF MISCONDUCT. MIRANDA, DID YOU MAKE ANYTHING OF THAT?

**MIRANDA HOOKER:**

COMPANIES SEEKING TO MAKE STRATEGIC ACQUISITIONS IN THE MERGERS AND ACQUISITIONS MARKET WOULD BE QUITE WISE TO ENHANCE THEIR DILIGENCE PROCEDURES TO ENSURE THAT THEY INVESTIGATE AND LEARN ABOUT ALL PRIOR MISCONDUCT OF A TARGET. DOJ'S NEW GUIDANCE IS CLEAR THAT THERE ARE STEPS AN ACQUIRING COMPANY CAN TAKE TO INSULATE ITSELF FROM THE PAST SINS OF AN ACQUISITION TARGET. BUT TO DO SO, THE ACQUIRING COMPANY MUST KNOW ABOUT ALL SUCH MISCONDUCT. CORPORATE AND LEGAL DUE DILIGENCE TEAM SHOULD BE PAYING CAREFUL ATTENTION TO PRIOR CRIMINAL INVESTIGATIONS, PROSECUTIONS AND RESOLUTIONS, AND EVEN ONGOING INVESTIGATIONS, AND SHOULD CONSIDER PRIORITIZING THE ACQUISITION AND REVIEW OF SUCH INFORMATION EARLY IN THE M&A PROCESS.

**CAL STEIN:**

ALL RIGHT, GREAT. LET'S MOVE ON TO THE THIRD TOPIC NOW. AND THIS ONE PROVIDES SOME GUIDANCE ON SELF-DISCLOSURES. NOW, THE GOVERNMENT TOUTING SELF-DISCLOSURES AND THE BENEFITS OF SELF-DISCLOSURES IN AN EFFORT TO TRY AND GET MORE OF THEM IS NOT REALLY ANYTHING NEW, BUT AT LEAST HISTORICALLY THOSE EFFORTS HAVE NOT REALLY WORKED, AT LEAST NOT TO THE EXTENT IT SEEMS THE DOJ WOULD LIKE. IN MY PERSONAL OPINION, IT'S REALLY JUST A MATTER THAT THE DOJ HAS NOT HISTORICALLY MADE THE POTENTIAL REWARD FOR THESE SELF-DISCLOSURES SIGNIFICANT ENOUGH TO BE WORTH THE RISK. THAT'S JUST MY VIEW AND IT'S AN OVERALL VIEW, OF COURSE, EACH SPECIFIC SITUATION IS DIFFERENT. BUT, MIRANDA, DOES THIS GUIDANCE ALTER AT ALL YOUR VIEWS ON SELF-DISCLOSURES? ARE THERE SPECIFIC SCENARIOS WHERE YOU WOULD BE MORE LIKELY TO RECOMMEND A CLIENT CONSIDER A SELF-DISCLOSURE OR SITUATIONS WHERE IT WOULD BE LESS LIKELY?

**MIRANDA HOOKER:**

I THINK THE QUESTION OF WHETHER OR NOT TO SELF-DISCLOSE IS ALWAYS A INDIVIDUALIZED, CASE-BY-CASE BASIS, BUT YOU REALLY HIT THE NAIL ON THE HEAD, CAL, WHERE THE ISSUE HERE IS THAT PREVIOUSLY THERE WAS VERY LITTLE GUIDANCE OR INSIGHT OR TRANSPARENCY AROUND WHAT THE

---

BENEFITS WERE OF SELF-DISCLOSING IN A CORPORATE CRIMINAL MATTER. THERE'S GUIDANCE ON THE CIVIL SIDE, BUT VERY LITTLE ON THE CRIMINAL SIDE.

**MIRANDA HOOKER:**

THE QUESTION MANY OF US HAVE ASKED DOJ PREVIOUSLY IS WHAT GUIDANCE SHOULD WE GIVE? WHAT CRITERIA SHOULD WE ADVISE COMPANIES ON SELF-DISCLOSURE AS TO THE ACTUAL BENEFITS OF IT? THERE WAS NEVER ANY GREAT ANSWER OTHER THAN, "TRUST THAT THE SYSTEM WILL WORK FOR YOU." AND YOU CAN UNDERSTAND THAT'S NOT ALWAYS SATISFYING TO COMPANIES FACING A QUESTION OF SELF-DISCLOSURE. AGAIN, WHETHER OR NOT TO SELF-DISCLOSE IS STILL A COMPLEX CASE-BY-CASE ANALYSIS, BUT THIS GIVES BETTER CLARITY AS TO THE UPSIDES OF DOING SO. FOR EXAMPLE, THERE'S A GUARANTEE OF IF YOU ARE SELF-DISCLOSING CONDUCT, YOU WILL NOT HAVE A MONITOR, AND THAT MAY BE A CARROT THAT REALLY INCENTIVIZES SOME COMPANIES TO SELF-DISCLOSE, BUT AGAIN, I THINK IT'S GOING TO BE ALWAYS A CASE-BY-CASE BASIS.

**CAL STEIN:**

NO QUESTION ABOUT THAT. SPEAKING OF MONITORS, THAT IS ACTUALLY A GREAT SEGUE INTO THE NEXT TOPIC IN THE DOJ GUIDANCE, THE FOURTH TOPIC WHICH TALKS ABOUT COMPLIANCE MONITORS. HERE THE DOJ REINFORCES THAT ITS DECISION OR THE DECISION TO USE MONITORS IS GOING TO BE MADE AGAIN ON A CASE-BY-CASE BASIS, AND DOJ ACTUALLY LISTS OUT SOME OF THE FACTORS THAT IT'S GOING TO CONSIDER, SELF-DISCLOSURE BEING ONE OF THEM. BUT IN ADDITION, THINGS LIKE WHETHER THERE WAS AN EFFECTIVE COMPLIANCE PROGRAM AT THE TIME OF THE RESOLUTION, WHETHER THERE WAS ADEQUATE TESTING OF INTERNAL CONTROLS, THE PERVASIVENESS OF THE MISCONDUCT AND THE RESPONSE BY THE CORPORATE C-SUITE, WHETHER AN INADEQUATE COMPLIANCE PROGRAM WAS ABUSED, THE INVOLVEMENT OF COMPLIANCE PERSONNEL IN THE MISCONDUCT, REMEDIAL MEASURES THAT WERE TAKEN, CHANGES TO THE COMPANY'S RISK PROFILE, UNIQUE COMPLIANCE CHALLENGES THAT MAY EXIST, AND THE EXISTING OVERSIGHT FROM INDUSTRY REGULATORS OR MONITORS. THOSE ARE ALL THINGS THE DOJ SPECIFICALLY MENTIONED. LET ME TURN TO YOU, ALLISON. DO ANY OF THOSE FACTORS OR ANYTHING ELSE IN THE GUIDANCE THE DOJ OFFERED ABOUT COMPLIANCE MONITORS JUMP OUT TO YOU AS MORE OR LESS IMPORTANT?

**ALLISON DELAURENTIS:**

THERE ARE SOME THAT ARE CLEARLY SIGNIFICANT, AS MIRANDA ALREADY ALLUDED TO. THE FIRST FACTOR IS SELF-DISCLOSURE, AND AS WE ALREADY SAID, AVOIDING A MONITOR IS ONE OF THE CARROTS OFFERED FOR SELF-DISCLOSURE, SO THAT'S OBVIOUSLY AN IMPORTANT FACTOR. I THINK THE EFFECTIVENESS OF THE COMPLIANCE PROGRAM IS ANOTHER CRITICAL FACTOR THAT'S WOVEN INTO SEVERAL OF THE FACTORS THAT YOU JUST DESCRIBED IN THE MEMO. A MONITOR'S ROLE IS ULTIMATELY TO TEST AND ASSESS A COMPANY'S COMPLIANCE PROGRAM. IF A COMPANY CAN PROVE THAT ITS PROGRAM IS ABLE TO PREVENT AND DETECT MISCONDUCT, THAT GOES A LONG WAY TOWARD ELIMINATING THE NEED FOR THAT MONITOR. ALL IN ALL, IT WILL CONTINUE TO BE CASE BY CASE AND DOJ MAY WEIGH DIFFERENT FACTORS DIFFERENTLY DEPENDING ON THE UNDERLYING CONDUCT. BUT AT LEAST HAVING THIS LIST OF FACTORS DOES LEND CLARITY TO A PROCESS THAT WAS PREVIOUSLY A BIT LESS PREDICTABLE.

**ALLISON DELAURENTIS:**

I ALSO THINK IT'S INTERESTING THAT THE GUIDANCE ALSO EMPHASIZES THAT THE MONITORS' RESPONSIBILITIES GOING FORWARD ARE TO BE WELL-DEFINED IN WRITING, SO THAT THE SCOPE IS KNOWN AND IDENTIFIED IN THE WORK PLAN AND THAT DOJ HAS TO BE APPRISED OF THE MONITORS



---

WORK AND IN PARTICULAR THE COST OF THE MONITORSHIP. NO DOUBT MEMBERS OF THE WORKING GROUP RAISED ISSUES RELATED TO THE SOMETIMES OVERWHELMING COSTS ASSOCIATED WITH MONITORSHIPS, AND THIS SEEMS TO BE DOJ'S RECOGNITION OF THOSE CONCERNS.

**CAL STEIN:**

THAT ACTUALLY BRINGS US TO THE FINAL TOPIC IN THE DOJ GUIDANCE, BUT OF COURSE, IT'S A DOOZY, CORPORATE CULTURE. THIS PORTION OF THE GUIDANCE ADDRESSES A NUMBER OF DISCRETE TOPICS. I THINK WE SHOULD TACKLE THEM INDIVIDUALLY. LET'S START WITH THE GUIDANCE ON PERSONAL DEVICES. THE GUIDANCE ADDRESSES SPECIFICALLY COMPLIANCE RISKS ASSOCIATED WITH EMPLOYEE PERSONAL DEVICES AS WELL AS THIRD-PARTY MESSAGING PLATFORMS. ALLISON, DO YOU HAVE ANY THOUGHTS ON THIS? WHY DO YOU THINK DOJ FOCUSED SO CLOSELY ON THIS PARTICULAR ASPECT OF COMPLIANCE, WHICH APPEARS TO BE PRETTY NARROW?

**ALLISON DELAURENTIS:**

I THINK, REALISTICALLY, IT'S BECAUSE THIS IS HOW PEOPLE COMMUNICATE AND MAYBE EVEN MORE SO IF THEY'RE ENGAGED IN NON-COMPLIANT OR POTENTIALLY CRIMINAL CONDUCT. I THINK THEY FOCUSED ON THIS BECAUSE WE'RE SEEING IT COME UP IN MORE AND MORE CASES, WHERE CRITICAL EVIDENCE LIES IN AREAS THAT ARE NOT YOUR STANDARD COMPANY EMAIL OR NOT OTHERWISE ON THE COMPANY SYSTEMS. AND UNLESS COMPANIES CAN ACCESS, PRESERVE, AND THEN PRODUCE THAT DATA, DOJ'S LEAVING EVIDENCE ON THE TABLE THAT THEY MAY VERY WELL NEED FOR THEIR CASE.

**CAL STEIN:**

THE GUIDANCE ALSO MENTIONS, WITH FAVOR, COMPLIANCE PROGRAMS THAT PENALIZE INDIVIDUALS FOR NON-COMPLIANT ACTIVITIES. MIRANDA, HAVE YOU SEEN EXAMPLES OF THIS IN PRACTICE? AND WHAT ABOUT THE OTHER SIDE, INCENTIVES FOR COMPLIANT CONDUCT?

**MIRANDA HOOKER:**

I HAVE SEEN THIS, AND THIS HAS BEEN A LONG TIME COMING AND IS SOMETHING THAT WE'VE SEEN ENACTED IN SOME OF THE MORE SOPHISTICATED PHARMACEUTICAL AND MEDICAL DEVICE COMPANIES. I WOULDN'T SAY IT'S WIDESPREAD YET, AND THIS GUIDANCE MAY BE JUST THE CARROT THAT COMPANIES NEED TO DEVELOP THESE PROGRAMS. IF SOMEONE THINKS THEY'LL GET LESS OF A BONUS OR NO BONUS FOR ENGAGING IN NON-COMPLIANT BEHAVIOR OR TURNING A BLIND EYE TOWARDS NON-COMPLIANT BEHAVIOR, THEY'RE LESS LIKELY TO DO THAT. PEOPLE ARE INCENTIVIZED BY COMPENSATION, AND THAT'S SOMETHING THAT DOJ HAS LONG TAKEN ISSUE WITH, BUT NOW IS TRYING TO USE THAT MOTIVATION TO ITS OWN BENEFIT IN INCENTIVIZING A CULTURE OF COMPLIANCE. I HAVE CLIENTS WHO GIVE PEOPLE BONUSES OR SPECIFIC AWARDS FOR REPORTING NON-COMPLIANT BEHAVIOR TO THE COMPLIANCE DEPARTMENT, AND THAT'S EXACTLY WHAT WE THINK DOJ IS TRYING TO INCENTIVIZE HERE.

**CAL STEIN:**

THAT MAKES SENSE AND, AS YOU NOTED, IT'S IN LINE WITH THE WAY DOJ TREATS AND ANALYZES COMPENSATION STRUCTURES IN OTHER AREAS WHEN THEY'RE CONDUCTING INVESTIGATIONS. FINALLY, IN THIS CORPORATE CULTURE SECTION OF THE GUIDANCE, THE DOJ ALSO ADVISES THAT PROSECUTORS SHOULD BE CONSIDERING WHETHER A CORPORATION USES NON-DISCLOSURE AGREEMENTS OR NON-DISPARAGEMENT PROVISIONS IN ITS COMPENSATION AGREEMENTS WITH HIS EMPLOYEES SO AS TO INHIBIT THEM FROM PUBLICLY DISCLOSING MISCONDUCT. NOW, NDAs AND



NON-DISPARAGEMENT PROVISIONS ARE PRETTY COMMON. I KNOW WE'VE SEEN THEM A LOT. BUT, MIRANDA, DO YOU THINK THIS GUIDANCE IS GOING TO HAVE MUCH OF AN IMPACT ON THE USE OF THEM GOING FORWARD, OR IS THIS KIND OF BUSINESS AS USUAL?

**MIRANDA HOOKER:**

I TEND TO THINK THIS IS MORE BUSINESS AS USUAL, BECAUSE MOST NDAs AND NON-DISPARAGEMENT AGREEMENTS HAVE A CARVE-OUT FOR WHISTLEBLOWERS. I VIEW THIS AS ARTICULATION OF EXISTING LAW. YOU CAN'T SIGN SOMEONE UP FOR A NON-DISCLOSURE AGREEMENT OR A NON-DISPARAGEMENT AGREEMENT AND PRECLUDE THEM FROM REPORTING CRIMINAL CONDUCT TO THE GOVERNMENT. SO, I DON'T KNOW THAT I THINK THIS IS GOING TO HAVE A MARKET IMPACT ON HOW INDUSTRY OPERATES.

**CAL STEIN:**

AS WE HAVE SEEN, THIS DOJ GUIDANCE IS REALLY ACTUALLY CHOCK-FULL OF SUBSTANTIVE REVISIONS AND EMPHASIS ON PROSECUTORIAL PRIORITIES. BUT FROM A PRACTICAL PERSPECTIVE, WHAT DOES ALL OF THIS MEAN? WHAT DOES IT MEAN TO CORPORATIONS THAT MAY BE FACING DOJ INVESTIGATIONS GOING FORWARD? OR PERHAPS MORE IMPORTANTLY, WHAT DOES IT MEAN TO CORPORATIONS THAT WANT TO AVOID FACING DOJ INVESTIGATIONS GOING FORWARD? THERE ARE A LOT OF PRACTICAL IMPLICATIONS FROM THIS GUIDANCE, FAR TOO MANY FOR US TO COVER ALL OF THEM IN THIS PODCAST. NOT TO MENTION THAT MOST ARE GOING TO BE DECIDED ON A CASE AND FACT-SPECIFIC BASIS.

**CAL STEIN:**

BUT, GENERALLY SPEAKING, THERE ARE A NUMBER OF PRACTICAL TAKEAWAYS FROM THIS GUIDANCE, AND I THINK WE'LL GO THROUGH A COUPLE OF THEM HERE. ONE RECOMMENDATION, AT LEAST FROM MY POINT OF VIEW, IS THAT COMPANIES IN THE MERGER AND ACQUISITION SPACE, AS WAS MENTIONED EARLIER, REALLY OUGHT TO BE FOCUSING ON ENHANCING AND PAYING MORE ATTENTION TO THEIR DUE DILIGENCE. ANY COMPANY THAT'S LOOKING TO MAKE AN ACQUISITION SHOULD REALLY BE SURE THAT IT IS CONDUCTING A FULSOME INVESTIGATION OF ITS POTENTIAL TARGETS AND LEARNING ABOUT ALL PRIOR MISCONDUCT THAT THE TARGET MAY HAVE ENGAGED IN. THE NEW GUIDANCE IS CLEAR THAT THERE ARE STEPS AN ACQUIRING COMPANY CAN TAKE TO INSULATE ITSELF FROM THE PAST MISCONDUCT OF AN ACQUISITION.

**CAL STEIN:**

BUT, AS NOTED, TO TAKE ADVANTAGE OF THOSE, THE COMPANY REALLY HAS TO KNOW ABOUT ALL OF IT. CORPORATE AND LEGAL DILIGENCE TEAMS SHOULD PAY ESPECIALLY CAREFUL ATTENTION TO PRIOR CRIMINAL INVESTIGATIONS, PROSECUTIONS AND RESOLUTIONS. AND IT MAY BE WISE FOR THEM TO PRIORITIZE THAT INFORMATION EARLY IN THE DUE DILIGENCE PERIOD, SO THE ACQUIRER CAN EVALUATE WHAT WILL NEED TO BE DONE TO CORRECT THOSE PROBLEMS POST-ACQUISITION, BEFORE THEY GO TOO FAR DOWN THE NEGOTIATION ROAD. MIRANDA AND ALLISON, WHAT PRACTICAL TIPS OR RECOMMENDATIONS COME TO YOUR MIND AFTER GOING THROUGH ALL OF THIS GUIDANCE?

**MIRANDA HOOKER:**

WELL, I THINK AN IMPORTANT ONE IS THAT A COMPANY INSURED HAS AN EFFECTIVE MEANS OF DETECTING COMPLIANCE VIOLATION, SO THAT A COMPANY CAN LEARN ABOUT ANY PROBLEM BEFORE DOJ DOES AND HAS AN OPPORTUNITY TO BOTH MITIGATE AND CONSIDER SELF-DISCLOSURES GIVEN THE ENHANCED BENEFITS OF DOING SO. AS WE JUST DISCUSSED, COMPANIES HAVE LONG

STRUGGLED TO PREDICT AND QUANTIFY THE BENEFITS OF SELF-DISCLOSURE. WHAT DOJ I THINK IS TRYING TO SAY NOW IS THAT WE WANT COMPANIES TO KNOW THAT THERE ARE BENEFITS THAT ARE PREDICTABLE AND TANGIBLE. STILL, WHETHER OR NOT SELF-REPORTING MAKES SENSE FOR A PARTICULAR COMPANY IS GOING TO DEPEND UPON THE SPECIFIC FACTS AND CIRCUMSTANCES OF THE INVESTIGATION. BUT AS DOJ BETTER ARTICULATES THE BENEFITS THAT A COMPANY CAN REAP FROM A SELF-REPORT, COMPANIES WOULD BE WISE TO IMPLEMENT PROCEDURES THAT AT LEAST GIVES THEM THE OPPORTUNITY TO TAKE ADVANTAGE OF THOSE BENEFITS SHOULD IT DECIDE, IN CONJUNCTION WITH COUNSEL AND UPON AN INVESTIGATION, TO DO SO.

**MIRANDA HOOKER:**

THIS INCLUDES, MOST NOTABLY IN MY MIND, ENSURING THAT THERE'S A COMPLIANCE PROGRAM DESIGNED TO EFFECTIVELY DETECT INSTANCES OF MISCONDUCT BEFORE THEY'RE REPORTED TO THE GOVERNMENT THROUGH A WHISTLEBLOWER OR BY OTHER MEETS. THIS INCLUDES, FOR EXAMPLE, A COMPLIANCE HOTLINE THAT ENCOURAGES EMPLOYEES TO REPORT MISCONDUCT INTERNALLY RATHER THAN EXTERNALLY, AND CAN BE AN EFFECTIVE WAY TO ENSURE THAT A COMPANY HAS THE OPPORTUNITY TO LEARN OF MISCONDUCT, INVESTIGATE THAT MISCONDUCT, AND EVALUATE WHETHER THERE IS A SELF-REPORT THAT COULD BE NECESSARY IN A WAY THAT COULD BENEFIT THE COMPANY BEFORE A GOVERNMENT INVESTIGATION MAY BEGIN. AND THAT TYPE OF SELF-REPORTING AND THE BENEFITS THAT MAY COME ALONG WITH IT ARE NO LONGER AN OPTION.

**CAL STEIN:**

THAT'S SUCH A GREAT POINT, AND I'M ALWAYS REMINDED OF SOMETHING SOMEONE ONCE TOLD ME, WHICH IS GOVERNMENT WHISTLEBLOWERS DON'T WALK AROUND WEARING T-SHIRTS THAT SAY WHISTLEBLOWERS. SO, IT CAN BE HARD TO FIND THAT INFORMATION, AND I THINK THE SUGGESTIONS YOU JUST MADE ARE REALLY GOOD. ALLISON, WHAT ABOUT YOU? ANY THOUGHTS OR RECOMMENDATIONS ON PRACTICAL TIPS FOR COMPANIES COMING OUT OF THIS GUIDANCE?

**ALLISON DELAURENTIS:**

I THINK ANOTHER ONE IS TO IMPLEMENT A FINANCIAL INCENTIVE OR DISINCENTIVE PROGRAM THAT'S TIED TO COMPLIANCE. COMPANIES SHOULD IMMEDIATELY CONSIDER CREATING AND IMPLEMENTING POLICIES THAT ARE INTENDED TO EITHER FINANCIALLY PENALIZE EMPLOYEES THAT ARE FOUND TO BE RESPONSIBLE FOR MISCONDUCT OR INCENTIVIZE COMPLIANT BEHAVIOR. THESE POLICIES, HOWEVER, DO NEED TO COMPLY WITH STATE AND FEDERAL WAGE LAWS, SO COMPANIES WOULD ALSO BE WISE TO CONSIDER CONSULTING OUTSIDE EMPLOYMENT COUNSEL BEFORE DOING SO. COMPANIES SHOULD ALSO REVIEW THEIR EXISTING COMPENSATION POLICIES WITH AN EYE TOWARD IDENTIFYING ANY THAT COULD BE CONSTRUED BY THE DOJ AS INCENTIVIZING MISCONDUCT OR OTHERWISE PRIORITIZING COMPENSATION OVER CORPORATE RESPONSIBILITY.

**CAL STEIN:**

THAT'S ANOTHER GREAT SUGGESTION AND ONE THAT'S ACTUALLY CERTAINLY SOMETHING COMPANIES CAN DO AND CAN DO IMMEDIATELY. I'LL OPEN IT UP TO THE BOTH OF YOU BEFORE WE END. ANY OTHER THOUGHTS, RECOMMENDATIONS, PRACTICAL TIPS?

**ALLISON DELAURENTIS:**

I THINK ANOTHER ONE IS TO UPDATE OR CREATE, IF A COMPANY DOESN'T ALREADY HAVE ONE, A PERSONAL DEVICE POLICY. THE MEMO SAYS THE DOJ IS GOING TO STUDY BEST PRACTICES IN THIS AREA, AND, IT SEEMS, ISSUE MORE GUIDANCE ABOUT THIS SPECIFICALLY. BUT IN THE MEANTIME,

---

COMPANIES SHOULD EVALUATE THEIR PERSONAL DEVICE POLICIES IN LIGHT OF THIS GUIDANCE AND IMPLEMENT THEM IF THEY DON'T HAVE THEM.

**MIRANDA HOOKER:**

ANOTHER THING I WOULD ADD, CAL, IS I THINK IT'S GOING TO BE REALLY IMPORTANT HERE, GIVEN DOJ'S PUSH FOR EARLY ENGAGEMENT AND INVOLVEMENT BY COMPANIES, IS THE COMPANIES SHOULD REALLY GET THEIR COUNSEL INVOLVED EARLY ON AND PREFERABLY BEFORE A FORMAL INVESTIGATION BEGINS. DOJ'S FOCUS ON EARLY DOCUMENTATION OF INDIVIDUAL ACCOUNTABILITY MEANS THAT THE RETENTION OF COUNSEL EARLY ON UPON RECEIVING A SUBPOENA IS GOING TO BE MORE IMPORTANT THAN EVER. WHAT DOJ IS BASICALLY SAYING IT WANTS IS THAT IF YOU'RE A COMPANY THAT'S A TARGET OF AN INVESTIGATION, DOJ WANTS YOU TO GET COUNSEL INVOLVED, CONDUCT YOUR OWN INVESTIGATION, LEARN ALL THE RELEVANT FACTS, ACT QUICKLY, PRODUCE DOCUMENTS, DON'T DRAG YOUR FEET AND HOLD OUT THE KEY DOCUMENTS UNTIL LATER AT TIME, WILL YOU FIGURE OUT THE FACTS AROUND IT AND HOW YOU WANT TO POSITION THOSE FACTS? WHAT DOJ IS BASICALLY ASKING COMPANIES TO DO IS ENGAGE QUICKLY, INVESTIGATE QUICKLY, PRODUCE QUICKLY, AND GET IN FRONT OF DOJ AS QUICKLY AS YOU CAN.

**CAL STEIN:**

THAT'S A GREAT POINT, AND IT TOUCHES ON SO MANY OF THE THEMES WE'VE TALKED ABOUT TODAY, BECAUSE IF WE GO BACK TO THE BEGINNING, WHAT WAS THE BIG GOAL, THE BIG THEME OF THIS GUIDANCE? IT'S TO MAKE THINGS MORE EFFICIENT FOR DOJ SO THAT THEY CAN MOVE QUICKER AND DO MORE. I THINK THAT'S A REALLY, REALLY GOOD POINT TO END ON. WITH THAT, WE ACTUALLY ARE OUT OF TIME HERE TODAY. SO LET'S BRING THIS WONDERFUL DISCUSSION TO A CLOSE. MIRANDA, ALLISON, IT'S REALLY BEEN A PLEASURE DISCUSSING THIS GUIDANCE WITH YOU BOTH TODAY. I WANT TO THANK EVERYONE FOR LISTENING. IF ANYBODY HAS ANY QUESTIONS OR COMMENTS ABOUT THIS PODCAST OR ITS SUBJECT MATTER, YOU CAN CONTACT ANY OF US. I CAN BE CONTACTED AT [CALLAN.STEIN@TROUTMAN.COM](mailto:CALLAN.STEIN@TROUTMAN.COM). MIRANDA CAN BE CONTACTED AT [MIRANDA.HOOKER@TROUTMAN.COM](mailto:MIRANDA.HOOKER@TROUTMAN.COM). AND ALLISON CAN BE CONTACTED AT [ALLISON.DELAURENTIS@TROUTMAN.COM](mailto:ALLISON.DELAURENTIS@TROUTMAN.COM). YOU CAN SUBSCRIBE AND LISTEN TO OTHER TROUTMAN PEPPER PODCASTS WHEREVER YOU LISTEN TO PODCASTS, INCLUDING APPLE, GOOGLE, AND SPOTIFY. THANK YOU ALL FOR LISTENING AND STAY SAFE.

COPYRIGHT, TROUTMAN PEPPER HAMILTON SANDERS LLP. THESE RECORDED MATERIALS ARE DESIGNED FOR EDUCATIONAL PURPOSES ONLY. THIS PODCAST IS NOT LEGAL ADVICE AND DOES NOT CREATE AN ATTORNEY-CLIENT RELATIONSHIP. THE VIEWS AND OPINIONS EXPRESSED IN THIS PODCAST ARE SOLELY THOSE OF THE INDIVIDUAL PARTICIPANTS. TROUTMAN PEPPER DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE CONTENTS OF THIS PODCAST. INFORMATION ON PREVIOUS CASE RESULTS DOES NOT GUARANTEE A SIMILAR FUTURE RESULT. USERS OF THIS PODCAST MAY SAVE AND USE THE PODCAST ONLY FOR PERSONAL OR OTHER NON-COMMERCIAL, EDUCATIONAL PURPOSES. NO OTHER USE, INCLUDING, WITHOUT LIMITATION, REPRODUCTION, RETRANSMISSION OR EDITING OF THIS PODCAST MAY BE MADE WITHOUT THE PRIOR WRITTEN PERMISSION OF TROUTMAN PEPPER. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT US AT [TROUTMAN.COM](http://TROUTMAN.COM).