

**PANEL:  
IN-HOUSE COUNSEL  
ON THE HOT SEAT**

**Moderator: Kelly Corr  
Corr Cronin Michelson Baumgardner & Preece**

# IN-HOUSE COUNSEL ON THE HOT SEAT

By

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## ETHICAL PROBLEMS CONFRONTING IN-HOUSE COUNSEL:

### Insider Trading

- **Kevin J. Heron, General Counsel for Amkor Technology, Inc.**
  - Indicted on four counts of securities fraud related to insider trading
  - SEC filed action alleging insider trading profits of over \$290,000
  - Result: convicted in jury trial; civil and criminal fines and forfeiture of over \$125,000 and imprisonment of time served
  - Links:
    - Jeff Blumenthal, Former Amkor counsel charged with insider trading, Philadelphia Business Journal (Dec. 1, 2006):  
<http://philadelphia.bizjournals.com/philadelphia/stories/2006/11/27/daily35.html?surround=lfm>

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<sup>1</sup> Mr. Corr is a Fellow of the American College of Trial Lawyers, is listed in three specialties, including “Bet The Company” Litigation in The Best Lawyers in America. Three times his peers have voted him one of the top three lawyers in Washington State.

<sup>2</sup> Mr. Jordan graduated *magna cum laude* from the University of Michigan Law School where he was Order of the Coif. He clerked for the Honorable Ronald Gould on the Ninth Circuit Court of Appeals.

- U.S. Attorney's Office (E.D. Pa.) news release (Dec. 5, 2006):  
<http://www.usdoj.gov/usao/pae/News/Pr/2006/dec/heron.html>
  - SEC Litigation Release No. 20079, SEC Charges Former General Counsel of Amkor Technology, Inc. with Insider Trading (Apr. 18, 2007):  
<http://www.sec.gov/litigation/litreleases/2007/lr20079.htm>
  - SEC v. Kevin J. Heron, Case 2:07-cv-01542-HB (E.D. Pa. Apr. 18, 2007) (Complaint):  
<http://www.sec.gov/litigation/complaints/2007/comp20079.pdf>
  
- **Thomas J. Bucknum, General Counsel for Biogen Idec Inc.**
  - Sold thousands of shares of Biogen Idec shortly before company drug was pulled from market because of safety concerns
  - SEC filed settled civil enforcement action alleging insider trading
  - Result: Civil penalties and disgorgement of \$3.009M  
Prohibited from acting as D&O for public company for 5 years
  - Links:
    - SEC Litigation Release No. 19528, SEC Files Settled Insider Trading Action Against Former General Counsel Of Biogen Idec Inc. (Jan. 12, 2006):  
<http://www.sec.gov/litigation/litreleases/lr19528.htm>
    - SEC v. Thomas J. Bucknum, C.A. No. 06-10065 PBS (D. Mass. Jan. 12, 2006) (Complaint):  
<http://www.sec.gov/litigation/complaints/comp19528.pdf>
    - John Hechinger, Biogen Former General Counsel Settles Insider-Trading Charges, Wall Street Journal (Jan. 13, 2006):  
[http://online.wsj.com/public/article/SB11370810731614490393gQrMrccB8wYiM0yhciXCCOjT0\\_20060120.html](http://online.wsj.com/public/article/SB11370810731614490393gQrMrccB8wYiM0yhciXCCOjT0_20060120.html)
    - SEC Litigation Release No. 20262, SEC Announces \$3 Million Fair Fund Distribution to Purchasers of Biogen Idec Common Stock (Aug. 31, 2007): <http://www.sec.gov/litigation/litreleases/2007/lr20262.htm>
  
- **Andrew S. Marks, Chief Patent Counsel for Vertex Pharmaceuticals, Inc.**
  - SEC filed enforcement action and DOJ charged for insider trading for 2001 sale of Vertex stock
  - Result: Pled guilty to insider trading  
Sentenced to 1 year and 1 day in federal prison  
Civil disgorgement of \$53,000  
Permanently barred from acting as D&O of public company
  - Links:
    - SEC Litigation Release No. 17871, SEC Charges High-Ranking Attorney at Cambridge Biotech Company with Insider Trading (Dec. 3, 2002):  
<http://www.sec.gov/litigation/litreleases/lr17871.htm>
    - SEC v. Andrew S. Marks (D. Mass. Dec. 3, 2002) (Complaint):  
<http://www.sec.gov/litigation/complaints/comp17871.htm>
    - SEC Litigation Release No. 18360, U.S Attorney Files Criminal Insider Trading Charges Against Former High-Ranking Attorney At Cambridge Biotech Company (Sept. 24, 2003):  
<http://www.sec.gov/litigation/litreleases/lr18360.htm>

- SEC Litigation Release No. 18956, Former Attorney at Cambridge Biotech Company Barred From Acting as an Officer or Director of Public Company in Connection with Settlement of Insider Trading Charges (Nov. 2, 2004): <http://www.sec.gov/litigation/litreleases/lr18956.htm>

## Options Backdating

- Of 39 General Counsels at Silicon Valley companies when the options backdating scandal hit, 36 were no longer at their position with their respective companies as of 2008
- 14 GC's were directly caught in backdating fallout
  - 4 GC's were charged by the federal government
  - 10 GC's stepped down or fired due to internal or governmental investigations
- At least 12 GC's no longer practice as of 2008
- **William F. Sorin, General Counsel of Comverse Technology, Inc.**
  - Criminally charged with conspiracy to commit securities fraud, mail fraud and wire fraud in connection with options backdating
  - SEC filed civil action alleging options backdating scheme
  - Result:           **Criminal:**     Pled guilty to 1 count of conspiracy to commit securities fraud, mail fraud, and wire fraud  
Sentenced to 1 year and 1 day in federal prison  
Ordered to pay \$51.8M in restitution
  - Civil:**           Total civil penalties over \$3.080M
  - Links:
    - U.S. Department of Justice press release, Former Executives of Comverse Technology Inc. Charged with Backdating Millions of Stock Options and Creating a Secret Stock Options Slush Fund (Aug. 9, 2006): [http://www.usdoj.gov/opa/pr/2006/August/06\\_odag\\_517.html](http://www.usdoj.gov/opa/pr/2006/August/06_odag_517.html)
    - SEC Litigation Release No. 19796, SEC Charges Former Comverse Technology, Inc. CEO, CFO, and General Counsel in Stock Option Backdating Scheme (Aug. 9, 2006): <http://www.sec.gov/litigation/litreleases/2006/lr19796.htm>
    - SEC v. Jacob "Kobi" Alexander et al., Civil Action Number 1:06-CV-03844-NGG-RER (E.D.N.Y. Aug. 8, 2006) (Complaint): <http://www.sec.gov/litigation/complaints/2006/comp19796.pdf>
    - U.S. Attorney's Office (E.D.N.Y.) press release, William F. Sorin, Former General Counsel of Comverse Technology Inc., Pleads Guilty to Securities Fraud Charge (Nov. 2, 2006): <http://www.usdoj.gov/usao/nye/pr/2006/2006Nov02b.html>
    - SEC Litigation Release No. 19964, SEC Settles Options Backdating Case Against William F. Sorin, Former General Counsel of Comverse Technology, Inc.; Relief Includes Officer-and-Director Bar and Over \$3 Million in Civil Penalties, Disgorgement, and Prejudgment Interest (Jan. 10, 2007): <http://www.sec.gov/litigation/litreleases/2007/lr19964.htm>

- Ex-Comverse Lawyer Going to Jail in Options Backdating Plan, New York Times (May 11, 2007): <http://www.nytimes.com/2007/05/11/technology/11comverse.html?ex=1336536000&en=8ca54d6522b60eb2&ei=5088&partner=rssnyt&emc=rss>
- **Leonard H. Goldner, EVP and General Counsel for Symbol Technologies, Inc.**
  - Criminally charged with nine counts of mail and wire fraud, and tax-related charges related to stock options backdating, including falsifying options exercise dates
  - SEC charged securities fraud for manipulation of stock options exercise dates for senior executives
  - Results: Pled guilty to conspiracy to obstruct IRS in computation, assessment and collection of income tax related to backdating of stock options  
Criminal forfeiture of \$2M (proceeds of crime)  
Permanently prohibited from acting as D&O for public company
  - Links:
    - SEC Litigation Release No. 18734, SEC Charges Symbol Technologies, Inc. and 11 Former Symbol Executives with Securities Fraud (June 3, 2004): <http://www.sec.gov/litigation/litreleases/lr18734.htm>
    - SEC v. Symbol Technologies, Inc. et al., (E.D.N.Y. June 3, 2004) (Complaint): <http://www.sec.gov/litigation/complaints/comp18734.pdf>
    - U.S. Attorney's Office (E.D.N.Y.) press release, Former General Counsel of Symbol Technologies Pleads Guilty to Conspiring to Obstruct the Internal Revenue Service in the Collection of Income Tax (Oct. 27, 2004): <http://www.usdoj.gov/tax/usaopress/2004/txdv042004oct27a.htm>
    - SEC Litigation Release No. 19585, Former General Counsel of Symbol Technologies, Inc. Consents to Permanent Injunctive Relief, Officer-and-Director Bar and Administrative Order Under Rule 102(E) (Mar. 2, 2006): <http://www.sec.gov/litigation/litreleases/lr19585.htm>
- **Myron F. Olesnyckyj, SVP and General Counsel for Monster Worldwide, Inc.**
  - SEC charged securities fraud for stock options backdating from 1997-2003, during which thousands of backdated options were granted to Monster officers, directors, and employees
  - Result: Pled guilty to securities fraud and conspiracy to commit securities fraud  
\$387,000 in criminal forfeiture and fines, 1-year probation  
Permanently prohibited from acting as D&O for public company
  - Links:
    - SEC Litigation Release No. 20004, SEC Charges Former General Counsel of Monster Worldwide, Inc. for Role in Options Backdating Scheme Feb. 15, 2007): <http://www.sec.gov/litigation/litreleases/2007/lr20004.htm>
    - SEC v. Myron F. Olesnyckyj, 07-CV-1176 (HB) (S.D.N.Y. Feb. 15, 2007) (Complaint): <http://www.sec.gov/litigation/complaints/2007/comp20004.pdf>

- U.S. Attorney's Office (S.D.N.Y.) press release, Former General Counsel of Monster Pleads Guilty to Securities Fraud in Connection with Backdating of Stock Options (Feb. 15, 2007):  
<http://www.usdoj.gov/usao/nys/pressreleases/February07/olesnyckyjpleapr.pdf>
- Ex-Official at Jobs Web Site Admits Backdating Options, New York Times (Feb. 16, 2007):  
<http://select.nytimes.com/search/restricted/article?res=F40D1FF73C5A0C758DDDAB0894DF404482>
- SEC Litigation Release No. 20056 (Mar. 27, 2007):  
<http://www.sec.gov/litigation/litreleases/2007/lr20056.htm>

## Kickbacks

- **Clinton Odell Weidner II, President, CEO and General Counsel of Capital City Bank**
  - Indicted for approving and facilitating \$1.5M federal loan conspiracy – Approved a \$1.5M increase in the personal line of credit of former Westar Energy CEO David Wittig so that Wittig could lend the money back to Weidner for a real estate investment in Scottsdale, Arizona.
  - Result: Pled guilty to two counts of making false bank entries  
Jury also found him guilty of conspiracy, money laundering, and two counts of making false bank entries  
Sentenced to 5 years in federal prison  
Criminal forfeiture of any real property associated with conspiracy
  - Links:
    - Margaret Stafford, Ex-Westar Energy Boss Wittig Gets 4 Years, Associated Press (Feb. 27, 2004): <http://www.washingtonpost.com/wp-dyn/articles/A12329-2004Feb27.html>
    - Robert Boczkiewicz, Court won't hear appeal from Wittig loan source, The Topeka Capital Journal (Dec. 5, 2006):  
[http://findarticles.com/p/articles/mi\\_qn4179/is\\_20061205/ai\\_n16896685](http://findarticles.com/p/articles/mi_qn4179/is_20061205/ai_n16896685)
    - U.S. v. Clinton Odell Weidner, II, No. 06-3204 (10th Cir. Dec. 20, 2006):  
<http://www.kscourts.org/ca10/cases/2006/12/06-3204.htm>
  
- **Frederick D. Kanter, Ohio Attorney and David M. Linick, in-house counsel for Glidden Co.**
  - Twenty-year scheme Kanter made referral or kickback payments of usually 30% of fees to Linick for retention of Kanter as outside counsel for Glidden.
  - Result: Kanter suspended from practice of law in Ohio for 1 year  
Linick suspended from practice of law in Ohio for 2 years
  - *Office of Disciplinary Counsel v. Linick*, 705 N.E.2d 667 (Ohio, 1999)
  - *Ohio State Bar Assoc. v. Kanter*, 715 N.E.2d 1140 (Ohio, 1999)

## Securities Violations/Fraud

- **Jon M. Bloodworth, VP & General Counsel for Busybox.com, Inc.**
  - SEC filed civil action alleging fraud in connection with IPO fraud scheme
  - Unsold IPO securities were purchased using undisclosed and unearned bonuses resulting in the defendants and others receiving almost 20% of the securities offered in the IPO, and which reduced the proceeds available to Busybox by over \$2.1 million
  - Result:           Agreed to civil judgment against him  
                      Paid \$150,000 in total penalties and fines  
                      Barred from acting as D&O for public company for 5 years
  - Links:
    - SEC Litigation Release No. 19284, SEC Sues Former Top Officers of Busybox.com for IPO Fraud (June 24, 2005):  
<http://www.sec.gov/litigation/litreleases/lr19284.htm>
    - SEC v. Patrick A. Grotto et al., Civil Action No. 05-CV-5880 (GEL) (S.D.N.Y. June 24, 2005) (Complaint):  
<http://www.sec.gov/litigation/complaints/comp19284.pdf>
    - SEC Litigation Release No. 19609, Court Enters Final Judgment Against Former Busybox General Counsel Jon M. Bloodworth For IPO Fraud Scheme (Mar. 16, 2006):  
<http://www.sec.gov/litigation/litreleases/lr19609.htm>
  
- **Steven Woghin, SVP and General Counsel for Computer Associates Int'l Inc.**
  - Criminal and civil charges filed for securities and accounting fraud scheme, and obstruction of justice
  - Falsely and fraudulently prematurely recorded and reported \$2.2B in revenue that had not in fact been finalized in that quarter so Computer Assoc. could report that it met projected quarterly revenue
  - Result            Pled guilty to securities fraud conspiracy and obstruction of justice  
                      Sentenced to 2 years in federal prison  
                      Permanently Barred from acting as D&O for public company  
                      Company had to pay \$225M in criminal penalties
  - Links:
    - U.S. Department of Justice press release, Former Computer Associates Executives Indicted on Securities Fraud, Obstruction Charges; Former General Counsel Pleads Guilty, Company Enters Into Cooperation Agreement (Sept. 22, 2004):  
[http://www.usdoj.gov/opa/pr/2004/September/04\\_crm\\_642.htm](http://www.usdoj.gov/opa/pr/2004/September/04_crm_642.htm)
    - U.S. v. Steven Woghin, 04-CR-847 (ILG) (E.D.N.Y. Sept. 21, 2004) (Information):  
<http://f11.findlaw.com/news.findlaw.com/nytimes/docs/ca/uswoghin904inf.pdf>
    - SEC Litigation Release No. 18891 (Sept. 22, 2004):  
<http://www.sec.gov/litigation/litreleases/lr18891.htm>
    - SEC v. Steven Woghin, 04 Civ. 4087 (ILG) (E.D.N.Y. Sept. 22, 2004) (Complaint): <http://www.sec.gov/litigation/complaints/comp18891-wog.pdf>

- Stephen Taub, Ex-CA Lawyer Gets Two Years, CFO.com (Jan. 16, 2007): <http://www.cfo.com/article.cfm/8546432>
  
- **Jonathan B. Orlick, EVP and General Counsel of Gemstar – TV Guide Int'l Inc.**
  - SEC filed securities fraud charges alleging scheme to inflate its licensing and advertising revenue and misleading investors about the company's true financial performance
  - Result: Civil penalties, disgorgement, and interest of \$305,510.62  
Barred from acting as D&O for public company for 10 years
  - Links:
    - SEC press release, SEC Sues Three Additional Former Senior Executives of Gemstar-TV Guide for Their Part in Financial Fraud (Jan. 5, 2004): <http://www.sec.gov/news/press/2004-1.htm>
    - SEC Litigation Release No. 19047, Former General Counsel of Gemstar-TV Guide International, Inc. Settles SEC Action (Jan. 21, 2005): <http://www.sec.gov/litigation/litreleases/lr19047.htm>
  
- **Stanley P. Silverstein, VP and General Counsel for The Warnaco Group, Inc.**
  - SEC brought enforcement proceedings for Warnaco's misleading disclosure in its 1998 annual report, alleging Silverstein knew or should have known that Warnaco's \$145M 1998 restatement resulted from material flaws in company's cost accounting and internal control systems, but that Warnaco failed to inform investors of this true cause for 1998 restatement
  - Result: Settled SEC charges  
Civil disgorgement and interest of \$165,772
  - Links:
    - SEC press release 2004-62, Company Settles Charges of Securities Fraud, Reporting Violations; Former CFO William Finkelstein Settles Charges of Aiding and Abetting Company's Violations; Former CEO Linda Wachner and Former General Counsel Stanley Silverstein Also Settle Actions Relating to Warnaco's Financial Disclosures; PricewaterhouseCoopers LLP Settles Related SEC Enforcement Action and Agrees to Pay \$2.4 Million Penalty (May 11, 2004): <http://www.sec.gov/news/press/2004-62.htm>
  
- **Herbert A. Getz, SVP and General Counsel for Waste Management, Inc.**
  - SEC filed civil complaint for securities fraud, alleging a 5-year financial fraud of a systematic scheme to falsify and misrepresent Waste Mgmt's financial results
  - Result: Civil judgment of over \$1.149M for disgorgement, interest, fine
  - Links:
    - SEC Litigation Release No. 17435, Waste Management, Inc. Founder and Five Other Former Top Officers Sued for Massive Earnings Management Fraud (Mar. 26, 2002): <http://www.sec.gov/litigation/litreleases/lr17435.htm>



- SEC v. Dean L. Buntrock et al., No. 02C 2180 (N.D. Ill. Mar. 26, 2002) (Complaint): <http://www.sec.gov/litigation/complaints/complr17435.htm>
- SEC Litigation Release No. 19351, Waste Management, Inc. Founder and Three Other Former Top Officers Settle Sec Fraud Action for \$30.8 Million (Aug. 29, 2005): <http://www.sec.gov/litigation/litreleases/lr19351.htm>

## **Other Crimes: (Mail Fraud, Wire Fraud, False Statements, Obstruction of Justice)**

- **Franklin C. Brown, Vice Chairman, previous General Counsel for Rite Aid Corp.**
  - SEC filed accounting fraud charges involving over \$2.3B in misstatements
  - DOJ filed criminal charges for false statements to SEC, witness tampering, and obstruction of justice
  - Results: Convicted on 10 counts, including false statements, obstruction of justice and witness tampering  
Sentenced to 10 years imprisonment  
Criminal fine of \$20,000  
Settled with SEC but no disgorgement or civil penalty due to Brown's inability to pay  
Permanently barred from acting as D&O for public company
  - Links:
    - SEC press release, SEC Announces Fraud Charges Against Former Rite Aid Senior Management (June 21, 2002): <http://www.sec.gov/news/press/2002-92.htm>
    - Ex-Executive at Rite Aid Sentenced to 10 Years, New York Times (Oct. 15, 2004): <http://query.nytimes.com/gst/fullpage.html?res=9B05EFDC173AF936A25753C1A9629C8B63>
    - SEC Litigation Release No. 19409, SEC Settles Fraud Case Against Rite Aid's Former Lawyer (Sept. 30, 2005): <http://www.sec.gov/litigation/litreleases/lr19409.htm>
    - SEC Litigation Release No. 19409, SEC Settles Fraud Case Against Rite Aid's Former Lawyer (Sept. 30, 2005): <http://www.sec.gov/litigation/litreleases/lr19409.htm>
- **Robert Graham, SVP and Assistant General Counsel for General Re Corp.**
  - SEC and DOJ filed cases alleging fraudulent reinsurance scheme for AIG
  - Indictment charged conspiracy to commit securities fraud, securities fraud, false statements, wire fraud, and mail fraud
  - Result: Sentenced to 1 year and 1 day in federal prison  
Criminal fine and penalty of over \$101,000  
Settled with SEC without monetary fines

Company had to pay over \$800M in penalties and disgorgement

- Links:
  - SEC Litigation Release No. 19552, SEC Charges One AIG and Four Gen Re Executives for Aiding in AIG Securities Fraud (Feb. 2, 2006): <http://www.sec.gov/litigation/litreleases/lr19552.htm>
  - SEC v. Ronald Ferguson et al., 06-CV-0778 (S.D.N.Y. Feb. 2, 2006) (Complaint): <http://www.sec.gov/litigation/complaints/comp19552.pdf>
  - U.S. Attorney's Office (D. Conn.) press release, Gen Re and AIG Executives Charged in Superseding Indictment (Sept. 20, 2006): <http://www.usdoj.gov/usao/ct/Press2006/20060920.html>
  
- **Michael J Pietrzak, EVP, Secretary and General Counsel for Hexagon Consolidated Companies of America, Inc.**
  - SEC filed civil action alleging fraudulent increase in stock price of company by filing false and misleading registration statements
  - Result: Jury found liable for securities fraud and other charges  
Ordered to pay total fines, disgorgement and interest of \$2.166M  
Permanently barred from acting as D&O for public company
  - Links:
    - SEC Litigation Release No. 18016, SEC Sues Officers of Hexagon Consolidated Companies of America, Inc. and Registered Assayer (Mar. 6, 2003): <http://www.sec.gov/litigation/litreleases/lr18016.htm>
    - SEC v. Michael J. Pietrzak et al., C.A. No. 03C-1507 (N.D. Ill. Mar. 6, 2003) (Complaint): <http://www.sec.gov/litigation/complaints/comp18016.htm>
    - SEC Litigation Release No. 20223 (Aug. 3, 2007): <http://www.sec.gov/litigation/litreleases/2007/lr20223.htm>
  
- **Peter Y. Atkinson, VP and General Counsel for Hollinger Inc.**
  - Indicted on mail fraud, wire fraud, and fraud charges involving \$2.1B sale of several hundred Canadian newspapers and abuse of corporate perks
  - Result: Convicted on three counts of mail fraud  
Sentenced to 2 years in federal prison and undisclosed criminal penalty
  - Links:
    - U.S. Department of Justice press release, Former Hollinger Chairman Conrad Black and Three Other Executives Indicted in U.S. - Canada Corporate Fraud Schemes (Nov. 17, 2005): [http://www.usdoj.gov/usao/iln/pr/chicago/2005/pr1117\\_01.pdf](http://www.usdoj.gov/usao/iln/pr/chicago/2005/pr1117_01.pdf)
    - Richard Siklos, Conrad Black Found Guilty in Fraud Trial, New York Times (July 14, 2007): <http://www.nytimes.com/2007/07/14/business/13cnd-black.html?ex=1187668800&en=47177f84c4d9bcd8&ei=5070>

- **Mark S. Kipnis, VP and Corporate Counsel for Hollinger Int'l Inc.**
  - Indicted on fraud charges for diverting from Hollinger International more than \$32M through self-dealing transactions
  - Also indicted for willfully causing Hollinger to file false tax returns
  - Result: Convicted on three counts of mail fraud  
Sentenced to 5 years in federal prison, followed by 6 months home confinement and undisclosed criminal penalty
  - Links:
    - Sun-Times Media Group, Inc. Form 10-Q for the quarter ended Sept. 30, 2006 (filed Nov. 9, 2006):  
<http://www.sec.gov/Archives/edgar/data/868512/000095013406021031/c09647e10vq.htm>
    - Richard Siklos, Conrad Black Found Guilty in Fraud Trial, New York Times (July 14, 2007):  
<http://www.nytimes.com/2007/07/14/business/13cnd-black.html?ex=1187668800&en=47177f84c4d9bcd8&ei=5070>
    - Mike Robinson, Ex-Press Baron Guilty Of Fraud, Washington Post (July 14, 2007): <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/13/AR2007071300662.html>
  
- **Bruce G. Hill, General Counsel for Inso Corp.**
  - SEC filed civil action alleging fraud related to a phony \$3M sales transaction
  - Indicted for securities fraud, wire fraud, false statements and perjury in connection with an SEC investigation
  - Result: Convicted of perjury  
Sentenced to 1 year and 1 day in federal prison, followed by supervised release for 2 years during each year he would perform 400 hours of community service; \$75,000 in criminal penalty  
Ordered to pay \$97,000 in civil disgorgement and interest  
Permanently barred from serving as a D&O of a public company
  - Links:
    - SEC Litigation Release No. 17578, SEC Charges Former Officers and Employees of Inso Corp. with Accounting Schemes (June 21, 2002):  
<http://www.sec.gov/litigation/litreleases/lr17578.htm>
    - SEC v. Bruce Hill et al., (D. Mass. June 21, 2002) (Complaint):  
<http://www.sec.gov/litigation/complaints/complr17578b.htm>
    - SEC Litigation Release No. 18699, Former General Counsel of Inso Corp. Indicted on Securities Fraud And Perjury Charges (May 7, 2004):  
<http://www.sec.gov/litigation/litreleases/lr18699.htm>
    - SEC Litigation Release No. 19253, Former General Counsel of Inso Corp. Convicted of Perjury in Testimony Before the Securities and Exchange Commission (June 7, 2005):  
<http://www.sec.gov/litigation/litreleases/lr19253.htm>
    - SEC Litigation Release No. 19617, Court Enters Final Judgment by Consent Against Former General Counsel of Inso Corp. in Accounting

Fraud Case (Mar. 21, 2006):

<http://www.sec.gov/litigation/litreleases/lr19617.htm>

- SEC Litigation Release No. 19617, Court Enters Final Judgment by Consent Against Former General Counsel of Inso Corp. in Accounting Fraud Case (Mar. 21, 2006):

<http://www.sec.gov/litigation/litreleases/lr19617.htm>

- **James W. Moen, General Counsel for Katun Corp.**
  - DOJ charged wire fraud and computer-related fraud for manipulating airline tickets and accessing competitor's computer files to obtain information
  - Results: Plead guilty to wire fraud and computer-related fraud  
\$200,000 in fines and restitution
  - Links:
    - U.S. v. James W. Moen, Criminal Docket No. 04-43 (PAM) (D. Minn. Jan. 22, 2004) (Information):  
<http://www.usdoj.gov/dag/cftf/chargingdocs/moeninformation.pdf>
    - More ex-Katun executives plead guilty, pay fines, Minneapolis/St. Paul Business Journal (Feb. 25, 2004):  
<http://twincities.bizjournals.com/twincities/stories/2004/02/23/daily22.html>
- **Howard R. Udell, EVP and Chief Legal Officer for The Purdue Frederick Company, Inc.**
  - Criminally charged with misbranding drug in connection with Purdue's fraudulent marketing of OxyContin (falsely claiming OxyContin was less addictive, less subject to abuse, and less likely to cause withdrawal symptoms than other medications)
  - Result: Pled guilty to misbranding drug  
Paid \$8M to Virginia AG's Medicaid Fraud Control Unit (part of \$34.5M fine levied personally against Udell and two other defendants, which itself was part of \$634M fine against Purdue)  
Paid \$5,000 in criminal fine  
Sentenced to 3 years' probation and 400 hours of community service
  - Links:
    - U.S. v. Howard R. Udell, Case No. 1:07CR29 (W.D. Va. May 10, 2007) (Plea Agreement):  
<http://www.vawd.uscourts.gov/PurdueFrederickCo/Plea-Agreement-Udell.pdf>
    - U.S. Attorney's Office (W.D. Va.) news release, The Purdue Frederick Company, Inc. and Top Executives Plead Guilty to Misbranding Oxycontin; Will Pay Over \$600 Million (May 10, 2007):  
[http://www.usdoj.gov/usao/vaw/press\\_releases/purdue\\_frederick\\_10may2007.html](http://www.usdoj.gov/usao/vaw/press_releases/purdue_frederick_10may2007.html)
- **Charles B. Spadoni, VP and General Counsel for Triumph Capital Group, Inc.**

- Involved in a scheme in connection with the investment of Connecticut state pension fund money: provided consulting contracts valued at approximately \$2 million to two close associates of the state Treasurer as consideration for the Treasurer's decision to increase the amount of the State of Connecticut pension fund invested with Triumph
  - Indicted for racketeering, theft/bribery, wire fraud, and obstruction of justice for destruction of documents relevant to a grand jury investigation
  - SEC filed related civil fraud charges
  - Result: Convicted of racketeering, racketeering conspiracy, theft/bribery, wire fraud/theft, and obstruction of justice  
Sentenced to 36 months in federal prison  
Criminal fine of \$50,000
  - Links:
    - In the Matter of Charles B. Spadoni, Exchange Act Release No. 50300 (Sept. 1, 2004) (Order Making Findings and Imposing Remedial Sanctions): <http://www.sec.gov/litigation/admin/34-50300.htm>
    - SEC Litigation Release No. 16759, SEC Charges Former Connecticut Treasurer and Ten Others Involved in Fraudulent Scheme in Connection With Investment of State Pension Fund Money; Three Defendants Agree To Settle Charges (Oct. 10, 2000): <http://www.sec.gov/litigation/litreleases/lr16759.htm>
    - SEC Litigation Release No. 18461, Triumph Capital Group, Inc. and Frederick W. McCarthy Settle SEC Fraud Charges; Triumph and Charles B. Spadoni Found Guilty by Jury in Criminal Action, and McCarthy Pleads Guilty to Criminal Charges (Nov. 17, 2003): <http://www.sec.gov/litigation/litreleases/lr18461.htm>
    - In the Matter of Charles B. Spadoni, Exchange Act Release No. 54774 (Nov. 17, 2006) (Order of Forthwith Suspension): <http://www.sec.gov/litigation/admin/2006/34-54774.pdf>
- **David S. Klarman, VP and General Counsel for U.S. Wireless Corp.**
    - SEC charged securities fraud and other misconduct related to transfer of U.S. Wireless common stock worth \$3.2M and cash totaling \$428,000 to offshore entities
    - Indicted and charged with defrauding U.S. Wireless shareholders related to offshore share and cash transfers
    - Result: Entry of civil order levying \$3.9M in disgorgement and interest  
Pled guilty to mail fraud and money laundering  
Prohibited from serving as D&O for public company for 10 years
    - Links:
      - SEC Litigation Release No. 18275, SEC Charges Former Executives of U.S. Wireless with Fraud (Aug. 6, 2003): <http://www.sec.gov/litigation/litreleases/lr18275.htm>
      - SEC v. Oliver Hilsenrath et al., C.A. No. C-03-3252 (N.D. Cal. July 14, 2003) (Complaint): <http://www.sec.gov/litigation/complaints/comp18275.htm>
      - Former U.S. Wireless exec pleads guilty, East Bay Business Times (Jan. 27, 2004):

[http://www.bizjournals.com/eastbay/stories/2004/01/26/daily13.html?jst=\\_cn\\_hl](http://www.bizjournals.com/eastbay/stories/2004/01/26/daily13.html?jst=_cn_hl)

- SEC Litigation Release No. 19286, Former General Counsel of U.S. Wireless Held Liable for \$3.9 Million and Barred from Serving As An Officer or Director of a Public Company (June 27, 2005):  
<http://www.sec.gov/litigation/litreleases/lr19286.htm>

## E-Discovery Violations

- ***Qualcomm, Inc. v. Broadcom, Corp.*, 2010 WL 1336937 (S.D. Cal. 2010)**
- ***Qualcomm, Inc. v. Broadcom, Corp.*, 2008 WL 638108 (S.D. Cal. 2008)**
- ***Qualcomm, Inc. v. Broadcom, Corp.*, 2008 WL 66932 (S.D. Cal. 2008)**
  - The Court found that Qualcomm intentionally withheld tens of thousands of discovery documents.
    - Important to Court:
      - Tens of thousands of suppressed documents
      - Ease with which Qualcomm ultimately located the documents
      - Simplicity and relevancy of the search terms and search locations that led to discovery of the documents
      - Lack of evidence indicating that Qualcomm had engaged in any meaningful oversight of its document production
    - The Court found that outside counsel failed to conduct reasonable inquiry into adequacy of Qualcomm's document production and ignored warning signs that the document production was not thorough or complete
      - Outside counsel failed to:
        - Search deponents and trial witnesses' computers
        - Adequately investigate discovery production once significant, documents were discovered
        - Ensure factual and legal arguments presented to Court were well-founded
      - Outside counsel failed to understand:
        - How Qualcomm's computer system was organized
        - Where emails were stored
        - How often and to what location laptops and personal computers were backed up and
        - Qualcomm's data retention processes
    - Other factors:
      - In-house lawyers and outside counsel failed to meet in person with Qualcomm employees most likely to be witnesses to discuss document retention
      - No attorney verified that discovery had been conducted
      - No attorney verified that the resulting discovery supported the important legal arguments, claims, and defenses presented to the court.
    - Result:
      - Qualcomm sanctioned for \$8.5M
      - Qualcomm in-house counsel in cooperation with select outside counsel had to engage in a comprehensive Case Review and Enforcement of Discovery Obligations program to identify

inadequacies in Qualcomm's discovery protocol and draft alternatives to prevent such future violations.  
-Outside counsel originally sanctioned by referral to California state bar, but subsequent opinion rescinded that sanction

- ***Magana v. Hyundai Motor Am.*, 167 Wash.2d 570 (2010)**
  - The Court found that Hyundai willfully violated discovery rules by producing false, misleading, and evasive discovery responses
  - Court also found that Hyundai's practice of searching only its legal department for related claims violated its discovery obligations
    - Court stressed that a corporation must search all of its departments, not just its legal department for responsive discovery documents
    - Court admonished Hyundai for falsely responding to discovery requests
  - Result: Default judgment against Hyundai for \$8M  
Hyundai had to pay opposing attorneys' trial and appellate fees

## **General Counsel and the Foreign Corrupt Practices Act**

- **Jeana Mushriqui, General Counsel/U.S. Manager for Mushriqui Consulting**
  - 22 executives and employees of companies were indicted (16 total indictments) in January 2010 for alleged FCPA violations, in what is the largest single investigation and prosecution against individuals in the history of the DOJ's enforcement of the FCPA
  - The indictments allege a scheme to pay bribes to a minister of defense for an African country, paying a 20% "commission" to a sales agent who represented the minister of defense to win a portion of a \$15M deal to outfit the country's presidential guard.. The sales agent was an undercover FBI agent and no minister of defense existed or was involved.
  - Mushriqui was indicted on six counts of violating the FCPA, and one count of conspiracy to commit money laundering
  - Links: <http://www.justice.gov/opa/pr/2010/January/10-crm-048.html>  
<http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202439285196>
- **Andrew Howell, General Counsel for Blackwater**
  - In April 2010, a North Carolina federal grand jury indicted Howell and other executives with 15 counts of conspiracy to violate firearms laws, making false statements and representations on federally licensed firearms dealers' records, possession of machine guns, possession of other firearms (short-barrelled shotguns) not registered in the National Firearms and Registration and Transfer Record, and aiding and abetting
  - Federal investigators are investigating possible violations of the FCPA, with the indictment alleging presentation to the King of Jordan with several firearms as gifts to curry favor from the King.

- Links: <http://www.fc-pablog.com/blog/tag/blackwater>
- **Other Useful Articles for In-House Counsel Related to FCPA**
  - [http://www.constructionweblinks.com/Resources/Industry\\_Reports\\_\\_Newsletters/20090316/fore.html](http://www.constructionweblinks.com/Resources/Industry_Reports__Newsletters/20090316/fore.html)
  - [http://www.foley.com/files/tbl\\_s31Publications/FileUpload137/3513/CorpCourse1Summer06\\_Brown.pdf](http://www.foley.com/files/tbl_s31Publications/FileUpload137/3513/CorpCourse1Summer06_Brown.pdf)

## **In-House Counsel As Whistleblower**

- **Dimitrios Biller, Managing Counsel for Toyota Motor Sales USA**
  - Was fired from Toyota while on medical leave; Toyota paid \$3.7M in severance
  - Filed a racketeering suit against Toyota alleging Toyota destroyed evidence, design and test data from an engineering subsidiary, and withheld records on design and testing of vehicle roofs in hundreds of rollover suits
  - Complaint alleges that Biller repeatedly confronted Toyota executives, including its in-house Counsel about the need to disclose evidence it was withholding but was rebuffed; and Biller was terminated while on medical leave for a mental and physical breakdown caused by Toyota's efforts to quiet his internal whistleblowing
  - Biller has been referred to the California State Bar for his disclosures of Toyota work product related to his running of an independent business
  - Links: <http://www.abajournal.com/news/article/ex-toyota-lawyer-alleges-destruction-of-evidence-in-rollover-suits/>
    - <http://www.abajournal.com/news/article/disclosures-by-ex-toyota-lawyer-spur-ethics-referral/>
    - <http://www.abajournal.com/news/article/toyota-whistleblower-lawyer-is-dogged-and-heavily-medicated/>
    - <http://www.autoblog.com/2009/09/10/report-toyota-whistleblower-lawsuit-may-spur-even-more-legal-ac/>
    - <http://news.injuryboard.com/toyota-whistleblower-billers-fight-over-sealed-documents-.aspx?googleid=277774>
- **Michael A. Baskin, General Counsel for Clark Atlanta University**
  - Dismissed from university without severance
  - Filed a \$1M wrongful-termination lawsuit against Clark Atlanta, alleging that his dismissal was, in part, retaliation for his role in exposing financial wrongdoing at the college



- The complaint alleges that Clark Atlanta allowed trustees and prominent alumni to count tuition payments for their children as charitable tax-deductable donations
- Links: <http://chronicle.com/article/fired-general-counsel-sues/20589>  
<http://www.gtlaw.com/portaresource/lookup/wosid/contentpilot-core-1602-5289/pdfCopy.pdf>

## **Whistleblower Protection: The Dodd-Frank Wall Street Reform and Consumer Protection Act's Expansion of SOX Whistleblower Protections**

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Sarbanes-Oxley, 15 U.S.C. §§ 7201 et seq., protects company “whistleblowers” under 18 U.S.C. 1514A. It prohibits publicly held companies, their officers, employees, contractors, subcontractors or agents from efforts to “discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee” to report, assist in reporting or assist in an investigation regarding conduct which the employee “reasonably believes constitutes a violation” of the Securities Exchange Act, any rule or regulation of the SEC, or provision of Federal law relating to fraud against shareholders.

While SOX does not itself provide whistleblowers with financial incentives for reporting violations of securities laws, the Securities Exchange Act, 15 U.S.C. 78u-1(e) provides for such rewards to employees who report insider trading, and the False Claims Act, 31 U.S.C. 3729 provides rewards to employees who report fraud on the federal government.

- Since passage of SOX, the Department of Labor has consistently held that the whistleblower protections of 18 U.S.C. 1514A applicable to publicly held companies do **not** extend to employees of privately held subsidiaries of public companies.<sup>1</sup>
- Financial reward provisions of the SEA, while in place since 1988, have resulted in “very few payments ... under the program”, due to its limitation to insider trading allegations and the “broad, somewhat vague” criteria for such awards.<sup>2</sup>
- Although the reward provisions of FCA have resulted in substantial recoveries for persons reporting fraud claims covered by that statute<sup>3</sup>, the FCA bounty provisions are limited to claims of fraud on the federal government.
- DOL decisions not to apply whistleblower protections to private subsidiaries of public companies have drawn criticism from some members of Congress.<sup>4</sup>

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<sup>1</sup> See Stevenson v. Neighborhood House Charter School, No. 2005-SOX-00087 (ALJ Sept. 7, 2005), and Paz v. Mary's Center for Maternal & Child Care, No. 2006-SOX-7 (ALJ Dec. 12, 2005) (SOX whistleblower protections are based solely on whether the company has a class of stock registered under Section 12 of the Exchange Act or whether it is required to make reports pursuant to the Act's Section 15(d)).

<sup>2</sup> See “Assessment of the SEC's Bounty Program”, Report No. 474, published by the SEC Office of Inspector General March 29, 2010, page 2.

<sup>3</sup> DOJ Press Release 11/19/09 (“Justice Department Recovers \$2.4 Billion in False Claims Cases in Fiscal Year 2009; More Than \$24 Billion Since 1986”).

<sup>4</sup> See, e.g., October 6, 2010 letter of Senators Patrick Leahy and Charles Grassley, published at <http://grassley.senate.gov>.

- In March 2010 the SEC recommended changes to its whistleblower protection and enforcement mechanisms, including:
  - An “outreach” program to provide the general public and SEC personnel more information about its bounty program.
  - Posting to its web site a publicly available whistleblower application form.
  - Establishing policies for agency follow-up of whistleblower reports, to clarify claims in such reports, “obtain readily available supporting documentation” and to provide status reports to reporting whistleblowers.
  - Developing specific criteria for awarding bounties, including that whistleblowers may rely in part on publicly available information and still be eligible.
  - Establishing formal paper and electronic files for each received claim.<sup>5</sup>
- The decisions not to apply whistleblower protections of SOX and related statutes to privately held affiliates of public companies allowed those companies to structure compliance policies less rigorously than public companies, and a means to contest whistleblower claims filed with regulatory agencies.
- Privately held affiliates have not to date been exposed to the SOX related remedies for whistleblowers, such as SEA and FCA “bounty” payments.
- Publicly held companies that were subject to the whistleblower remedies could rely on the specificity of claims for which the remedies are available, to determine where bounties may apply.
- The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203 (July 21, 2010), amends the SOX whistleblower provisions to include “any subsidiary or affiliate whose financial information is included in the consolidated financial statements” of public companies. (Section 929(a)).
- Dodd-Frank also extends the availability of bounty payments to a broader array of claims, including any claim “under the securities laws that results in monetary sanctions exceeding \$1,000,000”. (Section 922(a)(1)).
- The statute also provides new penalties/remedies for whistleblower retaliation claims, including possible double back-pay with interest and a separate cause of action for retaliation that does not require first filing a claim with the DOL. (Section 922(h)).

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<sup>5</sup> See “Assessment of the SEC’s Bounty Program”, supra.

## **In-House/Outside Counsel Challenges**

- Board members, senior managers and their in-house and outside counsel at privately held affiliates of public companies have not to date been required to implement policies or procedures that provide the same measure of whistleblower protection as their publicly held parents, owners or counterparts.
- To protect clients from triggering the expanded whistleblower protections/remedies that will now be applied to both public and certain privately held companies, in-house and outside counsel for those companies must:
  - i. educate their Boards, senior management, compliance/ethics officers and HR personnel about the extended requirements, and
  - ii. provide direction for evaluation of current company compliance, ethics and auditing policies and implementation of needed whistleblower policies or policy improvements.

## **Recommended Actions**

1. Counsel evaluation of individual company policies to determine whether they are sufficiently rigorous to provide required protections to whistleblowers.
2. Similar review of compliance and auditing practices to assure that a company responds appropriately to reported violations.
3. If existing policies, compliance programs and auditing practices are found lacking, development of policies that assure compliance with the new requirements.
4. Development of training/education programs covering expanded whistleblower protections/remedies, to be provided to Boards of affiliate companies affected by the new requirements.
5. Develop specific resolutions for their Boards to implement the new or modified policies and procedures, where needed.
6. Training on new requirements and new or revised policies and procedures for ethics, compliance and HR personnel for implementation and communication to employees.
7. Follow-up meetings/communications with ethics and compliance personnel, to assure maintenance of appropriate investigations and follow-ups to reported claims.
8. Periodic evaluation (minimum yearly) of contacts to ethics and compliance “hotlines”, 800 numbers or other sources where employees can report perceived legal and ethics violations, to identify any changes in frequency or content over time.



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Kelly Corr is a trial lawyer with extensive jury trial experience. His practice is broad ranging, focusing on class actions, products liability and personal injury, professional malpractice, complex commercial litigation, employment litigation, and intellectual property disputes. He has lectured and written on evidence, depositions, sanctions, injunctions, cross-examining experts, alternative dispute resolution, closing arguments, punitive damages and a variety of other topics in ten states and two countries to thousands of trial lawyers and in-house counsel.

Since 2001, Mr. Corr was named by *Seattle Magazine* as one of the top five business litigators in Seattle.

Mr. Corr has been selected a "Super Lawyer" ten times by *Washington Law & Politics*. In 2004, 2005, 2006, 2007, 2009 and 2010, he was voted among the top ten lawyers in the state in any field of practice. In 2005 and 2006 and 2009, *Washington Law & Politics* rated Mr. Corr among the top three lawyers in the state.

Since 2001, he has been listed in *The Best Lawyers in America* for both business litigation and personal injury, and was recently chosen for the inaugural category of "Bet the Company" litigation. Only two lawyers in Washington received this recognition.

*Chambers USA*, 2003-2004, picked Mr. Corr as one of the top three commercial litigators in Washington and wrote "Peers commend Kelly Corr for his ability to obtain favorable results in large, complex court cases." In the 2004 Second Edition, *Chambers USA* again selected Corr as one of the top litigators statewide, stating: "Corr is an outstanding trial lawyer who possesses the demonstrated skill and cases to show for it, acknowledged sources." In 2005, *Chambers* wrote that Mr. Corr is a "bulldog who fights the fight" and is "comfortable handling tough cases." In 2006 *Chambers* noted that Mr. Corr is "one of the best attorneys you could go to" and particularly commended him for "conducting a very tight case." In 2007 *Chambers* stated that Mr. Corr "has a very pleasant outward demeanor and is easy to get along with. When you scratch the surface you find an individual who has both a superb trial instinct and a tough courtroom personality. He is a first-class lawyer through and through."

In 2003, *Seattle Weekly* wrote Corr is "known as a tough litigator in complex cases." In 2005 and 2006, he was one of only three lawyers in Washington State selected for inclusion in the *Guide To The Leading U.S. Litigation Lawyers*. In March 2006, *Washington CEO* magazine picked Mr. Corr as one of the top ten civil trial lawyers in the state.

In 2008 and in 2009 *Benchmark, in America's Leading Litigation Firms and Attorneys*, picked Mr. Corr as one of the state's "Local Litigation Stars." *Benchmark* wrote Mr. Corr is a "savvy trial attorney" who is "very much a street fighter when he needs to be," and a particular asset in "cases that have a public aspect."

Mr. Corr has been featured on the cover of *Washington Law & Politics*. *Seattle Magazine*, *Seattle Business Monthly* and *Washington Journal* have each profiled Mr. Corr. His cases have been featured in and he has been quoted in *The New York Times*, *The Wall Street Journal*, *USA Today*, *People* magazine, *The Seattle Post Intelligencer*, *The Seattle Times*, numerous trade publications and in two books.