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Indiana Continuing Legal Education Forum (ICLEF), "Corporate compliance programs: insights from inside and outside" (2020). *Indiana Continuing Legal Education Forum 2020*. 27.
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CORPORATE COMPLIANCE PROGRAMS: INSIGHTS FROM INSIDE AND OUTSIDE

June 10, 2020

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**CORPORATE COMPLIANCE PROGRAMS:
INSIGHTS FROM INSIDE AND OUTSIDE**



Agenda

- 8:30 A.M. Registration & Coffee
- 8:55 A.M. Welcome and Introduction
- Tabitha K. Meier & Trent J. Sandifur, Program Chair
- 9:00 A.M. Risk-Based Compliance: Tailoring Compliance Programs Based on Risk Assessment
- Tabitha K. Meier
- Brian R. Weir-Harden
- 10:00 A.M. Operationalizing Compliance: Insights from In-House Legal and Compliance Professionals (*Topic Begins*)
- Gregory J. Morical
- Jeffrey L. Stitt
- Blaine R. Dart
- 10:30 A.M. Coffee Break
- 10:45 A.M. Operationalizing Compliance: Insights from In-House Legal and Compliance Professionals (*Topic Completes*)
- Gregory J. Morical
- Jeffrey L. Stitt
- Blaine R. Dart
- 11:15 A.M. Compliance Incident Response: Outside Counsel's Perspective on Compliance Breakdowns and Government-Imposed Monitorships
- Trent J. Sandifur
- Tabitha K. Meier
- 12:15 P.M. Adjourn

June 10, 2020

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INSIGHTS FROM INSIDE AND OUTSIDE**



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Tabitha K. Meier

Barnes & Thornburg LLP, Indianapolis



Tabitha's national and international practice is focused on compliance. Notably, she advises on the development and deployment of effective compliance programs for her clients' businesses, including risk assessment, training, policies and procedures, and investigations – all informed by a thorough understanding of the business environment.

By identifying and incorporating many points of view when advising clients, Tabitha acts as a relational change agent who delivers solutions that are integrated into her clients' business process and have the potential to positively impact their bottom line. She is at her best helping clients to realize commercial success while remaining compliant with the laws. An educator who firmly believes in preventative action as a component of ongoing compliance, Tabitha proactively works with executives at all levels to ensure they understand the laws and how evolving regulation will directly impact their business.

Tabitha served on the attorney team assisting the independent corporate compliance monitor for a large U.S. medical device manufacturer and distributor, pursuant to the company's deferred prosecution agreements with the U.S. government. Tabitha also is a member of the core team assisting the Special Compliance Coordinator appointed by the U.S. Department of Commerce to monitor, assess and report on the U.S. export control compliance of Zhongxing Telecommunications Equipment Corporation, of Shenzhen, China, and ZTE Kangxun Telecommunications Ltd. of Hi-New Shenzhen, China (collectively, ZTE).

Tabitha also supports the firm's federal contracting, procurement and national security team in the development of effective ethics and anti-corruption compliance programs.

Prior to joining Barnes & Thornburg, Tabitha served as compliance counsel for Hillenbrand, Inc., a publicly traded global diversified industrial company. As compliance counsel, she developed and led the company's anti-corruption, business ethics, trade control, international data privacy and conflict minerals compliance activities and protocols; conducted internal investigations; and was responsible for advising executive management and the board of directors on compliance matters.

While at Hillenbrand, Tabitha also developed and oversaw the overall compliance function, as well as provided training and legal advice to employees at all levels of the company. She handled compliance M&A due diligence and delivered international compliance support, advice and leadership in many countries, including the U.S.,

Germany, Switzerland, Italy, China, Russia and India. Tabitha's time abroad also included an expatriate assignment to Stuttgart, Germany, in 2015.

Prior to serving as compliance counsel, Tabitha handled all employment and litigation matters for Hillenbrand. She was also a litigation associate for a large Indianapolis-based law firm before going in-house.

Trent J. Sandifur

Taft Stettinius & Hollister LLP, Indianapolis



Trent is a former federal prosecutor who concentrates his practice on Foreign Corrupt Practices Act (FCPA) and international anti-corruption compliance, investigations and defense. He provides a broad array of services related to the FCPA, the UK Bribery Act and other anti-corruption laws on a global basis. These services include:

- Compliance programs
- Due diligence
- Training
- Internal reviews and investigations
- Government investigations and enforcement defense

In addition to his anti-corruption practice, Trent practices in the areas of white collar criminal defense, corporate internal investigations, government contractor compliance and complex commercial litigation. He has significant experience in Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS) and International Traffic in Arms Regulations (ITAR) compliance.

Trent, who served as an instructor at the Department of Justice's National Advocacy Center, has written and presented on the FCPA and other white collar criminal defense and corporate compliance issues. Trent is recognized by *Best Lawyers in America*® for commercial litigation. In 2008, *Benchmark Litigation* named him a Future Star in Indiana litigation. *Law & Politics Magazine* named Trent an Indiana Rising Star in litigation in 2008 and white collar criminal defense from 2009-2015.

Prior to joining Taft Stettinius & Hollister in 2007, Trent served on active duty in the U.S. Army Judge Advocate General's (JAG) Corps. From 2003–2006, he served on special assignment from the U.S. Army JAG Corps to the U.S. Department of Justice, where he was a Special Assistant U.S. Attorney. During his time with the Department of Justice, Trent oversaw federal criminal investigations and prosecuted violations of federal criminal law, including bank and wire fraud, embezzlement, theft of government property, drug manufacturing and trafficking, the production and possession of child pornography, and intrusions into federal government computer systems.

Trent, a lieutenant colonel and deputy staff judge advocate in the Army National Guard,

is an Operation Enduring Freedom veteran. He served in the Headquarters, U.S. Forces–Afghanistan Office of the Staff Judge Advocate, where he provided legal advice to the senior commander of all U.S. and NATO forces in Afghanistan. Trent's duties in Afghanistan focused on internal investigations and defense contractor compliance. He worked closely with the International Contract Corruption Task Force and Task Force Spotlight on anti-corruption issues.

Trent serves as chairperson for the board of directors of HVAF of Indiana, which provides services to homeless Indiana veterans. He is a member of the Veterans of Foreign Wars and the American Legion.

Blaine R. Dart

Zimmer Biomet, Warsaw



Vice President, Compliance Officer, U.S. and Canada

Blaine joined Zimmer Biomet in 2011 and was responsible for product liability litigation and risk management. In 2015, he joined the Compliance Department and currently serves as Vice President and Compliance Officer for the U.S. and Canada and serves on the Orthopedics Group leadership team. Blaine spent 5 years in private practice focusing primarily on employment litigation in federal and state courts. He is a graduate of Brigham Young University and Notre Dame Law School.

Gregory J. Morical

Calumet Specialty Products Partners, L.P., Indianapolis



Greg Morical is Vice President, General Counsel & Secretary at Calumet Specialty Products Partners, L.P. (NASDAQ: CLMT) in Indianapolis. He is a dynamic senior leader with experience building Legal and Compliance functions and leading cross-functional teams. Greg is a trusted legal advisor with the proven ability to identify risk and deliver practical legal solutions to achieve strategic objectives and meet business needs. He has significant experience with mergers, acquisitions and divestitures, as well as with complex litigation.

Jeffrey L. Stitt

Hillenbrand Inc., Batesville



Jeffrey Stitt is Vice President of Compliance at Hillenbrand, Inc. in Batesville. He is a Senior Global Executive with a proven track record of driving growth and mitigating risk.

Strong functional experience as a:

- Chief Compliance Officer
- Finance Executive
- Quality Leader
- Audit
- Operations

Lived and worked in US, Sub-Saharan Africa, and Europe.

Industry experience in:

- Power Generation
- Capital Projects
- Financial Services
- Consumer Products
- Aviation
- Healthcare
- Oil & Gas sectors.

Brian R. Weir-Harden

Barnes & Thornburg LLP, Indianapolis



Brian represents corporations and individuals subject to federal and state criminal and civil proceedings. He advises on national and international criminal antitrust investigations by the U.S. Department of Justice (DOJ) and the Japan Fair Trade Commission. Moreover, Brian represents creditors in commercial collections, commercial foreclosures, receiverships and loan restructurings.

Brian has represented clients involved in a wide range of criminal and quasi-criminal matters, including antitrust, tax evasion, bank fraud, immigration, foreign corruption and trade secret violations. He regularly engages with federal agencies such as the DOJ, Internal Revenue Service and Securities and Exchange Commission on behalf of national and international clients in the automobile parts, steel, real estate, insulation manufacturing, food services, financial services, mining, sports management, pharmaceuticals, nonprofit and government sectors. He also guides individuals through state ethics and grand jury proceedings and arbitrations.

In the area of antitrust law, Brian has advised and defended corporate clients and individuals in large national and international criminal antitrust investigations. He also has represented clients in civil antitrust matters and has experience with large and complex multidistrict class actions. Brian has assisted corporate clients with updating and modernizing antitrust compliance and enforcement policies and programs, and provided employee compliance training to large manufacturing companies. He has also contributed to international antitrust publications, such as *The International Comparative Legal Guide to: Cartels and Leniency*.

Notably, Brian is valued for his leadership when it comes to devising and executing legal solutions and plans of action. Brian ably explains complex issues in a manner that is understandable, actionable and defensible. Whether he is faced with a compliance issues or thorny investigation, Brian understands the importance of problem-solving in a way that allows his clients to keep their businesses running smoothly.

Table of Contents

Section One

**Tailoring and Updating
Your Company's Compliance
Risk Assessment.....**

**Tabitha K. Meier
Brian R. Weir-Harden**

PowerPoint Presentation

Section Two

**Operationalizing Compliance: Insights
from In-House Legal and Compliance
Professionals.....**

**Gregory J. Morical
Jeffrey L. Stitt
Blaine R. Dart**

PowerPoint Presentation

Section Three

**Outside Counsel's Perspective on
Compliance Breakdowns and
Government-Imposed Monitorships..... Trent J. Sandifur
Tabitha K. Meier**

PowerPoint Presentation

Section One

Tailoring and Updating Your Company's Compliance Risk Assessment

Tabitha K. Meier

Barnes & Thornburg LLP
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Brian R. Weir-Harden

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Indianapolis, Indiana

Section One

**Tailoring and Updating
Your Company's Compliance
Risk Assessment.....**

**Tabitha K. Meier
Brian R. Weir-Harden**

PowerPoint Presentation

A decorative background consisting of numerous squares of various colors (olive green, orange, red, yellow, teal, light green, light blue, and pink) arranged in a grid-like pattern, tilted at an angle.

Tailoring and Updating your Company's Compliance Risk Assessment

June 10, 2020

Tabitha K. Meier, Partner

Brian Weir-Harden, Partner

Critical Three Questions

- Updated Guidance from the US Department of Justice on Evaluating Corporate Compliance Programs, April 2019:
<https://www.justice.gov/opa/pr/criminal-division-announces-publication-guidance-evaluating-corporate-compliance-programs>
- 1) Is the compliance program well designed?
 - 2) Is the compliance program being implemented earnestly and in good faith?
 - 3) Does the compliance program work in practice?

REFRESHER - COMPLIANCE PROGRAM FRAMEWORK AND ELEMENTS

What is a Compliance Program?

- In general, it's a system of controls designed to ensure compliance with the laws and regulations that apply to an organization's business and/or activities.

Essential Program Elements

- Certain core elements seen globally* :
 - Strong tone from the top (and in the middle)
 - Due care in delegating substantial discretionary authority
 - Written policies and procedures
 - Appropriate compliance resources and oversight
 - Effective communication / training
 - Auditing, monitoring, and mechanism for reporting concerns
 - Discipline and incentives
 - Remediation
 - Risk assessment

*(for example, U.S. Sentencing Guidelines, UN Convention Against Corruption and Convention on Combating Bribery and OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance)

Let's Focus on Design and Implementation

- Key Concepts:
 - Risk Assessment
 - Risk Tailoring
 - Implemented Effectively – Let's use the word "Operationalized"

Risk Assessments and Risk Tailoring

- Ways to Accomplish:
 - Scanning the business and regulatory environment
 - Surveying key stakeholders
 - Assessing past and pending liability claims and “near-misses”
 - Calculating risk of harm, including physical, financial, reputational
- Then dedicating finite compliance resources in line with those risks = **risk tailoring**

Two Hypothetical Companies

Global Machine Manufacturer

- Public company
- Global sales
- Global procurement
- Competitive industry
- Mineral extraction and systems solutions
- 10,000+ employees
- Diverse functional areas and markets
- Matrix org structure
- Rapid international expansion

Local Machine Manufacturer

- Private company
- Regional sales
- Local procurement
- Custom manufacturing
- Auto manufacturing supplier
- Small, highly-technical skilled manufacturing group of employees
- Linear org structure
- Steady growth

RISK ASSESSMENT SHOULD REVEAL DIFFERENT RISK PROFILES FOR THESE COMPANIES

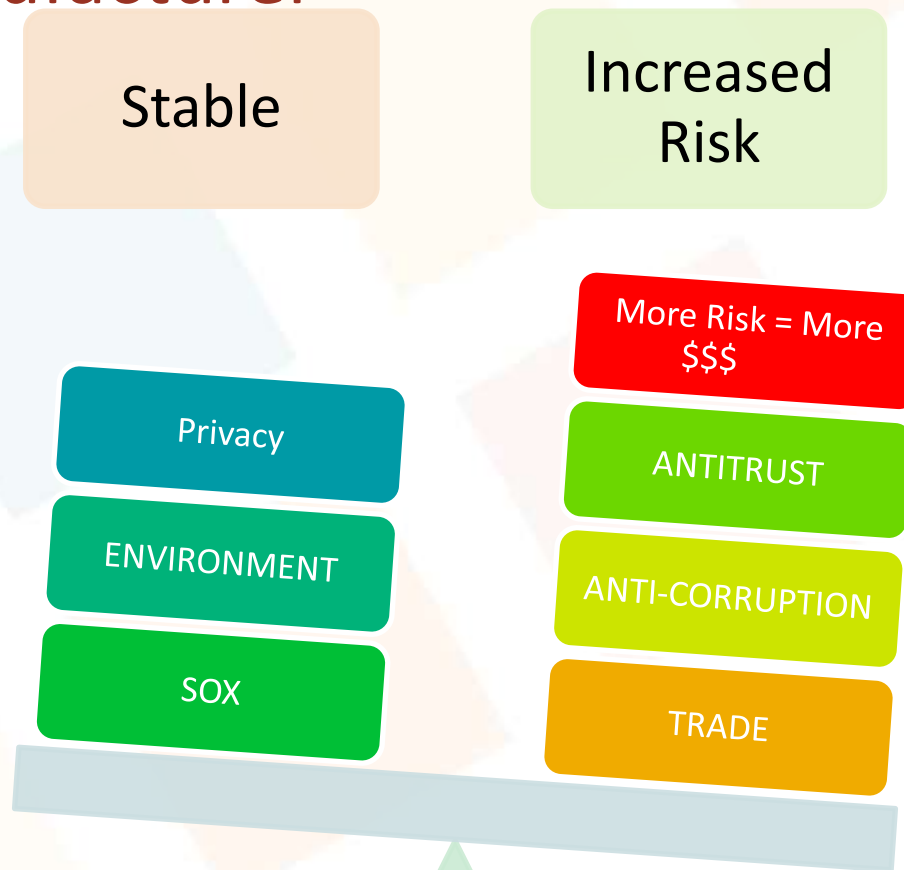
Potential Risk Profile for Hypothetical Global Machine Manufacturer



Risk Tailoring for Hypothetical Global Machine Manufacturer

- Conversations with key stakeholders reveal:
 - Rapid expansion, including increase in number of state-owned entity customers internationally
 - An intention to do some crisis contingency planning with competitors – for example, if a plant burns down or if the supply chain is interrupted.
- What impact on this year's risk tailoring and allocation of compliance resources?

This Year's Compliance Budget Allocation for the Global Manufacturer



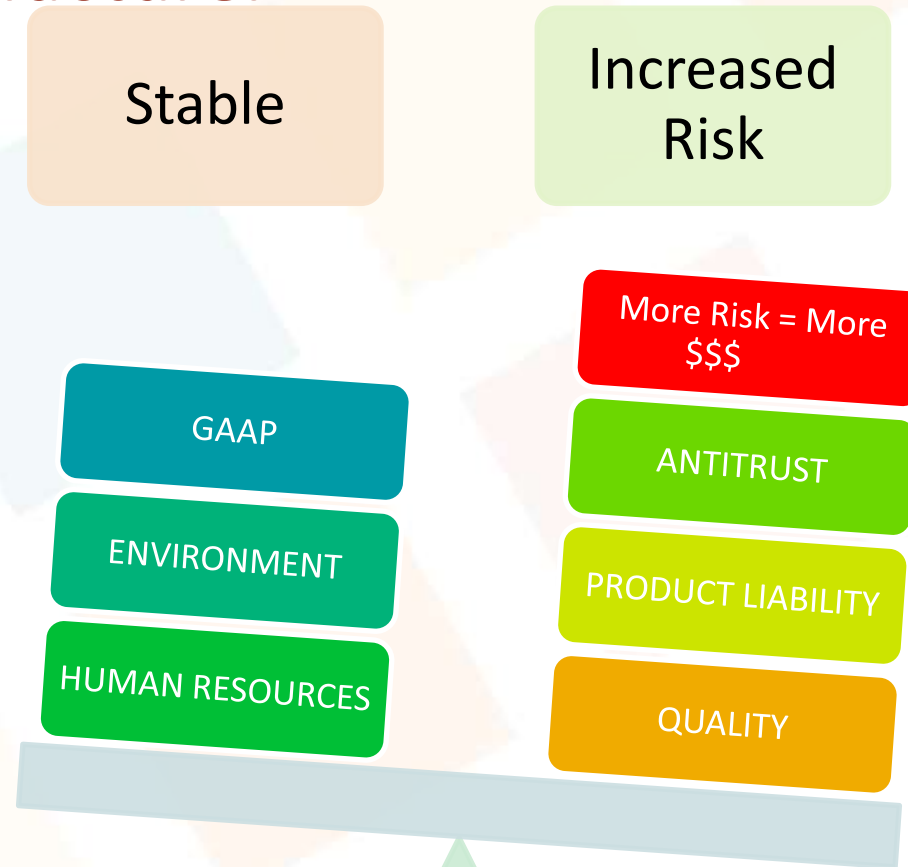
Potential Risk Profile for Hypothetical Local Machine Manufacturer



Risk Tailoring for Hypothetical Local Machine Manufacturer

- Conversations with key stakeholders reveal:
 - They've been hit with an increased number of product liability complaints this year;
 - They've been invited to discussions with Japanese auto industry participants on potential new work partnerships.
- What impact on this year's risk tailoring and allocation of compliance resources?

This Year's Compliance Budget Allocation for the Local Manufacturer



SO HOW DO YOU KNOW IF YOUR PROGRAM IS WORKING?

Remember the Key Program Elements

- Certain core elements seen globally* :
 - Strong tone from the top (and in the middle)
 - Due care in delegating substantial discretionary authority
 - Written policies and procedures
 - Appropriate compliance resources and oversight
 - Effective communication / training
 - Auditing, monitoring, and mechanism for reporting concerns
 - Discipline and incentives
 - Remediation
 - Risk assessment

*(for example, U.S. Sentencing Guidelines, UN Convention Against Corruption and Convention on Combating Bribery and OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance)

HYPOTHETICAL CASE EXERCISE: ROY'S GLOBAL SELLING CO. COMPLIANCE SCORECARD

Let's Use Simple Rating

On a Scale of 1-5, with 5 being the highest score.

- **5 = rock star** (established, tested, leading cutting edge program)
- **4 = mature** (established and tested)
- **3 = stable** (getting most bases covered but plenty of room for improvement)
- **2 = emergent** (just getting the program off the ground)
- **1 = nearly non-existent**

Scorecard Exercise: Risk Assessment Fictional *Roy's Global Selling Co.*

- Roy B. – proud CEO of Roy's Global Selling Company, knows everything there is to know about his business and the world he sells in (global manufacturer of hi-tech sneakers).
- He soaks up information about the industry as he goes, and he figures if any law changes that impacts the business, he will hear about it from an employee or be notified by the government.
- Until then, status quo is the name of the game.

Score ____ (1 – 5)

Scorecard Exercise: Tone

Fictional *Roy's Global Selling Co.*

- CEO Roy regularly instructs his employees that doing business the right way is the only way Roy's Global should do business.
- He emphasizes to senior management that he expects they will also instruct employees to never cut corners in getting the job done.
- Company managers routinely communicates during monthly employee status meetings their expectation of doing business the right way and never cutting corners.

Score ____ (1 – 5)

Scorecard Exercise: Policies and Procedures - Fictional *Roy's Global Selling Co.*

- Employees at Roy's Global receive an employee handbook outlining all employment policies.
- The handbook was last updated by the former HR VP in 2008. It's clear and easy to understand.
- He trusts his management and long-time employees to otherwise educate employees on how they do their jobs and what rules must be followed.
- Roy's Global has many long-tenured employees who are especially valuable to transferring knowledge. They are great at explaining the rules of the road.

Score ____ (1 – 5)

Scorecard Exercise: Appropriate Compliance Resources *Roy's Global Selling Co.*

- Roy's Global has successfully grown to \$700m in sales without any major compliance violations.
 - Roy's Global continues to expand its business by acquiring other similar companies. It looks only for the best.
 - Since there have been no real issues, Roy's Global is comfortable leaving compliance responsibilities to local management.
 - At this time, there is no plan to hire any person dedicated to leading compliance .
- Score ____ (1 – 5)**

Scorecard Exercise: Auditing, Monitoring, and Reporting Concerns: ***Roy's Global Selling Co.***

- If employees have “compliance” concerns, they can report those to local management.
- Roy's Global has no anonymous reporting mechanism.
- The Company relies on its external auditors to alert management to potential compliance issues.

Score ____ (1 – 5)

Scorecard Exercise: Discipline and Incentives

Roy's Global Selling Co.

- Employees at Roy's Global are expected to do the right thing – that's part of the Company's culture – they're not rewarded for what they're supposed to do in the first place.
- Employee's are fired immediately for compliance violations.

Score ____ (1 – 5)

Scorecard Exercise: Investigation and Remediation *Roy's Global Selling Co.*

- If a compliance issue is reported at *Roy's Global*, the local manager decides if it should be investigated.
- If it is investigated and if a compliance issue is confirmed by the local manager, s/he makes sure that there are appropriate policies, procedures, and training in place – if there are gaps s/he gives direction to his managers to close the gap.
- S/he knows they will get it done.

Score ____ (1 – 5)

So How Did You Rate this Company?

- Risk Assessment: _____ (1-5)
- Tone / Effective Communication: _____ (1-5)
- Policies and Procedures: _____ (1-5)
- Appropriate Resources: _____ (1-5)
- Auditing, Monitoring, Reporting: _____ (1-5)
- Investigation and Remediation: _____ (1-5)
- **Total Points:** _____
 - Then divide by 6 = Program Rating _____ **(1-5)**

Compliance is What We Do.

Questions?

Tabitha K. Meier

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Section Two

Operationalizing Compliance: Insights from In-House Legal and Compliance Professionals

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Vice President, Compliance Officer, U.S. and Canada
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Warsaw, Indiana

Section Two

**Operationalizing Compliance: Insights
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PowerPoint Presentation

Operationalizing Compliance: Insights from In-House Legal and Compliance Professionals

Blaine Dart, Vice President, Compliance Officer, U.S. and Canada,
Zimmer Biomet

Greg Morical, Vice President, General Counsel and Secretary, Calumet
Specialty Products, LP

Jeff Stitt, Vice President of Compliance, Hillenbrand, Inc.

What does “operationalizing compliance” mean to you?

Describe how compliance is structured in your company in terms of infrastructure, resources, responsibility, and reporting up?

How do you accomplish as much as possible with a finite compliance budget — or no dedicated budget at all?

*What “business case” helps support the need for compliance
inside your organization?*

How do you know what risk areas are within the ambit of responsibility of the Compliance Department vs. are owned and managed by the business?

How do you thwart compliance fatigue? What is it and is it real?

What sort of tools, dashboards, metrics do you report on to executive management and the relevant oversight committees and Board?

*How do you measure whether compliance is improving
and maturing in your organization?*

What has been your greatest compliance challenge?

What has been your greatest compliance accomplishment?

What would you tell your less-experienced self at the beginning of your compliance journey?

Thank you!

Section Three

Outside Counsel's Perspective on Compliance Breakdowns and Government-Imposed Monitorships

Trent J. Sandifur

Taft Stettinius & Hollister LLP
Indianapolis, Indiana

Tabitha K. Meier

Barnes & Thornburg LLP
Indianapolis, Indiana

Section Three

**Outside Counsel's Perspective on
Compliance Breakdowns and
Government-Imposed Monitorships..... Trent J. Sandifur
Tabitha K. Meier**

PowerPoint Presentation

Outside Counsel's Perspective on Compliance Breakdowns and Government-Imposed Monitorships

Trent J. Sandifur, Partner — Taft

Tabitha K. Meier, Partner — Barnes & Thornburg LLP

DOJ Guidance Regarding Compliance Breakdowns

Properly Scoped Investigations by Qualified Personnel

- How does the company determine which complaints or red flags merit further investigation?
- How does the company ensure that investigations are properly scoped?
- What steps does the company take to ensure investigations are independent, objective, appropriately conducted, and properly documented?
- How does the company determine who should conduct an investigation, and who makes that determination?

Resources and Tracking of Results

- Does the company apply timing metrics to ensure responsiveness?
- Does the company have a process for monitoring the outcome of investigations and ensuring accountability for the response to any findings or recommendations?
- Are the reporting and investigating mechanisms sufficiently funded?
- How has the company collected, tracked, analyzed, and used information from its reporting mechanisms?
- Does the company periodically analyze the reports or investigation findings for patterns of misconduct or other red flags for compliance weaknesses?

Response to Investigations

- Have the company's investigations been used to identify root causes, system vulnerabilities, and accountability lapses, including among supervisory manager and senior executives?
- What has been the process for responding to investigative findings?
- How high up in the company do investigative findings go?

Root Cause Analysis

- What is the company's root cause analysis of the misconduct at issue?
- Were any systemic issues identified?
- Who in the company was involved in making the analysis?

Prior Weaknesses

- What controls failed?
- If policies or procedures should have prohibited the misconduct, were they effectively implemented, and have functions that had ownership of these policies and procedures been held accountable?

Payment Systems

- How was the misconduct in question funded (e.g., purchase orders, employee reimbursements, discounts, petty cash)?
- What processes could have prevented or detected improper access to these funds?
- Have those processes been improved?

Vendor Management

- If vendors were involved in the misconduct, what was the process for vendor selection and did the vendor undergo that process?

Prior Indications

- Were there prior opportunities to detect the misconduct in question, such as audit reports identifying relevant control failures or allegations, complaints, or investigations?
- What is the company's analysis of why such opportunities were missed?

Remediation

- What specific changes has the company made to reduce the risk that the same or similar issues will not occur in the future?
- What specific remediation has addressed the issues identified in the root cause and missed opportunity analysis?

Accountability

- What disciplinary actions did the company take in response to the misconduct and were they timely?
- Were managers held accountable for misconduct that occurred under their supervision?
- Did the company consider disciplinary actions for failures in supervision?
- What is the company's record (e.g., number and types of disciplinary actions) on employee discipline relating to the type of misconduct at issue?
- Has the company ever terminated or otherwise disciplined anyone (reduced or eliminated bonuses, issued a warning letter, etc.) for the type of misconduct at issue?

Airbus Deferred Prosecution Agreement

- *Airbus Agrees to Pay over \$3.9 Billion in Global Penalties to Resolve Foreign Bribery and ITAR Cases.*
DOJ, Office of Public Affairs,
<https://www.justice.gov/opa/pr/airbus-agrees-pay-over-39-billion-global-penalties-resolve-foreign-bribery-and-itar-case>, Jan. 31, 2020.

Charges

- Conspiracy to violate the anti-bribery provision of the Foreign Corrupt Practices Act (FCPA)
- Conspiracy to violate Arms Export Control Act (AECA) and its implementing regulations – the International Traffic in Arms Regulations (ITAR)
- Global, multinational, multiagency investigation: U.S. Department of Justice, Parquet National Financier, UK Serious Fraud Office

Alleged Conduct

- Scheme to offer and pay bribes to foreign officials, including Chinese officials, in order to obtain and retain business, including contracts to sell aircraft. (FCPA)
- Failure to disclose political contributions, commissions or fees to the U.S. government, as required under the ITAR, in connection with the sale or export of defense articles and defense services to the Armed Forces of a foreign country or international organization.

“International corruption involving sensitive U.S. defense technology presents a particularly dangerous combination.”

DOJ, Office of Public Affairs, <https://www.justice.gov/opa/pr/airbus-agrees-pay-over-39-billion-global-penalties-resolve-foreign-bribery-and-itar-case>, Jan. 31, 2020.

Fines and Penalties

- Deferred Prosecution Agreement with U.S.D.O.J (Fraud Section and National Defense Division)
- \$527 million for FCPA and ITAR violations
- \$50 million as part of a civil forfeiture agreement for the ITAR-related conduct
- \$10 million penalty to U.S. Department of State's Directorate of Defense Trade Controls (DDTC)
- \$2.29 billion to the Parquet National Financier (PNF) in France
- Also deferred prosecution agreement with UK Serious Fraud Office regarding bribes in Malaysia, Sri Lanka, Taiwan, Indonesia, and Ghana, plus \$1.09 billion relating to SFO

“This resolution, however, also reflects the significant benefits available under [the Justice Department’s National Security Division’s] revised voluntary self-disclosure policy for companies that choose to self-report export violations, cooperate, and remediate as to those violations, even where there are aggravating circumstances.”

Principal Deputy Assistant Attorney General David P. Burns.

MONITORSHIPS

What is a Monitorship?

- A monitorship is a unique construct in which an organization agrees to be “monitored” by an independent third party individual (or team of individuals) which will oversee some or all of the organization’s business operations and report periodically to a third party
- Convenient, inexpensive way for the government to observe and supervise an organization’s operations without having to devote significant manpower
- The organization pays the bill
- Used by a variety of law enforcement and regulatory bodies

Olympus Corp. of the Americas – 2016 DPA

Retention and Obligations of an Independent Monitor

18. Until the expiration of this DPA, the Company will retain, at its own expense, the Monitor to evaluate and monitor the Company's compliance with this DPA and the Company's compliance with the Deferred Prosecution Agreement between Olympus Latin America, Inc., the Company, the Office, and the United States Department of Justice, Criminal Division, Fraud Section ("the OLA DPA"). The Company shall propose to the Office four or five candidates with the qualifications stated in this DPA and who are not deemed by the Office to have an actual or potential conflict of interest, and the Office will select the Monitor from those four or five candidates. The Office will make that selection consistent with United States Department of Justice guidelines, including review and approval by the Office of the Deputy Attorney General.

ZTE Superseding Settlement Agreement - 2018

b. **Special Compliance Coordinator.** Within 30 days of the date of the Order, BIS will select and ZTE shall retain at its expense an independent special compliance coordinator ("SCC") to coordinate, monitor, assess, and report on compliance by ZTE and its subsidiaries and affiliates worldwide with the Act, the Regulations and the terms of this Agreement and the Order, including without limitation, but not limited to, ZTE's compliance program and all related policies, practices, procedures, and systems regarding all exports, reexports, or transfers (in-country) or other activities that are subject to the Act, the Regulations, and the prevention, detection, and reporting of violations of U.S. export controls. The SCC will report to the chief executive officer and

Who is the Monitor?

- Selection process
- Pitching / Vetting
- Networks

Monitor's Relationship

- Relationship to the Company
- Relationship to the Government
- Confidentiality / FOIA
- Proactive or voluntary monitorships v. government-imposed
- Budget / fees / including of monitor-retained consultants

A Day in the Life of a Company Being Monitored

Roadmap and Guideposts

- Nature of past violations
- Guidance on what “good looks like” – various agencies may have model programs outlining expectations for an effective compliance program, e.g. DOJ and BIS
- Risk assessments
 - For example, past compliance failures, allegations of DPA, revenue segmentation, product lines, geography, channel partners
- Work plans
- Government reporting requirements / monitor reports

In Your Business

- Board meetings
- Committee meetings
- Meetings with President/CEO and executive leadership
- Business units and divisions
- Annual conventions / sales and leadership meetings
- Trade shows
- Meetings with external auditors and consultants

In Your Operations and Documents

- Site Inspections
- Interviews
- Document Requests
- Data Analysis
- Financial Documents
- Investigations
- Auditing and testing
- Issues with Attorney-Client Privilege

In Your Compliance Program

- Government reports
- Recommendations for improvement across any of the elements of an effective compliance program
- Potential Violations in the interim
- Objections?

Monitorship Outcomes

- Early termination
- Potential violations of settlement provisions and/or laws
- Extensions
- Per the terms of the resolution document
- Silver lining – potential competitive advantage

Resources

- <https://www.justice.gov/criminal-fraud/page/file/937501/download>
- <https://guidelines.ussc.gov/gl/%C2%A78B2.1>
- <https://www.justice.gov/opa/press-release/file/1241466/download>
- <https://www.bis.doc.gov/index.php/compliance-a-training/export-management-a-compliance/compliance>