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CORPORATE LIABILITY

The Expanding Role of Government Enforcers In the Area of Consumer Products

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In the 2007 George Clooney film *Michael Clayton*, a company called U-North is embroiled in a high-stakes consumer class action lawsuit alleging that it concealed the highly toxic properties of a weed killer it manufactured. U-North's concerns over this consumer class action were so great that it arranged for the murder of its own outside counsel, who had become aware of a ''smoking gun'' document that the company thought it had destroyed.

Michael Clayton remains a first-rate thriller. Its characterization of the legal landscape, however, already seems outdated. Were *Michael Clayton* remade today, a consumer class action would be the least of U-North's legal concerns. U-North might be able to short-circuit the consumers' lawsuit at the class certification stage, but the company—and possibly several of its executives and managers—likely would be hit with a crippling federal wire-fraud indictment and face a well-coordinated, multi-state attorneys general civil fraud investigation that might not be easily (or cheaply) resolved.

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Government enforcement in the area of ''off-the-shelf'' consumer products is certainly not new. But over the past several years government enforcers—including the criminal divisions of the Department of Justice and individual U.S. Attorney's Offices and consumer fraud divisions of state attorneys general offices—have taken on a more aggressive, creative and important role in this area, including using broad, generalized criminal provisions such as the federal mail and wire fraud statutes. This expansion has been experienced firsthand by some of the world's best known and most admired companies.

What is driving this government enforcement phenomenon? One possibility is that government enforcers are seeking to compensate for a variety of legal developments that collectively have significantly reduced the ability of private plaintiffs—and especially plaintiff classes—to obtain meaningful litigation success against consumer product companies. In other words, the diminished power of private plaintiffs has created an ''enforcement gap'' that the DOJ and state attorneys general are seeking to fill. When government enforcers step in, they can serve as a supplement to, or even a substitute for, private plaintiff actions. In many instances, a government enforcement action brought by the DOJ or state attorneys general can substantively assist private plaintiff lawsuits by, for example, demanding the company to admit, as part of any negotiated resolution, to factual allegations that private plaintiffs

might otherwise have had a difficult time adequately pleading and proving. Moreover, in some instances, a company might choose to settle a potentially winnable private class action because of a concern that a pending government enforcement investigation might end poorly and drive up the private lawsuit's value.

The increasingly aggressive tactics of government enforcers in the area of consumer products is less likely a short-term fad than a long-term trend. This will be particularly true if the DOJ's civil attorneys in fact begin to conduct civil corporate investigations with an eye toward identifying *criminally* culpable individual employees, as Deputy Attorney General Sally Q. Yates's recent internal memorandum instructs (13 CARE 1952, 9/11/15). For consumer product companies, this trend has profound consequences for legal strategy. In many key respects, dealing with the DOJ or a state attorney general is distinctly different than responding to a private class action complaint. Consequently, a company hoping to successfully resolve—or, better yet, avoid—a potential government enforcement action cannot simply borrow from its private civil litigation playbook.

II. Recent Examples of Government Action Against Consumer Product Companies

Traditionally, plaintiffs' lawyers have been the ''watchdog'' of consumer product fraud, and the consumer class action has been the foremost litigation concern of consumer product companies. Government enforcers, however, increasingly have turned their attention to the consumer product area. As the following examples show, a government investigation and potential action can present a legal and public relations threat that is equal to, or even greater than, lawsuits brought by private plaintiffs.

A. Federal Criminal Charges Related to Automobile Defects

Both in terms of publicity and seriousness, the federal criminal investigations into Toyota, General Motors, Takata, and now apparently Volkswagen may be the most striking examples of federal prosecutors' new focus on consumer products.

In March 2014, after a four-year federal investigation, Toyota stipulated to a one-count information charging the company, under 18 U.S.C. 1343, with failing to disclose unintended acceleration issues in some of its vehicles. The company agreed to pay a $1.2 billion fine and to retain an independent safety monitor.[1] Attorney General Eric Holder stated that the action was ''reflective of the aggressive nature we will take in looking at these kinds of charges'' and a ''sign for the industry that we take these matters seriously . . . .'' U.S. Attorney Preet Bharara sounded a similar theme, stating that companies ''must be maximally transparent'' with respect to potential safety issues and that ''the entire auto industry should take notice.'' Commentators have called the DOJ's action against Toyota a ''game changer'' because it is the first instance in which the DOJ pursued a criminal, rather than just a regulatory, action against an automaker for a safety-related issue.

Closely on the heels of the announcement of the Toyota settlement, General Motors publicly announced that the DOJ had begun a similar investigation into an ignition switch issue that presented significant safety concerns. Roughly 18 months later, on Sept. 17, the DOJ announced that GM had agreed to enter into a deferred prosecution agreement on false statement and wire fraud charges, to admit that the company concealed a ''deadly safety defect'' from the public and federal regulators, to forfeit $900 million, and to be overseen by a corporate monitor for four years[2] (13 CARE 2001, 9/18/15). A number of state attorneys general also have commenced independent investigations into whether GM had violated their states' consumer protection statutes.

Also in the automobile space, the DOJ is presently investigating the air bag manufacturer Takata for potential criminal violations in its handling of air bag recalls[3] (13 CARE 1608, 7/17/15). And federal criminal enforcement actions are not limited to safety incidents, either. On Sept. 21, it was reported that the DOJ and other federal agencies are widening an investigation into Volkswagen's alleged use of computer software that enabled their diesel engine cars to ''defeat'' emissions testing and make it appear that the cars run far cleaner than they actually do (13 CARE 2017, 9/25/15).

Volkswagen saw its stock drop approximately nearly 40 percent in the two trading days following the announcement, and it reported taking a $7.3 billion reserve with respect to the issue.[4] In addition to the DOJ, a multi-state group of state attorneys general and several international jurisdictions are also reportedly commencing investigations into Volkswagen.[5] U.K., German and French officials recently suggested that there should be an industry-wide sweep to determine whether the alleged problem exists at other automakers.[6]

B. Federal Criminal Charges Related to Food Safety

The federal Food, Drug, and Cosmetic Act strictly regulates food and food safety in the U.S., but criminal enforcement actions under the statute have been relatively infrequent and, historically, prosecutions against food manufacturers under Title 18 of the U.S. Code have been almost unheard of. That may now be changing.

In 2013, the DOJ indicted four former and current executives of the Peanut Corp. of America on conspiracy,

[1] Christie Smythe, *Toyota $1.2 Billion Deal Approved to End Criminal Probe*, Bloomberg Business, March 20, 2014, available at http://www.bloomberg.com/news/articles/2014-03-20/toyota-judge-accepts-1-2-billion-deal-to-end-u-s-probe.

[2] http://www.justice.gov/usao-sdny/file/772301/download.

[3] *See Detroit prosecutors join criminal probe of Takata over air bags*, Reuters, May 21, available at http://www.reuters.com/article/2015/05/21/us-autos-takata-probe-idUSKBN0O61T620150521.

[4] *See, e.g., VW facing U.S., German probes in widening emissions scandal,* http://www.examiner.com/article/vw-facing-u-s-german-probes-widening-emissions-scandal.

[5] *U.S. state attorneys general to probe Volkswagen*, Reuters, Sept. 22, available at http://www.cnbc.com/2015/09/22/reuters-america-us-state-attorneys-general-to-probe-volkswagen—new-york-ag.html.

[6] William Boston, *Volkswagen emissions investigations should widen to entire auto industry, officials say*, Sept. 22, 2015, available at http://www.nasdaq.com/article/volkswagen-emissions-investigations-should-widen-to-entire-auto-industry-officials-say-20150922-00086.

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wire fraud, mail fraud and obstruction of justice charges in connection with Peanut Corp.'s shipment of peanut butter contaminated with salmonella. The jury convicted the defendants of 67 of the 71 felony counts that went to trial. The lead defendant, Peanut Corp.'s former chief executive officer, Stewart Parnell, was recently sentenced to serve 28 years in federal prison for these offenses, which his attorney called effectively a life sentence[7] (13 CARE 2027, 9/25/15).

In April 2014, ConAgra Foods reported in its 10-K that the DOJ was criminally investigating, and could criminally charge, the company in connection with a similar contaminated peanut butter outbreak. Also in 2014, the DOJ indicted executives of the Rancho Feeding Corp., a slaughterhouse located in California, with charges that included wire fraud and mail fraud in connection with the company's shipment of potentially contaminated beef.

In a June 2015 speech, DOJ official Stuart Delery, who has spearheaded several of the DOJ's food safety prosecutions, stated that food safety is "a key priority for the Justice Department." Delery stated that the DOJ will continue to enforce food safety not only under the FDCA, but also with "laws of general applicability . . . such as the laws prohibiting mail and wire fraud."

C. State Consumer Protection Claims for Misleading Advertising

Government enforcers have also turned their attention to lesser-ticket matters involving small economic harms spread across many thousands of consumers, the type of matter for which private class action lawyers have historically been the predominant player. The state attorneys general actions against DISH, DirectTV, Dannon Yogurt and Sirius are illustrative of this.

In April and June 2009, DISH agreed to pay nearly $11 million to settle a 45-state attorneys general investigation into allegations that, *inter alia*, the company deceptively marketed its terms of service and charged Washington State residents an illegal $1 monthly "surcharge."[8] The following year, in December 2010, DirectTV paid $13 million to settle a 49-state attorneys general investigation into allegations that the company used misleading advertising in order to lock customers into long-term contracts. Also in December 2010, Dannon Yogurt entered into a $21 million settlement to conclude a multi-state attorneys general action claiming that Dannon made false statements about the health benefits of its Activia Yogurt. In December 2014, Sirius agreed to pay $3.8 million to settle a 45-state attorneys general action alleging that the company misled consumers about its "introductory rates" and related service contract issues.[9]

D. Federal and State Investigations Into Potentially Unsafe Foreign-Manufactured Products

Federal and state investigators have also demonstrated interest in pursuing cases involving consumer health and safety where they relate to products of foreign origin.

After a CBS News *60 Minutes* segment claimed to find high levels of formaldehyde in Chinese-made laminate flooring imported and sold by flooring retailer Lumber Liquidators, the Consumer Product Safety Commission and the DOJ began investigating the matter (13 CARE 1130, 5/29/15). Reportedly, the DOJ's investigation into the Chinese laminate flooring issue intensified other DOJ investigations into Lumber Liquidators's product sourcing practices, and the DOJ informed the company that it should expect some criminal charges. It is not unreasonable to expect that state attorneys general will bring parallel investigations and actions.

III. The Diminishing Power of Private Plaintiffs

Private class actions in the area of consumer products obviously have not disappeared. Indeed, significant private class action settlements were reached in several of the government enforcement actions discussed above, including a $1.3 billion class action settlement by Toyota and a $45 million class action settlement by Dannon Yogurt. Moreover, the legal hurdles that private plaintiffs might ordinarily face can substantially disappear if a company has admitted, as part of a negotiated resolution with government enforcers, to facts that would provide the basis for a private civil claim. However, several legal developments over the past two decades have significantly diminished the ability of private plaintiffs to obtain large damages against consumer product companies, especially relative to government enforcers.

A. Heightened Pleading Standards

It is more difficult than ever for a private lawsuit to withstand a motion to dismiss. In federal cases, private lawsuits must, at a minimum, satisfy the stricter "plausibility" standard that the Supreme Court set forth in 2007 in *Bell Atlantic Corp. v. Twombly*[10] and reaffirmed in its 2009 decision in *Ashcroft v. Iqbal*.[11] The *Twombly* and *Iqbal* decisions have increased the percentage of private federal court cases ending with involuntary dismissal.[12] Following *Twombly* and *Iqbal*, the majority of state courts have adopted a similar "plausibility" standard at the pleading stage, discarding earlier standards that were significantly more plaintiff-friendly. In addition, with respect to fraud-based claims, private plaintiffs in federal court and most state courts must satisfy an even more demanding pleading standard, one that can be quite difficult to meet without access to internal company documents.

B. Class Action Certification Requirements

Significant reforms in the 1990s and early 2000s have driven most consumer class actions into federal court

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[7] *Former peanut company CEO sentenced to 28 years for salmonella outbreak*, Reuters, Sept. 21, available at http://www.reuters.com/article/2015/09/22/us-usa-georgia-salmonella-idUSKCN0RL24H20150922.

[8] *Settlement Refunds*, Washington State Office of the Attorney General, available at http://www.atg.wa.gov/settlement-refunds#DISH.

[9] Gitte Laasby, *Sirius XM to pay settlement, restitution for misleading advertising, billing*, Milwaukee Wisconsin Journal Sentinel, Dec. 4, 2014, available at http://www.jsonline.com/blogs/news/284778131.html.

[10] 550 U.S. 544 (2007).

[11] 556 U.S. 662 (2009).

[12] *See, e.g.*, Alexander A. Reinert, *Screening Out Innovation: The Merits of Meritless Litigation*, 89 Ind. L.J. 1191 (2014).

while simultaneously decreasing the likelihood that plaintiffs can sustain such cases there.[13] Enacted in 2005, the Class Action Fairness Act[14] expanded the federal courts' diversity jurisdiction for class action suits, increasing federal court class action litigation by 72 percent just two years after its enactment.[15] Consumer fraud and protection cases now make up a significant portion of the new federal court activity.[16] A federal class action can be difficult to sustain. In addition to the pleading standards described above, it is more difficult than ever for a class even to meet the certification requirements under Federal Rule of Civil Procedure 23(f). Recent case law requires district courts to conduct a ''rigorous analysis of the [certification] requirements,'' even if that means ''prob[ing] behind the pleadings,''[17] and defendants can take interlocutory appeals of certification decisions with which they disagree. Federal case law with respect to arbitration agreements also creates a substantial roadblock to many plaintiffs. Under the Supreme Court's 2011 decision in *AT&T Mobility LLC v. Concepcion*,[18] consumers may be bound by arbitration and class action waiver provisions contained in purchase or service contracts.[19]

C. Constitutional Caps on Punitive Damages

For private plaintiffs, either individuals or in classes, who do manage to successfully sustain a consumer product case and ultimately bring it to trial, the potential rewards of that effort are not what they used to be. For example, under the Supreme Court's 2003 decision in *State Farm Mutual Automobile Insurance Company v. Campbell*,[20] punitive damages are available only where the defendant's conduct is particularly egregious, and the ratio between punitive and compensatory damages constitutionally cannot exceed 9:1.[21] A number of state legislatures have gone even further, imposing actual limits on punitive and noneconomic damages awards.[22]

IV. Government Enforcers' Unique Investigatory and Litigation Weapons

Government enforcement actions are not subject to many of the roadblocks that private plaintiffs face, and government enforcers have weapons that private plaintiffs simply do not have.

A. Threat of Criminal Penalties

First and foremost, the government has the ability to pursue criminal charges against companies and their executives. Criminal charges not only bring the possibility of significant fines and prison sentences, but the negative publicity associated with a criminal prosecution can damage a company's goodwill with its clients. In some industries, criminal charges can even amount to a corporate death sentence. Unlike civil claims brought by private plaintiffs, where defendants' motions to dismiss or for summary judgment are often successful, it is usually impossible for a defendant to successfully challenge the veracity of criminal charges short of trial. Thus, if a government enforcer is bent on pursuing criminal charges against a company, the company has only two real choices: settle the action (which often means admitting to underlying factual allegations) or take it all the way to a jury.

Moreover, criminal fines are not subject to the same constitutional constraints as private punitive damages, even though they serve much the same purposes of deterrence and punishment. And, under current case law, even civil statutory penalties, such as those allowed under most state consumer fraud statutes, can be massive relative to compensatory damages without violating the Constitution's Excessive Fines Clause.

B. Discovery Advantages

A private plaintiff must withstand a motion to dismiss in order to obtain court-ordered discovery. Government enforcers do not face this same limitation. Instead, government enforcers can serve a company with costly subpoenas and civil investigative demands prior to filing any sort of lawsuit against the company.[23] Indeed, government enforcers can pursue such discovery even before they have developed a theory of liability. Criminal grand jury subpoenas in particular are difficult to quash, and most states allow their attorneys general to issue civil investigative demands merely on a ''suspicion'' that the company has engaged in an unfair trade practice or violated a consumer protection statute.[24]

C. Multi-State Coordination and 'Outsourcing'

It is now commonplace for state attorneys general to coordinate with each other in pursuing consumer protection actions that have nationwide impact. By pooling their investigatory resources, state attorneys general essentially increase their ability to pursue claims against companies.[25] Coordinated, multi-state attorneys general actions can be difficult for a company to defend be-

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[13] Robert H. Klonoff, *The Decline of Class Actions*, 90 Wash. U. L. Rev. 729, 732 (2013).

[14] Pub. L. No. 109-2, 119 Stat. 4 (2005).

[15] Emery G. Lee III & Thomas E. Willging, *The Impact of the Class Action Fairness Act of 2005 on the Federal Courts: Fourth Interim Report to the Judicial Conference Advisory Committee on Civil Rules* (Apr. 2008), *available at* http://www.fjc.gov/public/pdf.nsf/lookup/cafa0408.pdf/$file/cafa0408.pdf.

[16] *Id.*

[17] Klonoff, *supra* note 19, at 748 (citing *General Telephone Co. v. Falcon*, 457 U.S. 147 (1982)).

[18] 131 S. Ct. 1740 (2011).

[19] Klonoff, *supra* note 19, at 817-18. The charges at issue were $30.22 in sales tax for an allegedly free phone.

[20] 538 U.S. 408 (2003).

[21] *Id.* at 424-26.

[22] David L. Hudson, Jr., *More States See Tort Limits Challenged as Unconstitutional*, ABA Journal (Apr. 1, 2013, 8:19 AM CDT), http://www.abajournal.com/magazine/article/more_states_see_tort_limits_challenged_as_unconstitutional/. Challenges to these caps on state constitutional grounds have met with mixed success. *Id.*

[23] *See The Phillip D. Reed Lecture Series Evidence Rules Committee: Symposium On Rule 502: Reinvigorating Rule 502*, 81 Fordham L. Rev. 1533, 1585 (2013) (noting that CIDs may result in ''millions of pages of documents [being] turned over before any claim is filed.'').

[24] *See, e.g.*, Conn. Gen. Stat. § 42-110d (''The Commissioner [of Consumer Protection or his authorized representative] can also issue civil investigative demands (''CIDs'') to: any person the Commissioner suspects of using, having used or about to use an act or practice that violates CUTPA . . . .''); Va. Code § 59.1-201.1 (attorney general empowered to issue CIDs on ''reasonable suspicion'' of a violation of the Virginia Consumer Protection Act).

[25] Conners, *supra* note 39, at 57.

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cause a company cannot force the attorneys general to consolidate their actions into a single forum. Instead, each attorney general is entitled to file suit in his or her home forum, thus forcing a company to defend multiple actions in many different jurisdictions at the same time.[26]

Another way that states have dealt with resource constraints is by outsourcing legal work to private firms willing to work for a contingency fee. While these arrangements do not extend to criminal prosecutions, they are increasingly a feature of state civil enforcement efforts.[27] Because these private firms are driven solely by their own economic interests, they may be more aggressive in pursuing actions of questionable validity.

D. Ability to Pursue 'Fraud' Claims with Relaxed Elements

When private plaintiffs pursue fraud-based claims against a company, they typically have to prove the element of "reliance."[28] Government enforcers usually are not so constrained. In a federal mail or wire fraud prosecution, for example, the DOJ does not have to prove that anybody relied upon the company's alleged misrepresentations. Instead, the DOJ needs to prove only that the company's misrepresentations were "capable" of influencing the persons to whom those misrepresentations were directed, a standard that is relatively easy to meet. Similarly, the majority of state consumer fraud statutes do not require the attorney general to prove the element of reliance.[29] In fact, the vast majority of state schemes even relieve the attorney general of the requirement to prove the company's knowledge of or intent to engage in consumer fraud or unfair business practices.[30]

V. Successfully Navigating a Government Enforcement Action

Government enforcement actions call for defense strategies that are distinctly different from those used to fend off private plaintiff suits. Thus, companies operating in industries, such as consumer products, that government enforcers are now increasingly targeting need to make sure that they understand and are prepared to rapidly implement the strategies that are specially tailored to successfully navigating government enforcement actions.

A. Remedial Measures

Remedial measures are not particularly relevant in private civil litigation: A plaintiff is generally prohibited from using subsequent remedial measures to prove liability, and subsequent remedial measures are not a defense to legal liability. Moreover, it would be highly unusual for a private plaintiff, particularly a plaintiff class, to drop a lawsuit or "go easy" on a company simply because the company has undertaken impressive remedial measures.

The same is not true with respect to a government enforcement action. A company's remedial measures are one of the first things that a government enforcer, particularly the DOJ, will look at in deciding whether to offer the company a favorable resolution or give the company a complete pass. The best scenario is for a company to work with its outside counsel to "get out ahead" of a government enforcement action by proactively identifying and remediating potential problems, including by terminating culpable employees and improving training and compliance procedures.[31] But even remedial measures taken after the company receives a subpoena or civil investigative demand can pay dividends.

B. Cooperation

When a company is served with a private civil lawsuit, "cooperating" is likely the last thing on the company's mind. When a company is facing a potential government enforcement action, however, cooperating might be one of the company's top considerations. The DOJ's internal policies formally recognize the concept of cooperation credit, and most state attorneys general at least informally recognize that a company's cooperation will make a favorable resolution more likely. A company deciding whether to cooperate, however, will inevitably face some hard calls, such as whether to provide the government with access to the company's attorney-client privileged documents and whether to assist in the prosecution of individual employees.[32] Outside counsel with deep experience defending companies against government enforcement actions can help with these critical decisions, including developing ways to disclose privileged documents on a selective basis without a general privilege waiver. Outside counsel with deep experience in conducting internal investigations will also have enhanced credibility with the DOJ when it comes time to disclose to the DOJ the findings of the company's internal fact-finding process, which the DOJ has now made a prerequisite to a company's receipt of any "cooperation credit."

C. Available Settlement Options

Private lawsuits are typically settled in a single way: money in exchange for voluntary dismissal of the lawsuit. Settling a government enforcement action is usually far more complex, because of the range of potential settlement options. For example, the government may want the company to admit to certain factual allegations, while the company wants a "no admissions" settlement. The government may want the company to plead guilty to a criminal offense, whereas the company might offer to enter into a deferred prosecution or non-

[26] *Id.*

[27] U.S. Chamber Institute for Legal Reform, *Privatizing Public Enforcement*, at 3-4 (September 2013), *available at* http://www.instituteforlegalreform.com/uploads/sites/1/PublicInterestPrivateProfit_FINAL.pdf (tracing the trend to asbestos litigation in the 1980s, noting its use during the tobacco litigation of the 1990s and expansion into a widespread tool in mass-tort cases in a variety of industries).

[28] Howard Roin & Christopher Monsour, *Economic Torts: A View from Experience*, 48 Ariz. L. Rev. 973, 977 (2006).

[29] *Id.*

[30] Carolyn L. Carter, *Consumer Protection in the States: A 50-State Report on Unfair and Deceptive Acts and Practices Statutes*, 17 (February 2009), *available at* https://www.nclc.org/images/pdf/udap/report_50_states.pdf (only five state statutes retain an intent or knowledge requirement).

[31] Miriam Hechler Baer, *Corporate Policing and Corporate Governance: What Can We Learn from Hewlett-Packard's Pretexting Scandal?* 77 U. Cin. L. Rev. 523, 543 (2008).

[32] *Should You Waive Privilege in Government Investigations*, Law360 (May 11, 2015), http://www.law360.com/articles/651446/should-you-waive-privilege-in-government-investigations.

prosecution agreement.[33] Where a guilty plea could amount to a corporate death penalty, the company may offer to have one of its less important subsidiaries, rather than the corporate parent, take the plea. With respect to a civil fraud settlement, the government and the company may agree on a dollar figure but disagree about the scope of the ''covered conduct'' included in the settlement's release of claims. The company and the government may also disagree about whether an onerous ''corporate integrity agreement'' or independent monitor should be required as part of the settlement.

Outside counsel with experience resolving government enforcement actions will know how to push for and obtain the resolution that exposes the company to the fewest collateral consequences and reduces the risk of parasitic lawsuits.

[33] Christopher A. Wray & Robert K. Hur, *Corporate Criminal Prosecution in A Post-Enron World: The Thompson Memo in Theory and Practice*, 43 Am. Crim. L. Rev. 1095, 1103-04 (2006).

D. Coordinating Settlements

Where a company is dealing with a multi-state investigation or an investigation involving both federal and state actors, it is critical for a company to resolve those actions in a coordinated manner. Reaching a favorable settlement with Oregon, for example, does a company little good if similar actions being pursued by 49 other states remain unsettled. Experienced counsel will know how to get multiple players to the table to execute a coordinated ''global'' settlement, rather than try to execute individual settlements on a piecemeal basis.

VI. Conclusion

Government enforcers are likely to continue to focus on the consumer products area, and companies should expect that the DOJ and state attorneys general will stay aggressive and creative in their investigatory tactics and charging decisions. Companies can successfully navigate government enforcement actions, and their chances of doing so will be enhanced if they and their outside counsel employ time-tested strategies that are tailored to corporate government enforcement actions.

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