

Internal Investigations: Best Practices and Strategies for Success

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Based on internal activity alerts, the IT security group at the well-known Pharma company, FeelBetter, determines that John Hack, a mid-level sales manager, has been downloading massive amounts of electronic data containing financial and proprietary information to flash drives and his personal email account in contravention of company policy.

- The view from Internal Audit
- Structuring a review team and deciding reporting lines
- Working with law enforcement

When confronted by Human Resources and Legal, Mr. Hack admits to downloading the files, but claims he was doing so because the documents shows the company is engaged in a massive off label marketing scheme, as well as accounting fraud. Mr. Hack says he has been providing documents to his personal attorney and the Department of Justice, and that he's blowing the whistle on FeelBetter's crimes.

FeelBetter's Form 10-Q is scheduled to be filed in 30 days.

- Responding to purported whistleblowers
- The benefits of a written response plan
- Audit Committee and external auditor expectations
- Ethical implications of whistleblowers
- Whether and when to engage with regulators

After being informed of the issue, FeelBetter's General Counsel decides the company needs to conduct an internal investigation into the allegations.

- Deciding when to hire outside counsel
- Internal and external reporting issues
- Getting an internal review up and running
- Ethical issues raised by internal reviews
- The external auditor's perspective

Three months into the internal review, and one month before FeelBetter's annual 10-K is scheduled to be filed, documents are identified that suggest the company's CEO may have been involved in the alleged misconduct and that the potential issues extend to the company's operations in Brazil, China and Spain.

- What to do when senior management is involved
- The ethics of investigating the conduct of managers and professional friends
- Special considerations associated with conducting a cross-border investigation
- Ethics rules outside of the United States

While gearing up to start the overseas portion of the review, FeelBetter receives subpoenas from the SEC and DOJ requesting documents and other information from the company's U.S. and non-U.S. operations.

- First principles of interacting with U.S. regulators
- Responding to regulatory requests for information and documents
- Getting the most of your forensic consultant

Outside counsel and Internal Audit inform
FeelBetter's General Counsel the internal
investigation is substantially complete.

- Potential deliverables to management, the Audit Committee and the external auditors
- Drafting a written report
- Reporting findings of incompetence, negligence, misconduct, etc.

QUESTIONS?



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Jack DiCanio is the head of litigation in Skadden's Palo Alto office. Mr. DiCanio's distinguished career, which began in the United States Attorney's Office for the Central District of California, encompasses a diverse trial practice focusing on complex, high-stakes federal and state court litigation, as well as white collar defense. Mr. DiCanio is annually ranked in *Chambers USA's* prestigious Band 1, along with Skadden's West Coast Litigation practice. He also is recognized in other publications for his successes on behalf of his clients, including by *The Best Lawyers in America*. Some of Mr. DiCanio's matters include representing:

- The National Football League in connection with a class action filed by retired players alleging that the players suffer from injuries and addictions resulting from the alleged improper administration of prescription drugs and painkillers during their playing days.
- FedEx in connection with a federal criminal indictment alleging that the company conspired with certain online pharmacies to unlawfully distribute controlled substances and misbranded drugs.
- KPMG in numerous matters, including in connection with civil litigation filed against the firm seeking \$100 million in damages relating to tax advice provided by the firm. Mr. DiCanio achieved victories in both state and federal court actions.
- William J. Ruehle, the former CFO of Broadcom, in the largest stock options backdating case brought by the federal government. After an eight-week trial, the U.S. District Court for the Central District of California dismissed all charges, including the entire SEC complaint against all the defendants, including Mr. Ruehle.
- Oaks Christian School in a successful arbitration against the California Interscholastic Federation-Southern Section (CIF-SS), arising from CIF-SS's decision to move Oaks Christian and three other private, religious schools into a new athletic area, which would have had a detrimental impact on the school and its students. The arbitrator's decision returned all of the schools to their original athletic areas.

Mr. DiCanio's other clients have included: American Apparel; the Cities of Burbank and Glendale in California; Farmers Insurance Group; Highland Fairview Properties; Intuitive Surgical, Inc.; Occidental Petroleum; Questcor Pharmaceuticals, Inc.; Sony Computer Entertainment; Tessera Technologies, Inc.; Visa International; and Zurich Insurance Group. Mr. DiCanio also has represented the boards of directors and board committees of Intel Corporation, Hewlett-Packard Company, KLA-Tencor Corporate and PG&E Corporation.

Mr. DiCanio served as an assistant United States attorney for the Central District of California. As the deputy chief of the General Crimes Section, he was responsible for training and supervising assistant United States attorneys in federal criminal practice and trial advocacy. During his tenure with the Department of Justice, Mr. DiCanio received the Attorney General's Distinguished Service Award (the second-highest award within the Department of Justice).