

## Cashing In on Corruption

By Steven Pearlstein

Friday, April 25, 2008; D01

Roger Witten, a partner at Wilmer Hale, recalls attending legal conferences a decade ago on corporate bribery, his specialty, that had maybe 60 people in the audience, and half were speakers from the various sessions.

But last fall, when he got up to speak at the big annual confab here sponsored by the American Conference Institute, Witten said more than 400 people had packed into the hotel ballroom, including scores of general counsels and chief compliance officers seeking the latest advice on how to keep their companies out of trouble and swarms of high-priced lawyers only too eager to help them.

For most of the 30 years since the passage of the Foreign Corrupt Practices Act, advising companies on compliance and, on rare occasions, defending them against prosecution, has been a niche business in most corporate law firms, part-time work for a partner or two.

But these days, FCPA business is booming, a welcome growth area for Washington law offices just as work on mergers and securities offerings has begun to wane. You can't go into a business class lounge at the international terminals at Dulles Airport without running into at least one lawyer headed to Europe or Asia to conduct an internal investigation of a possible bribe or kickback for a corporate audit committee. And law firm Web sites now boast entire practice areas devoted to advising multinational companies on how to design and implement compliance systems meant to deter and ferret out corrupt practices.

And it's not just the lawyers. Michael Hershman, president of the Fairfax Group in McLean, said that in the past two years, FCPA work has been the big growth area for his investigative firm and now accounts for 60 percent of its revenue.

"It is a significant part of our business, and it is becoming even more significant," agreed Dan Karson, executive managing director of Kroll, which bills itself as the world's leading risk consultancy. "It's still very much the flavor of the month."

Also sharing in the bonanza: accounting firms, forensic computer specialists and a growing army of compliance consultants.

As it happened, Hershman was calling me yesterday from Munich, where he's participating in the mother of all corruption investigations -- the internal probe by Siemens's supervisory board of widespread ethical misconduct. The probe, spearheaded by the New York law firm Debevoise & Plimpton, has already led to the dismissal of the German conglomerate's chief executive and, just Wednesday, the resignation of the head of its medical equipment unit. More than \$2 billion in suspicious transactions in more than 60 countries have been identified, and criminal investigations are ongoing in at least 10 countries, including the United States.

The costs to the company are staggering. Siemens has already been fined nearly \$300 million by German courts for bribes paid in Nigeria, Russia and Libya, and that figure is almost sure to reach into the billions. And as of September, the company reported that it had spent more than \$500 million for outside advisers working on the matter. According to legal journals, Debevoise alone has billed Siemens more than \$100 million.

While no other case comes close to Siemens's in scale, these internal probes don't come cheap, ranging from \$1 million to \$20 million. The Justice Department and the Securities and Exchange Commission, the agencies charged with enforcing the anti-bribery law, have estimated that there are as many as 70 investigations ongoing. That doesn't include the dozens of internal company probes that haven't been reported to the government, and may never be.

Why is all this happening? Several reasons.

The most obvious, of course, is that business has become more global, with many more companies setting up shop in countries where bribery is culturally accepted, if not perfectly legal.

But equally important has been a step-up in enforcement -- 38 cases brought last year, compared with fewer than 10 in most previous years. At the Justice Department, a team that used to have the equivalent of two people assigned to FCPA now has as many as 12 prosecutors, assisted by a new team of FBI agents dedicated to these cases. Both agencies are receiving lots of valuable help from foreign governments since the signing of a global convention that for the first time made corporate bribery illegal in other countries and gave U.S. investigators access to secret bank accounts and foreign tax records.

But even those changes would not have generated the increase in enforcement actions if it hadn't been for the rush of confessions from the companies themselves. Consistent with its general approach to corporate crime, the Bush administration had made clear it would be willing to accept significantly reduced penalties if companies voluntarily disclosed violations rather than covering them up.

Voluntary disclosure also got a push from the post-Enron Sarbanes-Oxley Act, which, among other things, required corporate directors to pay particular attention to "internal controls" -- a responsibility that includes not only accounting standards but ethical ones as well. If for no other reason than to protect themselves from legal liability and attacks on their reputations, directors now are quick to order up an outside investigation whenever even the hint of bribery is alleged by customers, employees or competitors.

And don't think law firms aren't playing off those fears by aggressively marketing their services as investigators, risk mitigators and compliance counselors.

The result is sudden flood of labor-intensive legal work for both partners and associates, particularly in the local offices of big international firms. One longtime practitioner estimates that the FCPA segment has grown tenfold in the past decade, with lots of litigators and white-collar defense attorneys now jumping into the act. And while it is likely to peak in the next year or two, FPCA work, along with the coming flood of subprime mortgage litigation, should be enough to keep Washington's legal industry humming, even as the rest of the economy slips slowly into recession.

Steven Pearlstein can be reached at [pearlsteins@washpost.com](mailto:pearlsteins@washpost.com).

[http://www.washingtonpost.com/wp-dyn/content/article/2008/04/24/AR2008042403461\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2008/04/24/AR2008042403461_pf.html)