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INSIDE THIS PUBLICATION:

Insights on whistleblowers & internal reporting

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Inside this e-Book

Avenatti arrest: Don't confuse whistleblowing with extortion

A high-profile arrest of Michael Avenatti for an extortion scheme against Nike raises difficult questions of corporate responsibility regarding whistleblower initiatives. **Joe Mont** reports.

For several years, thanks in large part to protections and benefits created by the Dodd-Frank Act, aggrieved employees at public companies have had a voice.

They can even monetarily benefit by escalating their regulatory and ethical concerns beyond HQ walls. The Securities and Exchange Commission is authorized by Congress to provide cash awards to eligible individuals who come forward with high-quality original information that leads

to an enforcement action in which more than $1,000,000 in sanctions is ordered. The range for awards is between 10 percent and 30 percent of the money collected.

It may not be a perfect system, but the bounty program and strikes against whistleblower retaliation (and "pretaliation") have been wildly successful. Now, however, whistleblowers have suffered a grievous injury.

Michael Avenatti, the attorney who represented adult film star Stormy Daniels in her battle against a President Trump non-disclosure agreement and alleged "hush money," was arrested on Monday, March 25th. The Department of Justice's criminal complaint alleged he attempted to extort more than $20 million from Nike. (It was one of two complaints filed against Avenatti. In a second set of charges, the DOJ alleged that Avenatti embezzled a client's money in order to pay his own expenses and debts—as well as those of his coffee business and law firm—and also defrauded a bank by using phony tax returns to obtain millions of dollars in loans.)

Here is where things get interesting on the whistleblower front. Earlier in the day, Avenatti tweeted: "[Tomorrow] at 11 am ET, we will be holding a press conference to disclose a major high school/college basketball scandal perpetrated by @Nike that we have uncovered. This criminal conduct reaches the highest levels of Nike and involves some of the biggest names in college basketball."

Avenatti tweet

That press conference is very unlikely to happen now, after what one respondent called "the greatest self-own in history." Avenatti, as detailed in charges brought by U.S. Federal Court in the Southern District of New York, allegedly threatened to hold the press conference, amid the NCAA basketball tournament and one day before Nike's quarterly earnings announcement, to expose allegations against the athletic apparel giant unless it paid his client, an Amateur Athletic Union basketball coach whose contract with Nike was recently not renewed, $1.5 million and agreed to hire Avenatti and another lawyer for as much as $25 million to conduct an "internal investigation" into the accusations.

As an alternative, Nike was told it could just make a one-time payment of $22.5 million to make Avenatti and his client's allegations go away. If Nike hired another firm to conduct an internal investigation into the allegations, Avenatti allegedly demanded that it would still be required to pay him at least twice the fees of that other firm.

Avenatti claimed to have evidence that one or more Nike employees had authorized and funded payments to the families of top high school basketball players and/or their families and attempted to conceal those payments, similar to conduct involving a rival company that had recently been the subject of a criminal prosecution. He identified three former high school players in particular and indicated his client was aware of payments to others as well.

"The defendant, and others known and unknown, unlawfully, willfully, and knowingly, and with intent to extort from a corporation any money and other thing of value, would and did transmit in interstate commerce a communication containing a threat to injure the reputation of a corporation," U.S. attorneys wrote.

The bulk of the indictment comes from investigative work by FBI Special Agent Christopher Harper and recorded phone calls he facilitated. He claims the press conference announced by Avenatti was used as a threat against Nike and a deadline for paying to cease the allegations. The press conference was timed to coincide with Nike's earnings call, "thus maximizing the potential financial and reputational damage his press conference could cause."

In one of the recorded phone calls with Nike, Avenatti doubled down on his threats to a Nike attorney: "I'll go take ten billion dollars off your client's market cap. … I'm not f***ing around with this, and I'm not continuing to play games. … You guys know enough now to know you've got a serious problem.

And it's worth more in exposure to me to just blow the lid on this thing. A few million dollars doesn't move the needle for me. I'm just being really frank with you."

Avenatti made it clear Nike would have to accede to his demands. "If this is not papered on Monday, we are done. I don't want to hear about somebody on a bike trip. I don't want to hear that somebody's grandmother passed away, or the dog ate my homework. I don't want to hear that none of it is going to go anywhere unless somebody is killed in a plane crash."

Whistleblower repercussions

The coach whose allegations against Nike form the bulk of Avenatti's alleged scheme was not an employee in the traditional sense. His relationship puts him more clearly in the bucket of third-party, or vendor, risk. He was, in essence, a paid consultant.

Nevertheless, his purported exposé fits squarely within the world of whistleblowers and perfectly illustrates concerns companies have always had about regulator-sanctioned bounty programs. That is what makes the events so troubling.

Before, during, and after the Dodd-Frank Act, critics have feared the following: that greed would fuel whistleblowers; that complaints would bypass internal reporting structures; and that bad actors could double dip by committing malfeasance, then profit by reporting the very same illegalities they were involved with. We do not yet know whether the still-unnamed coach brought any of his concerns to Nike, but if his reports ring true, it is very likely that he fits squarely in the third category of concern we detailed. At the very least, lacking more details from prosecutors, we have to at least track smoke to fire by noting his allegations only materialized after Nike stopped paying him.

As for greed, that seems undeniably a motivation, more so than any quest for justice or corporate responsibility. While Avenatti may be the brains behind the alleged extortion scheme, there is no indication that his client did anything more but go along for the ride.

It needs to be stressed that this plot is nowhere near normal in the whistleblowing world. The coach, while not a traditional employee, was in the same sort of position that many employees find themselves amid widespread and poorly concealed corporate malfeasance. The formula is usually quite simple: a company does something illicit, and an employee is aware and tries to minimize the damage. At the heart of the matter, most whistleblowers are not trying to bring a company down or make themselves wealthy; they are trying to save the firm from itself. They are trying to preserve an honest, fair, and productive working environment.

A lot of progress has been made regarding corporate ethics in recent years. We can only hope this alleged extortion scheme doesn't undermine what has been a very effective whistleblower process, although one that certainly remains a work in progress and fuel for debates.

Just do it (the right thing)

One bright spot in all this is that Nike, based on what we currently know, did the right thing, regardless of the merit of the allegations. Misdeeds will come to light if they do exist. For now, however, the company has apparently realized that the old adage, "it is not the crime, it's the coverup," rings true. Reporting the extortion attempt, rather than giving in to the relatively painless process of paying off the perpetrators, was the right thing to do. Any company in a similar situation—be it ransomware demands, IP theft, or employing a disgruntled accomplice—should follow the same strategy, no matter how painful it might be in the short term.

Another lesson reiterated by the scandal is that internal investigations must always be above board, fair, and objective. There is no place for hush money, bribes, or "putting a finger on the scale" when it comes to this important process. Nothing will empower critics and incur the wrath of regulators as fast as suspicions that this crucial compliance protocol was itself a scam. ■

Managing employee reports: Best practices

A recent NAVEX Global report looks at how the performance of ethics and CCOs' hotline and incident management systems stack up against their peers. **Jaclyn Jaeger** has more.

NAVEX Global's *2019 Ethics & Compliance Hotline Benchmark Report* is out, providing ethics and compliance officers a comprehensive look at how the performance of their hotline and incident management systems stack up against their peers.

The report pulled from 2,738 companies who received 10 or more reports during 2018 and was based on an overall analysis that, for the first time, exceeded over one million individual reports in a single year.

Among the key findings: The tracking of all report intake methods matters significantly. Companies that track only reports made through their hotline and the web showed a median of 1.1 reports per 100 employees, while companies that tracked all intake methods—hotline, Web, open-door complaints, e-mails—are managing a record 2.1 reports per 100 employees. The message to ethics and compliance officers is clear: Companies that do not gather reports from all intake methods miss a large percentage of risks and concerns employees could be bringing to their attention.

To get a complete picture of your risks, it's important to track all reports in a centralized incident-management system, said Scott Nelson, a partner at Seyfarth Shaw. Doing so will better help uncover weak points—problem regions, problem spots, problem managers, and what training is needed—Nelson said in a Webinar discussing the report's findings.

Even as tech-savvy generations enter the workforce, they still opt for human interaction when it comes to reporting concerns, said Carrie Penman, chief compliance officer of advisory services for NAVEX Global. "It's an important indication that there should be multiple ways for employees to report so that they can do it in a way they're most comfortable," she said.

On a related note, Penman and Nelson cautioned against giving employees the ability to bypass management and have a direct line of reporting to the board to report concerns. "First and foremost, it's much better to have a strong and formal escalation policy in place," Penman said. From there you can decide, as part of that escalation policy, what issues should be reported to the board.

To give employees a line of reporting directly to the board indicates "a lack of trust" in the management team or compliance officer, Penman added. If that's the case, they should look at the team they have in place, rather than put in systems that bypass management, she said.

Another notable finding to come from the report: Inquiries dropped to an all-time low, making up 15 percent of all reports. Inquiries differ from allegations in that allegations are claims or concerns that may require further investigation, whereas employees may make an inquiry if they simply need advice or assistance, not just to report an issue.

"Both types of reports provide insight into your program," NAVEX Global noted in the report. "Tracking these questions closely, regardless of intake channel, can provide valuable insight into areas where more training may be needed, policies should be updated, or procedures could be reviewed."

CCOs should encourage employees to see the hotline as more than just a channel for reporting allegations. That, however, requires designating and training someone to understand the difference between inquiries and allegations, "so that complaints versus questions can be identified and things can be addressed in the proper way," Nelson said.

During NAVEX Global's Webinar, Penman and Nel-

son cited a recent study by George Washington University, "Evidence on the Use and Efficacy of Internal Whistleblowing Systems," which uncovered a strong correlation between increased reporting volumes and returns on investment, including an increased return on assets and fewer instances of litigation. "That's been a missing link for companies," Nelson said.

CCOs need ammunition to take to senior management to get the necessary budgets. "That study certainly will be helpful in that regard," Nelson said.

Just as important as it is for employees to come forward with questions or concerns, it's equally important that they follow up on anonymous reports, which is when the reporter returns to a submitted case for follow-up or to provide additional information, for example. The median level of reports for which this occurred fell from 32 percent in 2017 to 20 percent in 2018, according to NAVEX Global.

"I can't tell you how many companies I've represented where they've had a complaint but it's incomplete, and they need to follow up, but they can't get any more information to do a proper investigation because they have no way of getting in touch with the person," Nelson said. "So, having the ability to follow up is really important."

On a practical level, this finding highlights a key opportunity for ethics and compliance officers "to assess their processes for educating employees on the capabilities of their reporting programs, especially follow-up options for reporters that don't compromise their anonymity," NAVEX Global said in the report.

The categories of reports remain consistent with previous years' findings, with the highest numbers concerning matters of "HR, diversity, and workplace respect," making up 70 percent of all reports. This category entails employee relations or misconduct, including discrimination, harassment, and retaliation. "That means we need to continue, if we are in compliance, to have a really strong partnership with our HR teams to best manage these reports," Penman said.

In the wake of the #MeToo Movement, which started in late 2017, NAVEX Global this year separately analyzed the median volume of harassment and discrimination reports for 2016, 2017, and 2018. What it found was that between 2016 and 2018, reports of harassment increased by a substantial 18 percent, with 41 percent of these reports substantiated. From 2017 and 2018 alone, there was an 8.5 percent increase in these reports.

These numbers are consistent with data published in 2018 by the Equal Employment Opportunity Commission, showing that charges filed with the EEOC alleging sexual harassment in fiscal year 2018 increased more than 12 percent from the previous year. "These findings reflect strong growth in the number of employees willing to speak out against harassment," Penman said. "And they should serve as notice to employers that #MeToo is a fundamental shift in employees' willingness to tolerate harassment."

The report says 22 percent of retaliation reports made internally are substantiated, which is low compared to the number of retaliation reports made directly to regulatory agencies. While claims of retaliation can be difficult to prove, what ethics and compliance officers should do is define retaliation and train employees on what it is, what it looks like, and what to do about it if they see it or experience it, NAVEX said.

Following HR, diversity, and workplace respect matters, the category with the second highest number of reports concerned "business integrity" issues, making up a median of 16 percent of reports. Other reports made, though to a much lesser extent, were environmental, health, and safety (6 percent); misuse/misappropriation of corporate assets (5 percent); and accounting/auditing/financial reporting (2 percent).

Because HR, diversity, and workplace respect matters make up most reports, "they are the biggest driver of change in the case closure time," NAVEX Global stated. The worst thing a company can do is allow reports to fester too long, and yet many reports being made internally are not being addressed fast enough. Currently, the median case closure time for all HR, diversity, and workplace respect reports is 40 days, which is about on par with the median 44 days case closure time in 2017, and 42 days in 2016.

"Especially in a #MeToo era, this is way too long

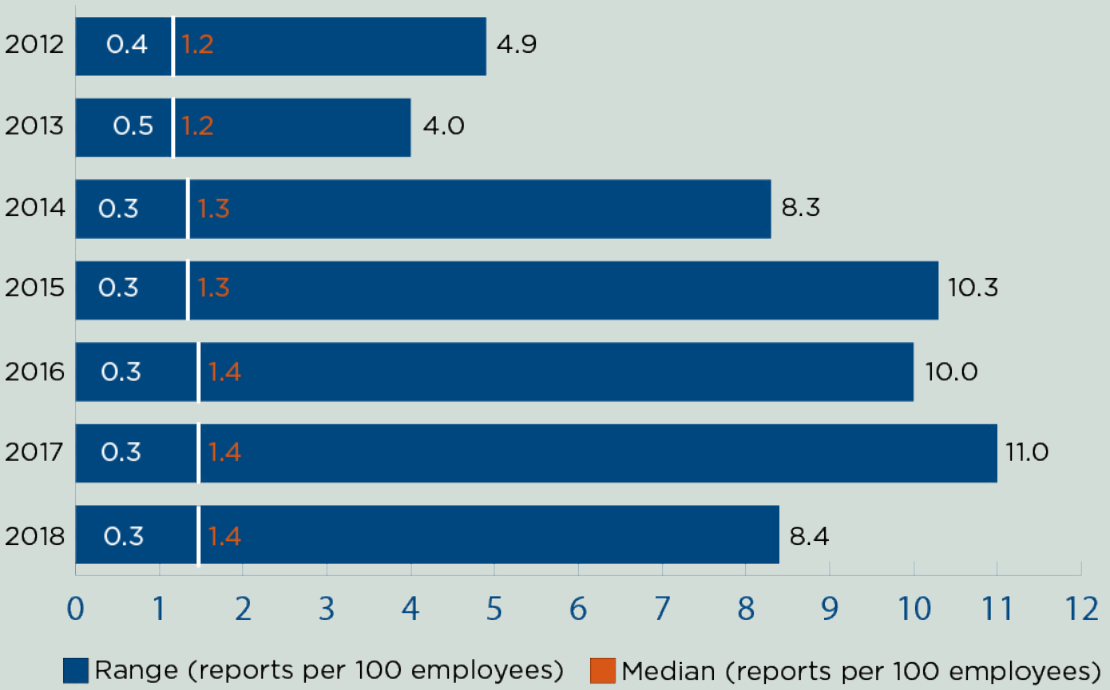
for complaints," Nelson said. HR, diversity, and workplace respect matters need to be addressed and remedied, and thus companies should strive to close those generally within two weeks, he said. "You don't want sit on this information and wait 40 days."

Some are even hiring investigators, serving under the compliance function or HR. "I think that's a great idea where you have people trained in investigations to help out with this," he said.

The broader message here for the ethics and compliance profession is that employee reports and inquiries that are tracked, documented, and followed up on help companies to better prevent, or more quickly detect and resolve, employee matters before they tarnish the company's reputation and become a costly liability. ■

HOW DOES YOUR REPORT VOLUME COMPARE TO OTHERS?

Utilizing the "Report Volume per 100 Employees" benchmark enables organizations of all sizes to compare their total number of unique contacts from all reporting channels—including Web forms, hotline, open door, mobile, e-mail, mail, and more. To calculate, take the total number of unique contacts (incident reports, allegations, and inquiries) from all reporting channels received during the period, divide that number by the number of employees in your organization, and multiply it by 100.



Source: NAVEX Global

Strength in Numbers

The ROI of Compliance Program Hotline Reporting

Corporate ethics and compliance officers have long sought to quantify the business value of internal hotline reporting systems. Of particular interest is a means to accurately calculate the financial return these systems deliver to the bottom line.

Historically, compliance professionals have believed in a link between hotline usage and better business performance: that a strong speak-up culture not only helps the business achieve regulatory compliance; it also provides a strategic competitive advantage in the marketplace. That belief is supported primarily by anecdotal evidence and intuition from years of practice. Compliance officers had little empirical data directly associating internal reporting with business performance. Until now.

A groundbreaking new study out of George Washington University, *Evidence on the Use and Efficacy of Internal Whistleblowing Systems*[1], examines the relationship between internal reporting system usage (whistleblower hotlines) and business performance. To conduct this study, the researchers requested, and were granted anonymized access to the industry's largest internal whistleblowing database. This data is maintained and administered by NAVEX Global, the market-leading provider of whistleblower hotline and incident management systems. Kyle Welch, lead researcher, noted, "The NAVEX Global data set was uniquely valuable to this work as it is the only one of its size, the largest by far. Additionally the records go back more than a decade, which enabled us to see changes over time."

[1] Stubben, Stephen and Welch, Kyle T., *Evidence on the Use and Efficacy of Internal Whistleblowing Systems* (October 26, 2018). Available at SSRN: http://ssrn.com/abstract=3273589

Executive Summary

The study reveals a clear correlation between increased use of internal hotline reporting systems and improved business performance across several important dimensions. This statistical validation is welcome news for compliance professionals, executive leadership, and others concerned with maintaining a healthy, productive workplace culture.

Several of the study's findings are counter-intuitive. For example, prior to this research, one might assume that more internal reporting suggests a troubled, possibly toxic corporate culture. In fact, the opposite is true: more internal reporting correlates to better business performance.

Further, the study also finds that those benefits increase with usage. That is, the more an organization uses its hotline, the more certain business results improve. Specifically, increased hotline use is correlated with:

- **Greater profitability and productivity** as measured by return on assets (ROA). Higher levels of hotline utilization is associated with a small but meaningful improvement in ROA: up to a 2.8 percent "bump" versus comparable firms with lower utilization.
- **Fewer material lawsuits.** Companies with higher levels of reporting were subject to 6.9 percent fewer pending material lawsuits in the subsequent three years than those with lower levels of activity.

KEY DATA #1

ROA Improvement: 2.8%

Greater hotline utilization is associated with improvement in ROA: Up to a 2.8 percent "bump" versus comparable firms with lower utilization.

KEY FINDINGS

There is a correlation between increased use of internal reporting systems and improved business performance.

- **Lower litigation costs.** When material lawsuits were brought against companies, those with higher hotline usage faced 20.4 percent less in total settlement amounts.
- **Fewer external whistleblower reports.** Companies with more internal reporting activity experienced fewer external reports to the Occupational Health & Safety Administration (which receives whistleblower reports under Section 806 of the Sarbanes-Oxley Act) in subsequent years.

The research also found that lower levels of hotline activity were associated with suspect corporate governance and financial reporting.

Specifically, lower hotline use is correlated with:

- **Weaker governance practices.** Companies with lower-level hotline activity rated poorly on the Bebchuk Entrenchment Index[2]. This index measures governance practices such as staggered boards, limited shareholder rights, and golden parachute payments for senior executives; all of which correlate to lower firm valuations.
- **Increased potential for earnings management.** Firms with lower-level hotline activity also tend to claim "discretionary accruals" (an indicator of earnings management) more often. Further, companies with more discretionary accruals also tended to see more external whistleblower reports in subsequent years.

[2] https://today.law.harvard.edu/more-than-300-research-papers-have-applied-the-entrenchment-index-of-bebchuk-cohen-and-ferrell/

KEY FINDINGS

The data shows that hotline reporting activity and return on assets are always correlated positively: The more activity, the greater the ROA.

This first-of-its-kind-report sheds new light on how a robust internal reporting system helps management improve both workplace culture and business results simultaneously.

Implications: What's next for compliance officers

Foremost, this research dispels the notion that more internal complaints are inherently bad. They are not. The data shows that higher internal whistleblower activity ***never*** correlates with negative business outcomes.

The data shows that hotline activity does more than predict future concerns about potential litigation or regulatory investigations. ***This metric tells the company how eager its employees are to raise and discuss problems.*** It is a barometer of their engagement in the long-term success of the company, both financially and strategically.

On those grounds alone, boards should be demanding this data – and compliance officers should be glad to provide it; it's a crucial metric of business performance across several definitions of the term: higher return on assets, lower levels of litigation, smaller legal settlements. Once upon a time, boards and senior executives might have assumed hotline activity above some arbitrary threshold was bad. This data shows the opposite. That is, more hotline reporting activity always correlates to better business performance among the criteria measured in this study.

The research also has implications for a company's efforts to improve its corporate culture; to achieve a true "culture of compliance." If hotline activity measures employees' willingness to raise and discuss problems, then tracking that reporting activity as a metric itself – month after month, quarter after quarter – reveals how much more or less willing employees are to raise and discuss problems over time. It measures how the organization's sensitivity to ethical conduct might be changing.

A healthy, ethical culture pays off in many ways. This research offers compliance professionals a new way to measure program effectiveness, and shines a new light on the implications of hotline report statistics. Compliance officers can also show their executive leadership and the board that hotline reporting is far more valuable than previously considered, regardless of regulatory requirements. And that increased activity ***has value beyond the reports themselves***.

KEY DATA #2

Fewer material lawsuits: 6.9% 

Companies with higher hotline usage experience 6.9% fewer material lawsuits over a three-year period relative to similar companies with lower hotline usage.

Fundamentally, compliance officers now have the first empirical evidence of something that has always felt right: that investing in compliance brings a strategic advantage to the organization. It helps companies to identify and resolve problems more quickly, which translates into fewer external complaints to regulators, fewer lawsuits, and lower legal settlements.

Those are the advantages a company gains not just by talking about ethics and good conduct, but by investing in the policies, procedures, training, third-party due diligence, and other compliance program activities to generate more internal activity. Even if the Justice Department, the U.S. Sentencing Guidelines, and compliance program examinations all vanished tomorrow, the evidence now exists that companies should still embrace compliance programs and internal whistleblowing anyway, because they improve organizational excellence.

On a practical level, these findings can guide a compliance officer's thinking about how to build and operate a compliance function. The primary conclusion – that more internal reporting activity is better – becomes the fixed point on the horizon companies want to reach. This also suggests that hotline data should be treated as a key performance metric and regularly be reported to the board.

To generate and administer more reports, compliance programs must build a system to receive them via multiple channels (including, especially, employees bringing concerns directly to managers); and a system to shepherd those reports from filing to investigation to resolution; and then consolidate that data from all systems into one larger picture. That's the only way to get a complete analysis of activity that gives useful information to senior management.

Compliance professionals should continue from there, exploring how this research has implications for program management, policy, training, data collection and more. The key point: compliance officers no longer need to wonder how much activity is "enough." More internal reporting activity is always better.

KEY DATA #3

Lower settlement costs: 20.4%

Companies with higher hotline usage see 20.4% smaller litigation settlement costs over a three-year period relative to similar companies with lower hotline usage.

Guarding the gatekeepers

Gatekeepers who have firsthand knowledge of corporate wrongdoing should be entitled to the same legal protections afforded to any other whistleblower. **Jaclyn Jaeger** reports.

Compliance officers, general counsel, and other internal gatekeepers have reason to applaud a recent federal appeals court decision that upheld most of an $11 million federal jury award obtained by a whistleblower in a wrongful termination case. It's a shining example of doing the right thing in the face of adversity.

In *Wadler v. Bio-Rad Laboratories*, a civil complaint, Bio-Rad's longtime general counsel, Sanford Wadler, alleged he was fired for reporting numerous red flags internally to Bio-Rad's audit committee concerning questionable conduct in China that potentially violated the Foreign Corrupt Practices Act (FCPA). Six months prior to Wadler filing his complaint, Bio-Rad in November 2014 agreed to a $55 million settlement for making improper payments to foreign officials in Russia, Vietnam, and Thailand in violation of the FCPA. During the trial, Bio-Rad argued that Wadler was terminated, in part, for alleged poor work performance, leading up to the FCPA violations.

Prior to trial, Wadler—and, by extension, all internal gatekeepers—had scored a precedent-setting victory when U.S. Magistrate Judge Joseph Spero of the Northern District of California, who was overseeing the trial, ruled that whistleblower protections enshrined in the federal Sarbanes-Oxley Act (SOX), preempt state law regarding attorney-client privilege, effectively allowing Wadler to use privileged communications and confidential information that was "reasonably necessary" to establish his retaliation case.

Key evidence revealed that an unfavorable performance review of Wadler was created a month after his termination. In February 2017, following a three-week trial and just three hours of deliberation, Wadler was awarded $11 million in damages.

Despite Bio-Rad's arguments on appeal, the Ninth Circuit in its Feb. 26 ruling kept intact *most* of the jury's award—$5 million in punitive damages and $2.96 million in back pay. The court did, however, direct the lower court to reduce damages by nearly $3 million, citing last year's Supreme Court decision in the case *Digital Realty v. Somers*, which held that the anti-retaliation provision of the Dodd-Frank Act doesn't protect internal disclosures made by a whistleblower unless that individual also disclosed potential securities law violations to the Securities and Exchange Commission. Because Wadler did not do so, the double backpay authorized under Dodd-Frank will be reversed in Wadler's case.

One issue remains: The Ninth Circuit found that the district court judge erred when he instructed the jury that "rules or regulations of the SEC" include the statutory provisions of the FCPA's anti-bribery and books-and-records provisions, falling under Section 806 of the SOX. The court noted the FCPA is a statute.

Some in the legal profession may point to the loss of attorney-client privilege in this case as a negative—but if a company is acting unethically and illegally, it's only just that the truth be brought to light. General counsel, compliance officers, internal audit, and other gatekeepers who have first-hand knowledge of corporate wrongdoing should be entitled to the same legal protections afforded to any other whistleblower.

The idea of keeping key evidence of substantial wrongdoing—whatever that wrongdoing may entail—from seeing the light of day, effectively allowing senior executives to hide behind attorney-client privilege, is ludicrous. It's equally ludicrous that attorney-client privilege can shield employers from being called to account for retaliating against an internal whistleblower for ethically performing their duties in good faith.

Kudos here goes to Wadler and his counsel (formerly Kerr & Wagstaffe, and now Wagstaffe, von Loewenfeldt, Busch & Radwic) for scoring a symbolic victory for gatekeeper whistleblowers everywhere. ■

SEC awards $50M to two whistleblowers

The SEC awarded $50M to whistleblowers whose information helped bring a successful enforcement action. **Jaclyn Jaeger** has more.

The Securities and Exchange Commission on March 26 announced awards totaling $50 million to two whistleblowers whose high-quality information assisted the agency in bringing a successful enforcement action. One whistleblower received an award of $37 million and the other received an award of $13 million.

The $37 million award is the SEC's third-highest award to date after the $50 million award made in March 2018 to joint whistleblowers and a more than $39 million award announced in 2018.

Jordan Thomas, chair of the whistleblower representation practice of law firm Labaton Sucharow, served as counsel to the whistleblower who received the $13 million award. That whistleblower was a J.P. Morgan executive who reported a tip to the SEC that led to a massive enforcement action against J.P. Morgan Securities (JPMS) and JPMorgan Chase Bank (JPMCB) concerning securities violations for failing to disclose conflicts of interest to clients. The whistleblower cooperated in the agency's investigation. The case, in which JPMS and JPMCB agreed to pay $267 million to the SEC to settle the charges in December 2015, is one of the largest enforcement actions initiated by an SEC whistleblower since the SEC Whistleblower Program was enacted.

"Whistleblowers like those being awarded today may be the source of 'smoking gun' evidence and indispensable assistance that strengthens the agency's ability to protect investors and the capital markets," said Office of the Whistleblower Chief Jane Norberg.

The SEC has awarded near $376 million to 61 individuals since issuing its first award in 2012. All payments are made out of an investor protection fund established by Congress that is financed through monetary sanctions paid to the SEC by securities law violators. No money has been taken or withheld from harmed investors to pay whistleblower awards. Whistleblowers may be eligible for an award when they voluntarily provide the SEC with original, timely, and credible information that leads to a successful enforcement action. Whistleblower awards can range from 10 percent to 30 percent of the money collected when the monetary sanctions exceed $1 million.

The SEC protects the confidentiality of whistleblowers and does not disclose information that could reveal a whistleblower's identity as required by the Dodd-Frank Act. ■

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