



RISKY BUSINESS

Developing and Maintaining an
Effective Corporate Compliance
Strategy

*Presented to the Western Pennsylvania
Association of Corporate Counsel*

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FVL

FORENSIC VALUATION LITIGATION, LLC

AGENDA

- PERSPECTIVES ON RISK
- IMPACT OF CULTURE
 - TONE AT THE BOTTOM
- USING COSO FRAMEWORK TO APPLY COMPLIANCE STANDARDS
- TRENDS & SURVEY RESULTS
 - WHAT DO THEY MEAN FOR YOUR COMPANY?
- Q&A

IMPORTANCE OF CULTURE



CORRUPTION

I WANT EITHER LESS CORRUPTION OR MORE OPPORTUNITY TO PARTICIPATE IN IT.

PERSPECTIVES ON RISK

CORPORATE CRISES AND SHOCKING SURPRISES

- THEY HAPPEN TO THE BEST OF ORGANIZATIONS
 - STRATEGIC BLUNDERS
 - BAD ACQUISITIONS
 - PRODUCT AND SERVICE FAILURE
 - CHURNING CUSTOMER ACCOUNTS
 - “COOKING THE BOOKS”
 - ROGUE LEADERS AND OVERRIDE OF CONTROLS



PERSPECTIVES ON RISK

- OFFICERS AND DIRECTORS NEED TO BE TAKING A LONG HARD LOOK AT RISK
- THE THREAT TO SUCCESS AND THE POSSIBLE CONSEQUENCES IF THEY MATERIALIZE
- CRITICS BELIEVE THAT MAJOR RISKS AND THEIR CONSEQUENCES SHOULD HAVE BEEN ANTICIPATED, BETTER MANAGED OR AVOIDED ALL TOGETHER

PERSPECTIVES ON RISK

COMMON QUESTIONS AFTER THE EVENT

- WHY DIDN'T SOMEBODY DO SOMETHING TO PREVENT THIS?
- WHERE WAS MANAGEMENT?
- WHERE WAS THE BOARD OF DIRECTORS?
- WHERE WAS THE AUDIT COMMITTEE?
- WHERE WERE THE AUDITORS?
- WHERE WERE THE REGULATORS?



PERSPECTIVES ON RISK

BUSINESS RISK – THE THREAT THAT AN EVENT OR ACTION THAT WILL ADVERSELY EFFECT AN ORGANIZATIONS ABILITY TO ACHIEVE ITS BUSINESS OBJECTIVES AND EXECUTE ITS STRATEGIES SUCCESSFULLY.



PERSPECTIVES ON RISK

- The Cancer Fund of America in Knoxville, TN
- Cancer Support Services
- The Breast Cancer Society in Mesa, AZ
- Children's Cancer Fund of America in Powell, TN
- James T. Reynolds, Sr.
- Telemarketers called people across the USA asking for \$20 donations

PERSPECTIVES ON RISK

DONORS WERE TOLD THAT THE FUNDS WERE TO BE USED FOR:

- FINANCIAL AID AND OTHER SUPPORT TO CANCER PATIENTS
- PAIN MEDICATION
- TRANSPORTATION TO CHEMOTHERAPY VISITS
- HOSPICE CARE
- **DONATIONS WERE ACTUALLY USED FOR CARS, GYM MEMBERSHIPS, CRUISE VACATIONS AND COLLEGE TUITION**

PERSPECTIVES ON RISK

- RAISED OVER \$192 MILLION
- SPENT OVER \$187 MILLION THEMSELVES
- APPROXIMATELY \$.03 OF EVERY DOLLAR WENT TO SPENDING ON CANCER CARE AND SUPPORT.
- ACCORDING TO THE FTC, NONE OF THE CONTROLS USED BY A BONA FIDE CHARITY WAS IN PLACE .
- EACH ORGANIZATION HAD A BOARD OF DIRECTORS

PERSPECTIVES ON RISK

- HOW COULD THIS HAPPEN?
- WHAT IS THE IMPACT ON THE ORGANIZATION?
- WHAT IS THE IMPACT ON NON FOR PROFIT COMMUNITY?



PERSPECTIVES ON RISK

BUSINESS RISK ASSESSMENT PROCESS

- SET BUSINESS OBJECTIVES
- IDENTIFY KEY BUSINESS RISKS
- ASSESS POTENTIAL IMPACT AND LIKELIHOOD OF OCCURRENCE
- CHOOSE A COURSE OF ACTION
- **MONITOR THE INTERNAL AND EXTERNAL ENVIRONMENTS FOR CHANGES IN CONDITIONS AND COMPLIANCE WITH CONTROLS**

PERSPECTIVES ON RISK

BUSINESS RISK FRAMEWORK

- FINANCIAL RISKS – LOSING FINANCIAL RESOURCES
 - **STRATEGIC** – DOING THE WRONG THINGS
 - **OPERATING** – DOING THE RIGHT THINGS THE WRONG WAY
 - **INFORMATION** – INACCURATE OR NON RELEVANT INFORMATION, UNRELIABLE SYSTEMS OR MISLEADING REPORTS

CORPORATE COMPLIANCE PROGRAM

CRITICAL ELEMENTS OF AN EFFECTIVE PROGRAM INCLUDE:

- SET STANDARDS AND PROCEDURES TO REDUCE CRIMINAL ACTS
- PREVENT THE INAPPROPRIATE DELEGATION OF DISCRETIONARY AUTHORITY
- COMMUNICATE STANDARDS AND PROCEDURES TO ALL EMPLOYEES
- ENFORCE STANDARDS AND PROCEDURES WITH DISCIPLINARY MECHANISMS
- IMPLEMENT COMPLIANCE MEASURES SUCH AS MONITORING , AUDITING OR REPORTING SYSTEMS



CORPORATE COMPLIANCE PROGRAM

CRITICAL ELEMENTS OF AN EFFECTIVE PROGRAM INCLUDE:

- RESPOND APPROPRIATELY AFTER AN OFFENCE HAS BEEN DETECTED
- ASSIGN A SPECIFIC HIGH-LEVEL PERSON TO OVERSEE AND TAKE OWNERSHIP OF THE PROGRAMS SUCH AS A **CHIEF COMPLIANCE OFFICER**

CORPORATE COMPLIANCE PROGRAM

- **TONE AT THE TOP** – THE TREADWAY COMMISSION CONCLUDED THAT TOP MANAGEMENT IS THE MOST IMPORTANT FACTOR CONTRIBUTING TO THE INTEGRITY OF THE FINANCIAL REPORTING PROCESS.
- **TONE AT THE BOTTOM** – RECENTLY ORGANIZATIONS ARE SEEING THAT TONE AT THE BOTTOM IS JUST AS IMPORTANT AS TONE AT THE TOP.
- WHY IS THAT?



CORPORATE COMPLIANCE PROGRAM

- **TONE AT THE BOTTOM –**
 - RISK THROUGH PEOPLE
 - WE ARE DIFFERENT IN HOW WE COPE WITH SITUATIONS, PRESSURE, ATTENTION TO DETAIL
 - POOR JUDGEMENT
 - NONCOMPLIANCE WITH CONTROLS
 - CONTROLS IN PLACE MAY NOT ENSURE COMPLIANCE
 - MISSED IDENTIFICATION OF THE “ACTUAL” RISK
 - RISK IS BASED ON PAST EXPERIENCE.
 - BUSINESS, CULTURES, AND PEOPLE CHANGE CONSTANTLY

CORPORATE COMPLIANCE PROGRAM

FEDERATION INTERNATIONAL FOOTBALL ASSOCIATION (FIFA)

- MAY 31, 2105 – ALLEGED PAYMENTS SUGGEST LINK TO TOP OFFICIALS
- DURING 2008 SOME \$10 MILLION IN TRANSFERS PAYMENTS FROM FIFA BANK ACCOUNTS IN SWITZERLAND TO A CARIBBEAN SOCCER ORGANIZATION
- BELIEVED MONEY WAS USED TO PAY BRIBES AND TO SECURE VOTES FOR SOUTH AFRICA'S BID TO HOST THE WORLD CUP IN 2010

CORPORATE COMPLIANCE PROGRAM

- TRANSFERS WAS SENT IN THREE INSTALLMENTS : (\$616,000, \$1.6 MILLION AND \$7.8 MILLION) WHICH MEANT THEY NEEDED SIGNED APPROVAL FROM WITHIN A SMALL GROUP OF EXECUTIVES FROM FIFA
- DID EXECUTIVES KNOW WHAT THEY WERE SIGNING?
- ACCORDING TO LOWER MANAGEMENT TYPICALLY EXECUTIVES USED FOR APPROVAL WOULD HAVE BEEN THE GENERAL SECRETARY AND CFO



CORPORATE COMPLIANCE PROGRAM

- \$10 MILLION WAS TO BE SENT TO THE SOUTH AFRICAN GOVERNMENT .
- SOUTH AFRICAN GOVERNMENT WAS TO SEND MONEY TO A CARIBBEAN BANK FOR THE PAYMENT OF VOTES TO HOST WORLD CUP.
- SOUTH AFRICA WINS THE BID TO HOST 2010 WORLD CUP.
- THIS TYPE OF ACTIVITY WENT ON FOR OVER 24 YEARS WITH OVER \$150 MILLION DOLLARS BEING PAID OUT.
- FIFA PRESIDENT RESIGNED TODAY- 6/2/15
- CORRUPTION WAS PART OF FIFA'S CULTURE



CHIEF COMPLIANCE OFFICER

WHAT WAS ONCE A PART TIME / SPLIT ROLE HAS EVOLVED INTO A FULL TIME ROLE

- RECENT SURVEY TAKEN BY D&T SHOWED:
 - 57% OF CCO'S REPORT DIRECTLY TO THE CEO OR THE BOARD
 - 51% OF CCO'S HAVE A SEAT ON EXECUTIVE MANAGEMENT COMMITTEE
 - 55% OF CCO'S STATED THAT THEY REGULARLY BRIEF THE BOARD ON COMPANY'S OVERALL ETHICS AND CULTURE



CHIEF COMPLIANCE OFFICER

- RESPONDENTS BELIEVE THAT COMPLIANCE IS SEEN AS A BUSINESS PARTNER ACROSS THE ENTIRE ORGANIZATION.
 - COMPLIANCE CULTURE IS MAKING TRANSITIONS WITHIN ORGANIZATIONS
- ROLES AND RESPONSIBILITIES OF CCO INCLUDE:
 - COMPLIANCE TRAINING
 - CODE OF CONDUCT
 - WHISTLEBLOWER HOTLINE

CHIEF COMPLIANCE OFFICER

CHALLENGES FOR CCO INCLUDE:

- LACK OF MONITORING TOOLS
- SMALL STAFF
- SMALL BUDGETS
- BUY IN AND FEEDBACK FROM OTHERS WITHIN ORGANIZATION

CONSEQUENTLY CCO MAY HAVE TO PARTNER WITH OTHERS WITH THE ORGANIZATION SUCH AS HR, INTERNAL AUDIT, OR LEGAL RISK MANAGEMENT TEAM



CHIEF COMPLIANCE OFFICER

- PARTNERING WITH INTERNAL AUDIT WITH REGARD TO RISK ASSESSMENT
- GETTING BUY IN AND FEEDBACK FROM BUSINESS UNIT LEADERS IS ESSENTIAL FOR EFFECTIVE RISK ASSESSMENT
- CCO'S SHOULD BE SETTING COMPLIANCE MONITORING AND TESTING PRIORITIES BASED ON THESE RISK ASSESSMENTS
- EFFECTIVENESS OF RISK ASSESSMENT IS BASED ON THE MATURITY AND QUALITY OF THE RISK ASSESSMENT PROCESS

CHIEF COMPLIANCE OFFICER

TAKATA, JAPANESE AUTO SUPPLIER

- SUPPLIED AIRBAG INFLATORS TO MAJOR AUTO MANUFACTURES
- 34 MILLION U.S. VEHICLES HAVE BEEN IDENTIFIED AS HAVING DEFECTIVE AIRBAG INFLATORS PRODUCED BY TAKATA.
- RECALLS OF VEHICLES IS ESTIMATED TO BE 33.8 MILLION

CHIEF COMPLIANCE OFFICER

- THE GAS USED TO INFLATE THE AIRBAGS COULD RESULT IN A VIOLENT EXPLOSION CAUSING METAL AND PLASTIC FRAGMENTS INTO THE CARRIAGE COMPARTMENT OF THE CAR
- SIX DEATHS HAVE BEEN LINKED THE FAULTY AIRBAGS AND OVER 100 INJURIES
- *TAKATA STATED THAT INFLATORS WERE ONLY AT RISK IN HOT HUMID AREAS*
- MANUFACTURERS WHO USED TAKATA AIRBAGS INCLUDE: FORD, GMC, TOYOTA, NISSAN, BMW, FIAT AND OTHERS

QUESTIONS?

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