

Internal Investigations

**SCCE Southeast Conference
October 14, 2011**

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The Fact Pattern

United Pickle Supply (UPS) is a global distributor of pickled cucumbers, with pickling factories all over the world. As part of its commitment to compliance, UPS maintains a global Help Line, which allows employees to provide anonymous information to the company about its operations, and compliance with global pickle laws. One of UPS's largest customers of pickles is the US Department of Defense, which serves UPS pickles in all of its canteens around the world.

On August 14, 2011, an anonymous caller from UPS's pickle factory in Beijing, China calls the UPS Help Line, and makes a report.

The caller complains about his manager, Mr. Vlastic, and claims that the manager is telling employees to label some of the pickle packages for sale to the US Department of Defense without the "Made in China" reference on the container.. The caller believes, rightly, that the US Department of Defense requires US-made pickles under the Champion US-made Key Edibles (CUKE) Act of 1934.

In addition, the caller believed that Mr. Vlastic was running a small pickle business on the side (Gherkin World) and is using UPS resources to offset his costs. The caller claims that he's seen emails from Mr. Vlastic to UPS customers, claiming to undercut UPS's prices if those customers start buying pickles from Gherkin World.

Finally, the caller stated that the manager was bribing Chinese customs officials to ensure that pickles from UPS would pass easily through inspections.

The contents of the Help Line call were passed to the UPS Corporate Legal Department to investigate.

First Steps Initiate and “Protect” the Investigation

- Who will conduct the investigation?
 - Internal (Audit, Compliance, Legal)
 - External (Law Firm, Accounting Firm)
- Investigation Memo
 - Confidential Investigation
 - Directed by Legal Department
 - Documents properly marked (Privileged/Work Product)



Who is On the Team? What are the Relevant Documents? Preserve the Data

- Paper Files
- Electronic Files
 - Emails
 - Hard Drive Documents
- Retention Schedule
- Location
 - Data Privacy Issues
 - Document Review Issues



Substantive Investigation Concerns

Impact to the Company:

- Regulatory Impacts
 - CUKE Act (Buy American)
 - FCPA (Bribes)
- Self-dealing
 - Gherkin World Business

Disclosure Considerations FCPA

- Foreign Corrupt Practices Act (FCPA) criminalizes improper payments to foreign government officials. Enforced by DOJ and SEC.
- Dodd-Frank Act provides new whistleblower incentives to employees who report SEC violations, including FCPA.
 - Bounty can be substantial
 - Relates to “new information”
 - Depending upon the level of concern, it may be beneficial to disclose
- Employees should be aware of Company Policy relating to Duty to Disclose



Maintaining Culture of Compliance No Retaliation

- Violations should be reported without fear of retribution
- Reporting violations will not result in disciplinary action, loss of a job, or retaliation
- Employees should not be discouraged from using any of the avenues available
- Zero tolerance – retaliation is subject to discipline, including dismissal



Engage Outside Resources as Necessary

While maintaining a robust and capable internal investigation program is critical for ensuring a Company's commitment to compliance, when findings indicate a systemic or material concern, outside resources should be engaged.

Often, involving a third-party can bring credibility to an investigation or dealings with regulators.

