This is Release #15 (September 2015)

Deskbook on Internal Investigations, Corporate Compliance and White Collar Issues
by Kaye Scholer LLP

The members of Kaye Scholer LLP’s highly respected White Collar Litigation and Internal Investigations Practice Group, leading experts in the field of corporate criminal and regulatory issues, have updated this invaluable treatise to bring you practical information, in-depth analysis, and the latest developments in the field. Highlights of Release #15 include the following.

Searching and Seizing Electronic Communications. Chapter 5’s discussion of government searches and seizures involving wiretaps and text messages has been revised and expanded to include coverage of Fourth Amendment and privacy issues raised by monitoring programs that require a person to wear a GPS tracking device or where an individual’s cell phone signals are used for geolocation purposes. See new §§ 5:4.1–5:4.3.

Forfeiture of Funds Used for Attorney Fees: The “Innocent Owner” Defense. Where the government has seized property and has proven that the property is subject to forfeiture, the claimant has the burden of proving by a preponderance of the evidence that it is an innocent owner. For purposes of the “innocent owner” defense in a context where the object of the government’s forfeiture claims is the funds used to pay attorney fees, the Second Circuit recently held that a defense attorney can rely on the outcome of a pretrial Monsanto hearing to reasonably conclude, under the right circumstances, that the government’s forfeiture claims are without merit. See § 6:1.3[D][2] for details.
Drug and Medical Device Manufacturers. Chapter 10’s updated coverage includes details of numerous recent and significant criminal resolutions and enforcement actions involving drug and medical device manufacturers, including the DOJ’s December 2014 “side letter agreement” with Stryker Corporation in connection with a guilty plea entered by a company it had acquired, which included a number of compliance measures designed to prevent future misconduct (see § 10:2.5), and a February 2015 $7.9 million settlement with AstraZeneca to resolve allegations that it had paid kickbacks to a pharmacy benefit manager in exchange for maintaining “sole and exclusive” status for one of its drugs (see § 10:3.1).

Knowing and Willful False Statements to a Government Agency. The Department of Justice’s recent shift in policy regarding the “willful” element of the false statements statute to a more defense-friendly position has already showed an impact, with two recent cases being remanded by the Supreme Court to the circuit courts for further consideration in light of the government’s confession of error. See § 13:1.2. This supplement also updates chapter 3 (Grand Jury Investigations and Multiple Representations of Witnesses), chapter 8 (Leniency Programs and Policies), chapter 12 (Money Laundering).

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