



September 2014

## Immigration Violations Cost Resort Chain \$2.5M – What Is Your Compliance Exposure?

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On September 10, 2014 the United States Attorney's office in Utah and Immigration and Customs Enforcement (ICE) announced that Grand America Hotels and Resorts had entered into a **non-prosecution agreement**, agreeing to forfeit almost \$2 million for hiring unlawful workers. The company also agreed to institute a compliance plan and undertake other remedial measures estimated to cost \$500,000.

This case is a stunning example of the importance of immigration related monitoring, compliance and oversight by the C-suite, as well as the exposure and cost to companies that do not prioritize such compliance and dedicate the necessary programming with limited time, resources and funds.

The Sinclair Services Company owns and operates a number of high-end hotel and resort properties in Utah, Wyoming, Arizona, California, and Idaho under the Grand America Hotels and Resorts label. Through cooperation and lengthy negotiations, the company entered into an agreement with the US Attorney's Office and ICE's Homeland Security Investigations (HSI) forfeiting \$1,950,000 to the Department of Homeland Security.

The case reveals interesting facts about the need for company compliance oversight. It also highlights the lengths some will go to in an effort to keep an existing workforce intact, even one filled with unlawful workers.

### Timeline

- September 2010: HSI issues a Notice of Inspection (NOI) initiating an administrative audit of the company's Form I-9s. At this time Grand America was an E-Verify participant.
- After completing the audit, ICE issues a **Notice of Suspect Documents**



(NSD) determining that 133 undocumented individuals were working for Grand America without proper work authorization.

- September 2011: ICE closes out the case by issuing a "Warning Notice" to Grand America, and the hotel chain terminates the individuals in question.
- Subsequent 12 months: ICE discovers employees of Grand America had created three temporary staffing agencies in order to rehire a portion of the population of the employees previously deemed unauthorized. 43 of the same employees are rehired through these temporary staffing agencies, mostly under different names and/or Social Security numbers using fraudulent identity documents.
- September 2012: Search warrants are executed against Grand America.
- September 2014: case settles with \$1.95 million forfeiture and compliance program instituted.

### Exposure and Liability

According to Kumar Kibble, the special agent in charge (SAC) of HSI in Denver, the office which oversees Utah's ICE investigations, "[a]ll industries, regardless of size, location and type are expected to comply with the law. As this significant settlement demonstrates, there are real consequences for businesses that employ an illegal workforce."

In exchange for the cooperation of the company, the US Attorney agreed to not bring criminal charges against Grand America or its executives. The company's cooperation in providing the government with all related evidence obtained through its own internal investigation was likely used by their attorneys to assist in securing the agreement and keeping high level executives and others shielded from personal liability. Not surprisingly, the individuals involved in the scheme have been fired and may be criminally prosecuted and held personally liable.

According to the Department of Justice, the agreement also requires the company to take substantial remedial measures and estimates the cost of implementing such measures at \$500,000. Among the remedial measures are:

- Mandating new immigration policies;
- incorporating immigration law compliance clauses into labor service contracts;
- re-training of human resources employees on Form I-9 procedures;
- agreeing to continue to use the E-Verify employment eligibility verification website; and
- hiring immigration and corporate counsel to advise on these issues.

### What Should Employers Take Away from This?

Employers, take note: the frequency of ICE investigations is expected to increase as FY 2015 begins and immigration reform remains on the back burner in Washington. Alleged compliance failures (including those discovered during routine Form I-9 inspections) will be tracked and acted upon. Tips and leads will continue to be the main manner in which an investigation is initiated, including scenarios involving whistleblowers. Companies who were previously audited are now likely to be re-audited. Interestingly while re-audits have been a standard part of ICE's protocols, they are utilized with varying frequency by different ICE offices across the country.

Another likely implication of this case will be some sort





of internal review at ICE/HSI to ensure auditors and agents apply higher scrutiny where large numbers of unlawful workers are involved, prior to issuing Warning Notices. Companies should not be lulled into a false sense of security when they are successful in challenging ICE/HSI or when they receive a low fine or a Warning as a result of an investigation. Instead, companies should see it as an opportunity to determine the need for a full house clean-up of their immigration program. When compliance is not taken as seriously as it should be, a \$2 million dollar payment ends up being the wakeup call.

Key components to any immigration compliance program include:

- dedicated resources and commitment to promoting a true culture of compliance
- written hiring and employment eligibility verification policies that ensure consistent recruitment and employment
- internal compliance and training programs related to verification processes, to include completion of the Form I-9, how to detect fraudulent use of documents in the verification process, and how to use E-Verify as a best practice or where required—either due to state and local mandates or by virtue of the Government contractor Federal Acquisition Regulation (FAR)
- internal audits to minimize liability when conducted in conjunction with guidance from experienced counsel



## For More Information

For more information on the implications of this case or how to tailor your own immigration compliance to minimize exposure, please contact your Polsinelli relationship attorney or the author of this alert:

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To contact another member of our Immigration team, see below or click [here](#) to visit our website at [www.polsinelli.com](http://www.polsinelli.com) > Services > Immigration > Related Professionals.

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To learn more about our Immigration practice, click [here](#) or visit our website at [www.polsinelli.com](http://www.polsinelli.com) > Services > Immigration.





## About Polsinelli's Immigration Practice

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The Polsinelli Immigration and Compliance Practice combines the legal talents of a respected immigration centric team with the resources of a top tier Am Law 100 law firm.

We pride ourselves on learning your business so that we can provide tailored solutions. We understand that in the current global labor market, businesses need immigration solutions that fit with their commercial objectives. Our representation spans the gambit of immigration issues, ranging from preparing temporary work visa applications to EB-5 foreign investor work to defending businesses in Immigration and Customs Enforcement (ICE) investigations. Polsinelli's multidisciplinary approach provides clients with comprehensive advice on immigration matters that often involve employment, corporate, international, government contracts, litigation, government investigations, and tax law issues. Such coordination can prove critical to our client's successes. Have a question? See page 3 for contact information for one of Polsinelli's immigration professionals.

## About Polsinelli

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*real challenges. real answers.<sup>SM</sup>*

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\* Law360, March 2014

\*\* The American Lawyer 2013 and 2014 reports

## About this Publication

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