

A Modern Fairy Tale: The Company Which Cried Wolf or Lessons Learned from *L’Affaire Renault*

Once upon a time there was a boy who went to the town square and cried “The Wolf is coming to steal our secrets!” The townspeople all gathered ‘round and asked him how he knew this. “A person named NoMan told me,” he declared. But there was more, as the boy told the now rapt townsfolk “And he said if you give me some money to help pay his ‘expenses’, I can find out when and how the Wolf will steal our secrets.” As this town was in France, they immediately gave the boy €450,000 (or €700,000 depending on the version of the fairy tale) and he and the money were never seen again.

I. The Tale

Most people in the compliance world have by now heard about *L’Affaire Renault*. As reported extensively in the Wall Street Journal (WSJ), the affair became public in January of this year, when Renault fired three top officials for allegedly selling secret information regarding the company’s electric car program. These allegations were based upon information which came from an unknown informant who claimed that the three terminated officials had large Swiss bank accounts funded by monies which came from the sale of this information. This unknown informant was paid for his information, by two Renault security department employees, and then allegedly onto another party, who eventually passed along some or all of the Renault payment to the informant.

If all of this sounds confusing, well it is. The inquiry began last August with an anonymous letter to company officials stating that one of the now terminated employees was overheard “negotiating a bribe”. By December, the company’s security department had “assembled elements pointing to the existence of bank accounts in Switzerland and Liechtenstein.” The accused employees were terminated in January, 2011. On March 14, the WSJ reported that “state prosecutor Jean-Claude Marin on Monday said his investigation showed that the three didn’t have bank accounts in those countries.” On March 15, the WSJ reported that the Chief Executive Officer (CEO) of the French car maker Renault apologized on national television for the wrongful termination of three company officials for improper allegations of industrial espionage. In addition to this apology, he offered to meet the men and propose that they rejoin the company. They also would be offered compensation, “taking into account the serious hurt that they and their families have suffered...” This case (and the introductory fairy tale) presents several very large ‘*Lessons Learned*’ for any company which engages in an anti-corruption, anti-bribery or fraud investigation and then disciplines or terminates employees based upon the investigation.

II. The Moral

Look Before You Leap

Our colleague, Lindsey Khan wrote about Fraud Investigation Preparation in a two part series posted on her blog isight.com. Over this two part series, she reviewed author Stephen Pedneault's book, "*Anatomy of a Fraud Investigation*", in which he outlined the steps a company should take when preparing for a fraud investigation. Imagine where Renault might be if they had read Lindsey's blog. I digress to say you should bookmark and read Lindsey's blog as she regularly writes on investigations and even provides an investigation template on a complimentary basis.

The first thing to emphasize is that a company cannot over-prepare for such an investigation. With this in mind, here are seven steps he suggested a company should take before they begin a fraud investigation:

1. Timing. If the target(s) know you are on to them, they will have absconded so make this initial determination.
2. Strategize. Figure out who needs to be involved in the investigation and meet as soon as possible to explore options and discuss how they will move forward with the investigation, as each one differs based on the goals, circumstances and people involved.
3. Review laws, policies and other documents. Obtain everything of significance before you start the investigation and then secure it.
4. Available information. If your company uses outside investigators, make certain that they understand company structure, infrastructure and relationships.
5. Whistleblower protection and confidentiality. Although this information or source may need protection, the identity must be known and verified.
6. Lock down evidence. Physical and electronic evidence need to be gathered and secured as soon as possible.
7. Resource allocation. Make sure your company has the tools you need to gather evidence and label it properly for storage.

You Leapt, Now What?

Your actions after you have followed Pedneault's seven preparation steps will be equally, if not more important. First and foremost your investigation must be thorough. In other words, if the key part of the allegation is that bribes were being funneled into a Swiss bank account, your company had better make certain this information is correct before you go and make that public pronouncement. You should endeavor to make certain that your company CEO does not, as

reported in the WSJ, proclaim the statement made by the CEO of Renault when he said publicly “that the company had evidence against them” regarding the existence of foreign bank accounts. Over two months after this public statement, neither Renault nor the French Prosecutor’s Office had discovered such evidence to back up this allegation.

Keep A Sense of Balance

Attorney Stephen Pearlman, quoted in the WSJ, noted that a company must approach any such allegations “with a real sense of balance” and not “over-react.” Mr. Pearlman said he recently had a client who received an anonymous tip on some alleged wrongdoing and wanted to act before the investigation was done. “I told them, ‘You’ve got to take a deep breath, don’t overreact’” he recalled.

Robert Fatovic, the chief legal officer at Ryder System Inc., also quoted in the WSJ, said “Renault is the poster child for why you want to approach these situations with a sense of balance, and not have people rush to judgment.” Fatovic also noted that “By ending an investigation prematurely, you run the risk of a frivolous issue going public too soon.” Or having your CEO go on national television and personally apologize to those wrongfully accused.

Get Some Serious Advice

So how does a company tread through this minefield? If there are serious allegations made concerning employees engaging in criminal conduct a serious response is required. The first thing to do is hire some seriously good lawyers to handle the investigation. These lawyers need to have independence from the company so do not call your regular corporate counsel. Do not send down Internal Audit or HR to take a look at things and report back. Attorney Jim McGrath, writing in Internal Investigations Blog, drives this point home by stating, “*Despite the fact that using specialized investigation counsel is a best practice that is worth the money, one of the more difficult things is convincing decision-makers of the same... The Renault scandal reiterates the need of companies of all sizes to go outside to specialized counsel for sensitive inquiries.*”

The hiring of outside counsel is also important because you will most probably have to deal with a government. If the investigation does reveal actionable conduct and you are in the US, your company will need legal counsel who is most probably an ex-Department of Justice prosecutor or ex-US Attorney to get your company through that process. Even if there is a finding of no criminal activity, you will need very competent and very credible counsel to explain the investigation protocol and its results to the government. If you are in the UK you need to hire someone with credible Serious Fraud Office- type experience or an ex-Crown Prosecutor. If you are in France, well you are in France.

There is a very good list of attorneys who specialize in the FCPA provided by my colleague **Howard Sklar** in his blog entitled “***Getting Advice***”. He knows the folks he listed personally and tells you their strengths. It is a great resource and now would be an excellent time to use it.

Don't Pay Bounties to Unknown Persons for Unsubstantiated Rumors

A very troubling aspect of this case is the payment for the information. The payment itself has reportedly ranged from a high of €700,000 to €450,000 down to €250,000. It is not clear as to the timing of this payment but apparently the payment was handled by two security department employees, who handed it over to a third person, not the informant, who resided in Algeria. This third party in Algeria now cannot be located and the WSJ reported that initially “an employee in the security unit refused to disclose to Renault who ultimately received the money...” Reuters has reported that French criminal justice officials are now investigating the two security department employees regarding whom this anonymous source was and where the money went. The WSJ later reported that this employee, who has been in custody for a couple of weeks, has finally named this anonymous source.

Many US companies are worried about the impact of the Dodd-Frank Whistleblower provisions. However, a clear difference is that Dodd-Frank requires substantiated securities violation, as in an admission by a company, settlement agreement or judicial finding, for payment of any bounty rewards. In *L’Affaire Renault*, the company apparently paid a bounty to an unknown source, for unsubstantiated information, which did not result in any criminal finding or even a civil wrong. Whatever your company does **DO NOT PAY BOUNTIES TO PERSONS UNKNOWN**.

The moral of the fairy tale that started our piece and *L’Affaire Renault* is that your company needs to get it right. The costs for not doing so are simply too great.

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