Casey Jones or How to Stop a Compliance Train Wreck

The evaluation of C-Suite leadership can be problematic in the best of times. In the compliance world, if a company has a serious violation of the Foreign Corrupt Practices Act (FCPA), it may be due to tone-deafness at the top. Worse than simple tone-deafness, the C-Suite can be an active part of the problem. While not FCPA violations, the criminal prosecutions at the highest echelon at Enron, WorldCom and Adelphia certainly speak to ethical lapses at the top. But the question remains, how can a Board evaluate a company's top leadership for compliance and ethics?

In a posting on the HBR Blog Network, entitled, "*News Corp and Questions Boards Need to Ask*" author Rob Kaplan poses an interesting solution to this conundrum. Kaplan phrases the question as "*how does a board really know the leadership style of its senior operating management and the culture of the company for which it has fiduciary responsibility*?" He acknowledges that Boards often have very little process or procedure in place to judge the leadership style, daily behaviors, and cultural norms being established by their senior operating leadership. This can deprive Boards of sufficient information to make an informed decision and "by the time directors realize there is a culture or leadership style problem at the company, it is too late to have prevented real damage to the business, reputation, and careers of senior executives."

While Kaplan discusses this in the context of the ongoing News Corp scandal, he sets forth an interesting mechanism by which a Board can fulfill its duty to make competent compliance and ethics evaluations; he calls it a "360-Review". In a 360-Review, an outside professional firm is brought into the company to conduct discreet interviews with a number of company employees who interact with the senior executives under review. The key is that the interviews are discreet and "not for attribution."

While noting that the 360-Review is "not without controversy"; Kaplan, nonetheless, posits that with improved insights Boards can "clear the air" with a Chief Executive Officer (CEO), or other C-Suite inhabitant. The 360-Review also can reduce general employee speculation about senior management deficiencies and can provide to the Board a better ability to coach the CEO and flag emerging cultural problems. He concludes by noting "This and similar types of constructive steps taken by the board can serve to preempt issues before they become a threat to the company and the CEO's career."

The UK Bribery Act Six Principles of Adequate Procedures; OECD Good Practices and the Department of Justice (DOJ) Best Practices released with recent Deferred Prosecution Agreements and Non-Prosecution Agreements (DPA/NPA) all speak to a system of disciplines AND incentives for behaviors in accordance with good compliance and ethics. Most companies which follow such *best practices* have policies, programs and procedures in place to punish those who violate compliance policies and reward those who conduct business in accordance with these compliance policies. However, the Board may be overlooking an evaluation of those at the highest level of the company's management. If the inherent message of the C-Suite is to make quarterly or other numbers, and the pressure is solely on that issue, the Board needs to understand that a train wreck may be coming. Kaplan's suggestion of a 360-Review, focused on compliance and ethical behavior, could be a mechanism which assists a Board in slowing down such an oncoming derailment.