



INDIVIDUAL ACCOUNTABILITY FOR CORPORATE WRONGDOING

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For Whom The Bell Tolls? It Tolls for Thee

The Department of Justice's Yates Memo and Individual Accountability of Corporate Wrongdoing

On September 9, 2015, the United States Department of Justice published a memorandum entitled: "Individual Accountability for Corporate Wrongdoing" and signed by Deputy Attorney General Sally Yates (the "Yates Memo"). While these policies have been heralded as a significant shift in DOJ's handling of investigations into corporate wrongdoing, the changes should not come as a surprise. The Yates Memo is just another incremental step in a continuum that began with the Department of Justice's June 1999 Holder Memorandum about charging corporations, extended to the DOJ Thompson and McNulty Memos and can be seen in court decisions over the past few years, specifically involving settlements proposed by the SEC that were rejected by Judge Jed Rakoff from the Southern District of New York.

Below is a discussion of events preceding the Yates Memo, the details of the Yates Memo and its implications for corporations, employees and their counsel.

I. History of Actions Against Individuals for Corporate Wrongdoing

A. Holder Memo

In June 1999, then-Deputy Attorney General Eric Holder issued a memorandum including several non-mandatory factors for DOJ attorneys to consider when determining

whether to bring charges against a corporate entity.¹ One of the factors permitted prosecutors to consider a corporation's willingness to waive the attorney-client privilege and work product doctrine when disclosing the complete results of its internal investigation.² This was the first official policy statement from DOJ to promote this practice and which "essentially revolutionized the prosecution of corporations."³

B. Arthur Anderson/ENRON and the Thompson and McNulty Memos

In the wake of the ENRON scandal and the Arthur Anderson prosecutions in 2002, DOJ issued the Thompson Memo in January 2003.⁴ It made the factors from the Holder Memo mandatory as opposed to optional and displayed increased skepticism toward corporate cooperation. In response to Congressional efforts to invalidate the portions of the Thompson Memo dealing with privilege-waiver requests, DOJ issued the McNulty Memo in December 2006. Attempting to assuage its critics, the McNulty Memo limited waiver requests for times when there was "a legitimate need for the privileged information to fulfill" law enforcement obligations.⁵ It also required prosecutors to obtain approval

¹ See Memorandum from Eric H. Holder, Deputy Attorney General, to Heads of Department Components and United States Attorneys (June 16, 1999), available at www.justice.gov/sites/default/files/criminal-fraud/legacy/2010/04/11/charging-corps.PDF

² Id.

³ Robert A. Del Giorno, Corporate Counsel as Government's Agent: The Holder Memorandum and Sarbanes-Oxley Section 307, THE CHAMPION, August 2003, at 22.

⁴ See Memorandum from Larry D. Thompson, Deputy Attorney General, to Heads of Department Components and United States Attorneys (Jan. 20, 2003), available at federalevidence.com/pdf/Corp_Prosec/Thompson_Memo_1-20-03.pdf

⁵ Memorandum from Paul J. McNulty, Deputy Attorney General, to Heads of Department Components and United States Attorneys, (Dec. 12, 2006), available at <http://www.usdoj.gov/dag/>

from a supervisor prior to requesting that a corporation waive the attorney-client privilege or work product doctrine.

C. Rejection of Settlement Agreements with no Admission of Wrongdoing

Despite other interactions between DOJ and the Senate Judiciary Committee between 2006 and 2010, at least one member of the judiciary determined that DOJ was not doing enough to hold individuals liable for corporate misconduct. Judge Jed Rakoff of the Southern District of New York made waves by rejecting a proposed settlement agreement between Bank of America and the SEC in 2009. See *S.E.C. v. Bank Of Am. Corp.*, 653 F. Supp. 2d 507 (S.D.N.Y. 2009). Although he ultimately accepted a revised agreement, Judge Rakoff forced the parties to come up with a higher penalty, which he openly criticized in a published decision. Judge Rakoff didn't stop there. In 2011, he rejected a \$285 million settlement between Citigroup and the SEC based on the agreement's provisions allowing Citigroup to avoid an admission of wrongdoing, not be required to admit this particular wrongdoing in any future proceedings, and not disgorge funds to defrauded shareholders. See *S.E.C. v. Citigroup Global Markets Inc.*, 827 F. Supp. 2d 328, 334-35 (S.D.N.Y. 2011) vacated and remanded, 752 F.3d 285 (2d Cir. 2014). In the three years prior to the reversal of this decision from the Second Circuit, Judge Rakoff encouraged other judges to take a closer look at similar settlement agreements.⁶

II. Yates Memo⁷

The September 9, 2015 Yates Memo purports to announce the formal adoption of policies for DOJ's criminal and civil investigations into corporate wrongdoing, some of which are new and others that have already been in place as "best practices" for federal prosecutors. DOJ describes this memorandum as its "best efforts to hold to account the individuals responsible for illegal corporate conduct." It involves six "key steps" toward accomplishing this goal as follows.

A. To qualify for any cooperation credit, corporations must provide all relevant facts relating to individuals responsible for misconduct

1. No picking and choosing facts to disclose to try and insulate high-level executives.
2. Post-resolution action for corporations: pleas or

settlement agreement must include provision w/ consequences for failure to comply with information (stipulated penalties and/or a material breach).

B. Criminal and civil investigations focusing on individuals from the inception of the investigation

1. Maximizes ability to determine full extent of corporate misconduct b/c corporations only act through individuals.
2. Increases likelihood that individuals with knowledge will cooperate and provide information against higher ranking employees.
3. Maximize chances that final resolution will include criminal or civil charges against corporation and individuals.

C. Criminal and civil attorneys should be in routine communication with each other

1. Permits consideration of full range of remedies and ensures most thorough and appropriate resolution in every case.
2. Criminal attorneys should alert civil attorneys of conduct that might give rise to individual civil liability as early as possible.

D. Absent extraordinary circumstances, no corporate resolution will provide any individuals with protection from criminal or civil liability

1. The Assistant Attorney General or United States Attorney will have to personally approve a settlement in writing if it includes a release.

E. Corporate cases should not be resolved without a clear plan to resolve related individual cases before the statute of limitations expires

1. Prosecution or corporate authorization memorandum should include:
 - a. discussion of potentially liable individuals;
 - b. status of the investigation for each;
 - c. investigative work that needs to be done;
 - d. plan for resolving the matter before the statute of limitations expires.
2. If decision is made not to pursue an individual who committed misconduct, reasons must be written

[speeches/2006/mcnulty_memo.pdf](#).

⁶ See *S.E.C. v. CR Intrinsic Investors, LLC*, 939 F. Supp. 2d 431, 435 (S.D.N.Y. 2013) (Marrero, J.); *United States v. Morgan Stanley*, 881 F. Supp. 2d 563, 568 (S.D.N.Y. 2012) (Pauley, J.).

⁷ See Memorandum from Sally Quillian Yates, Deputy Attorney General, to Heads of Department Components and United States Attorneys (Sept. 9, 2015), available at www.justice.gov/dag/file/769036/DOWNLOAD

and approve by US Attorney or Assistant Attorney General.

3. Tolling agreements should be rare exception, but if unavoidable, all efforts should be made to preserve the ability to charge individuals by agreement or court order.

F. Civil attorneys should no longer consider individuals' abilities to pay when determining whether to bring a lawsuit against them

1. Twin aims are equally important:

- a. Recover as much money as possible;
- b. Accountability/deterrence of individual misconduct.

2. When these two are in tension, attorneys should consider:

- a. Whether the misconduct was serious;
- b. Whether it is actionable;
- c. Whether admissible evidence will be sufficient to obtain a lasting judgment;
- d. Whether pursuing the action reflects an important federal interest.

3. Despite minimal short term monetary yield, this strategy will result in significant long-term deterrence.

III. Critical Analysis: DOJ's "best efforts to hold to account the individuals responsible for illegal conduct" are likely to backfire.

DOJ claims these changes will accomplish four important policy objectives: 1) 2) deterring future illegal activity, incentivizing changes in corporate behavior, 3) ensuring the culpable individuals are held responsible for their actions; and 4) promoting the public's confidence in the justice system. But in practice, the new guidelines are more likely to make investigations more prolonged and arduous.

A. Corporate employees likely to hire counsel in the early stages of an internal investigation, then multiple possibilities:

1. Prematurely plead the Fifth.
2. Only tell as much to an investigator as they believe necessary.

3. Follow counsel's advice not to cooperate at all.

B. Amplified Upjohn warnings? Current structure:

1. Counsel represents the company, not the employee.
2. Counsel is conducting an investigation to provide legal advice to the company, and the purpose of the interview is to obtain information for the investigation. Consequently, the attorney-client privilege applies to the conversation.
3. But the attorney-client privilege exists between counsel and the company. And the company may choose to waive that privilege and share some information with others, including the government, without notifying the employee or requesting the employee's permission.
4. The employee may want to obtain independent legal advice.

C. Issues Inherent in DOJ's six key steps:

1. Cooperation credit now requires disclosures of all relevant facts about individuals
 - a. Time pressure may lead to corporation concluding that cost or effort is too high/too great to make sense;
 - b. Company leadership may face obstacles if individual employees hire counsel early and refuse to cooperate;
 - c. Post-resolution actions including settlement agreements with provisions requiring compliance w/teeth (stipulated penalties and/or material breach finding).
2. Focus first on individuals in criminal and civil investigations
 - a. Further motivation for employees to retain counsel early.
 - b. Ignores possibility that corporate policies are to blame instead of individual bad actors.
3. Cooperation requirement between criminal and civil attorneys
 - a. Additional reason for employees to be concerned – less likely to escape liability if criminal attorney decides not to press charges.

- b. This will cause problems with company leadership that may want to cooperate but can't get the employee to discuss anything with and internal investigator.
- 4. Settlement will not protect individuals from civil or criminal liability except in extraordinary circumstances
 - a. No corporate resolutions that include agreements to "dismiss charges against, or provide immunity for, individual officers or employees."
 - b. Possible problem when individual employee who the corporation supports is discussing possible resolutions with DOJ while corporate is trying to settle.
- 5. No resolution of corporate cases without specific plan to resolve individual cases before statute of limitations expires
 - a. Presupposes that company would provide enough formation for the government to develop this specific plan for an individual.
 - b. Again, early retention of counsel by individuals will frustrate this requirement.
- 6. Inability to satisfy a judgment is no longer a permissible consideration for civil attorneys considering initiating a lawsuit after the corporate investigation
 - a. Encourages early retention of counsel.
 - b. Discourages cooperation by individuals.
 - c. Cooperation may be less than truthful due to fear of civil claims.



U.S. Department of Justice


Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

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MEMORANDUM FOR THE ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION
THE ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION
THE ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION
THE ASSISTANT ATTORNEY GENERAL, ENVIRONMENT AND
NATURAL RESOURCES DIVISION
THE ASSISTANT ATTORNEY GENERAL, NATIONAL
SECURITY DIVISION
THE ASSISTANT ATTORNEY GENERAL, TAX DIVISION
THE DIRECTOR, FEDERAL BUREAU OF INVESTIGATION
THE DIRECTOR, EXECUTIVE OFFICE FOR UNITED STATES
TRUSTEES
ALL UNITED STATES ATTORNEYS

FROM: Sally Quillian Yates 
Deputy Attorney General

SUBJECT: Individual Accountability for Corporate Wrongdoing

Fighting corporate fraud and other misconduct is a top priority of the Department of Justice. Our nation's economy depends on effective enforcement of the civil and criminal laws that protect our financial system and, by extension, all our citizens. These are principles that the Department lives and breathes—as evidenced by the many attorneys, agents, and support staff who have worked tirelessly on corporate investigations, particularly in the aftermath of the financial crisis.

One of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing. Such accountability is important for several reasons: it deters future illegal activity, it incentivizes changes in corporate behavior, it ensures that the proper parties are held responsible for their actions, and it promotes the public's confidence in our justice system.

There are, however, many substantial challenges unique to pursuing individuals for corporate misdeeds. In large corporations, where responsibility can be diffuse and decisions are made at various levels, it can be difficult to determine if someone possessed the knowledge and criminal intent necessary to establish their guilt beyond a reasonable doubt. This is particularly true when determining the culpability of high-level executives, who may be insulated from the day-to-day activity in which the misconduct occurs. As a result, investigators often must reconstruct what happened based on a painstaking review of corporate documents, which can number in the millions, and which may be difficult to collect due to legal restrictions.

These challenges make it all the more important that the Department fully leverage its resources to identify culpable individuals at all levels in corporate cases. To address these challenges, the Department convened a working group of senior attorneys from Department components and the United States Attorney community with significant experience in this area. The working group examined how the Department approaches corporate investigations, and identified areas in which it can amend its policies and practices in order to most effectively pursue the individuals responsible for corporate wrongs. This memo is a product of the working group's discussions.

The measures described in this memo are steps that should be taken in any investigation of corporate misconduct. Some of these measures are new, while others reflect best practices that are already employed by many federal prosecutors. Fundamentally, this memo is designed to ensure that all attorneys across the Department are consistent in our best efforts to hold to account the individuals responsible for illegal corporate conduct.

The guidance in this memo will also apply to civil corporate matters. In addition to recovering assets, civil enforcement actions serve to redress misconduct and deter future wrongdoing. Thus, civil attorneys investigating corporate wrongdoing should maintain a focus on the responsible individuals, recognizing that holding them to account is an important part of protecting the public fisc in the long term.

The guidance in this memo reflects six key steps to strengthen our pursuit of individual corporate wrongdoing, some of which reflect policy shifts and each of which is described in greater detail below: (1) in order to qualify for any cooperation credit, corporations must provide to the Department all relevant facts relating to the individuals responsible for the misconduct; (2) criminal and civil corporate investigations should focus on individuals from the inception of the investigation; (3) criminal and civil attorneys handling corporate investigations should be in routine communication with one another; (4) absent extraordinary circumstances or approved departmental policy, the Department will not release culpable individuals from civil or criminal liability when resolving a matter with a corporation; (5) Department attorneys should not resolve matters with a corporation without a clear plan to resolve related individual cases, and should

memorialize any declinations as to individuals in such cases; and (6) civil attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against an individual based on considerations beyond that individual's ability to pay.¹

I have directed that certain criminal and civil provisions in the United States Attorney's Manual, more specifically the Principles of Federal Prosecution of Business Organizations (USAM 9-28.000 *et seq.*) and the commercial litigation provisions in Title 4 (USAM 4-4.000 *et seq.*), be revised to reflect these changes. The guidance in this memo will apply to all future investigations of corporate wrongdoing. It will also apply to those matters pending as of the date of this memo, to the extent it is practicable to do so.

1. To be eligible for any cooperation credit, corporations must provide to the Department all relevant facts about the individuals involved in corporate misconduct.

In order for a company to receive any consideration for cooperation under the Principles of Federal Prosecution of Business Organizations, the company must completely disclose to the Department all relevant facts about individual misconduct. Companies cannot pick and choose what facts to disclose. That is, to be eligible for any credit for cooperation, the company must identify all individuals involved in or responsible for the misconduct at issue, regardless of their position, status or seniority, and provide to the Department all facts relating to that misconduct. If a company seeking cooperation credit declines to learn of such facts or to provide the Department with complete factual information about individual wrongdoers, its cooperation will not be considered a mitigating factor pursuant to USAM 9-28.700 *et seq.*² Once a company meets the threshold requirement of providing all relevant facts with respect to individuals, it will be eligible for consideration for cooperation credit. The extent of that cooperation credit will depend on all the various factors that have traditionally applied in making this assessment (*e.g.*, the timeliness of the cooperation, the diligence, thoroughness, and speed of the internal investigation, the proactive nature of the cooperation, etc.).

This condition of cooperation applies equally to corporations seeking to cooperate in civil matters; a company under civil investigation must provide to the Department all relevant facts about individual misconduct in order to receive any consideration in the negotiation. For

¹ The measures laid out in this memo are intended solely to guide attorneys for the government in accordance with their statutory responsibilities and federal law. They are not intended to, do not, and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law by a party to litigation with the United States.

² Nor, if a company is prosecuted, will it support a cooperation-related reduction at sentencing. See U.S.S.G. USSG § 8C2.5(g), Application Note 13 ("A prime test of whether the organization has disclosed all pertinent information" necessary to receive a cooperation-related reduction in its offense level calculation "is whether the information is sufficient ... to identify ... the individual(s) responsible for the criminal conduct").

example, the Department's position on "full cooperation" under the False Claims Act, 31 U.S.C. § 3729(a)(2), will be that, at a minimum, all relevant facts about responsible individuals must be provided.

The requirement that companies cooperate completely as to individuals, within the bounds of the law and legal privileges, *see* USAM 9-28.700 to 9-28.760, does not mean that Department attorneys should wait for the company to deliver the information about individual wrongdoers and then merely accept what companies provide. To the contrary, Department attorneys should be proactively investigating individuals at every step of the process – before, during, and after any corporate cooperation. Department attorneys should vigorously review any information provided by companies and compare it to the results of their own investigation, in order to best ensure that the information provided is indeed complete and does not seek to minimize the behavior or role of any individual or group of individuals.

Department attorneys should strive to obtain from the company as much information as possible about responsible individuals before resolving the corporate case. But there may be instances where the company's continued cooperation with respect to individuals will be necessary post-resolution. In these circumstances, the plea or settlement agreement should include a provision that requires the company to provide information about all culpable individuals and that is explicit enough so that a failure to provide the information results in specific consequences, such as stipulated penalties and/or a material breach.

2. Both criminal and civil corporate investigations should focus on individuals from the inception of the investigation.

Both criminal and civil attorneys should focus on individual wrongdoing from the very beginning of any investigation of corporate misconduct. By focusing on building cases against individual wrongdoers from the inception of an investigation, we accomplish multiple goals. First, we maximize our ability to ferret out the full extent of corporate misconduct. Because a corporation only acts through individuals, investigating the conduct of individuals is the most efficient and effective way to determine the facts and extent of any corporate misconduct. Second, by focusing our investigation on individuals, we can increase the likelihood that individuals with knowledge of the corporate misconduct will cooperate with the investigation and provide information against individuals higher up the corporate hierarchy. Third, by focusing on individuals from the very beginning of an investigation, we maximize the chances that the final resolution of an investigation uncovering the misconduct will include civil or criminal charges against not just the corporation but against culpable individuals as well.

3. Criminal and civil attorneys handling corporate investigations should be in routine communication with one another.

Early and regular communication between civil attorneys and criminal prosecutors handling corporate investigations can be crucial to our ability to effectively pursue individuals in

these matters. Consultation between the Department's civil and criminal attorneys, together with agency attorneys, permits consideration of the full range of the government's potential remedies (including incarceration, fines, penalties, damages, restitution to victims, asset seizure, civil and criminal forfeiture, and exclusion, suspension and debarment) and promotes the most thorough and appropriate resolution in every case. That is why the Department has long recognized the importance of parallel development of civil and criminal proceedings. *See* USAM 1-12.000.

Criminal attorneys handling corporate investigations should notify civil attorneys as early as permissible of conduct that might give rise to potential individual civil liability, even if criminal liability continues to be sought. Further, if there is a decision not to pursue a criminal action against an individual – due to questions of intent or burden of proof, for example – criminal attorneys should confer with their civil counterparts so that they may make an assessment under applicable civil statutes and consistent with this guidance. Likewise, if civil attorneys believe that an individual identified in the course of their corporate investigation should be subject to a criminal inquiry, that matter should promptly be referred to criminal prosecutors, regardless of the current status of the civil corporate investigation.

Department attorneys should be alert for circumstances where concurrent criminal and civil investigations of individual misconduct should be pursued. Coordination in this regard should happen early, even if it is not certain that a civil or criminal disposition will be the end result for the individuals or the company.

4. Absent extraordinary circumstances, no corporate resolution will provide protection from criminal or civil liability for any individuals.

There may be instances where the Department reaches a resolution with the company before resolving matters with responsible individuals. In these circumstances, Department attorneys should take care to preserve the ability to pursue these individuals. Because of the importance of holding responsible individuals to account, absent extraordinary circumstances or approved departmental policy such as the Antitrust Division's Corporate Leniency Policy, Department lawyers should not agree to a corporate resolution that includes an agreement to dismiss charges against, or provide immunity for, individual officers or employees. The same principle holds true in civil corporate matters; absent extraordinary circumstances, the United States should not release claims related to the liability of individuals based on corporate settlement releases. Any such release of criminal or civil liability due to extraordinary circumstances must be personally approved in writing by the relevant Assistant Attorney General or United States Attorney.

5. Corporate cases should not be resolved without a clear plan to resolve related individual cases before the statute of limitations expires and declinations as to individuals in such cases must be memorialized.

If the investigation of individual misconduct has not concluded by the time authorization is sought to resolve the case against the corporation, the prosecution or corporate authorization memorandum should include a discussion of the potentially liable individuals, a description of the current status of the investigation regarding their conduct and the investigative work that remains to be done, and an investigative plan to bring the matter to resolution prior to the end of any statute of limitations period. If a decision is made at the conclusion of the investigation not to bring civil claims or criminal charges against the individuals who committed the misconduct, the reasons for that determination must be memorialized and approved by the United States Attorney or Assistant Attorney General whose office handled the investigation, or their designees.

Delays in the corporate investigation should not affect the Department's ability to pursue potentially culpable individuals. While every effort should be made to resolve a corporate matter within the statutorily allotted time, and tolling agreements should be the rare exception, in situations where it is anticipated that a tolling agreement is nevertheless unavoidable and necessary, all efforts should be made either to resolve the matter against culpable individuals before the limitations period expires or to preserve the ability to charge individuals by tolling the limitations period by agreement or court order.

6. Civil attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against an individual based on considerations beyond that individual's ability to pay.

The Department's civil enforcement efforts are designed not only to return government money to the public fisc, but also to hold the wrongdoers accountable and to deter future wrongdoing. These twin aims – of recovering as much money as possible, on the one hand, and of accountability for and deterrence of individual misconduct, on the other – are equally important. In certain circumstances, though, these dual goals can be in apparent tension with one another, for example, when it comes to the question of whether to pursue civil actions against individual corporate wrongdoers who may not have the necessary financial resources to pay a significant judgment.

Pursuit of civil actions against culpable individuals should not be governed solely by those individuals' ability to pay. In other words, the fact that an individual may not have sufficient resources to satisfy a significant judgment should not control the decision on whether to bring suit. Rather, in deciding whether to file a civil action against an individual, Department attorneys should consider factors such as whether the person's misconduct was serious, whether

it is actionable, whether the admissible evidence will probably be sufficient to obtain and sustain a judgment, and whether pursuing the action reflects an important federal interest. Just as our prosecutors do when making charging decisions, civil attorneys should make individualized assessments in deciding whether to bring a case, taking into account numerous factors, such as the individual's misconduct and past history and the circumstances relating to the commission of the misconduct, the needs of the communities we serve, and federal resources and priorities.

Although in the short term certain cases against individuals may not provide as robust a monetary return on the Department's investment, pursuing individual actions in civil corporate matters will result in significant long-term deterrence. Only by seeking to hold individuals accountable in view of all of the factors above can the Department ensure that it is doing everything in its power to minimize corporate fraud, and, over the course of time, minimize losses to the public fisc through fraud.

Conclusion

The Department makes these changes recognizing the challenges they may present. But we are making these changes because we believe they will maximize our ability to deter misconduct and to hold those who engage in it accountable.

In the months ahead, the Department will be working with components to turn these policies into everyday practice. On September 16, 2015, for example, the Department will be hosting a training conference in Washington, D.C., on this subject, and I look forward to further addressing the topic with some of you then.

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Lewis Wiener, an experienced trial attorney with more than 25 years of trial and counseling experience, brings creativity and energy to his representation of corporate entities and individuals in state and federal court litigation throughout the United States. Lew heads Sutherland's Financial Services Litigation Team, is co-chair of the firm's TCPA defense practice, and is a member of the firm's executive committee. His extensive civil litigation and trial experience includes serving as class action defense counsel and as arbitration counsel, conducting large internal investigations, handling complex litigation matters, and defending entities in connection with investigations and enforcement actions brought by government agencies. Lew also represents clients in eminent domain/inverse condemnation, environmental and land-use litigation before state and federal trial and appellate courts.

A former trial lawyer with the U.S. Department of Justice, Lew draws on his experience representing executive branch agencies to represent clients in court and to advise clients on regulatory, compliance and enforcement matters at the federal and state level. While at the Department of Justice, Lew was twice recognized by the Attorney General for special achievement in the handling of significant litigation matters on behalf of the United States, and he was lead government counsel in the largest class action ever filed against the United States. Lew also serves as pro bono partner for Sutherland's Washington, D.C. office .

Lew holds prominent leadership positions in national and local organizations including serving as co-chair of the Washington Lawyers' Committee for Civil Rights and Urban Affairs, as president of the United States Court of Federal Claims Bar Association, and as a member of the Board of Trustees of the State University of New York at Albany.

Practice / Industries

- Litigation
- Class Action Defense
- Financial Services Litigation
- Complex Business Litigation
- U.S. Court of Federal Claims
- Appellate
- White Collar Defense
- Environmental
- Natural Resources
- Construction
- Director & Officer Liability
- Insurance
- Consumer Financial Services
- Crisis Management
- Telephone Consumer Protection Act (TCPA)
- Cybersecurity & Privacy

Education

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