

Monitoring Corporate Compliance

Experience. **Redefined.**[™]

***5th Biennial National Fraud Awareness
Conference on Transportation
Infrastructure Programs***

July 31, 2008



Deferred Prosecution and Non-Prosecution Agreements

Deferred Prosecution Agreement

- ◆ Public
- ◆ Filing of a formal charging document
- ◆ Filing of Agreement with the appropriate court

Non-Prosecution Agreement

- ◆ Not Public
- ◆ Formal charges are not filed
- ◆ Agreement is maintained by the parties
- ◆ Agreement is not filed with a court

Deferred Prosecution and Non-Prosecution Agreements

- ◆ Increased Usage (see Chart)
- ◆ Includes a Fine
- ◆ Punishment vs. Death Sentence
- ◆ Use of a Monitor

<u>Year</u>	<u>Agreements</u>	<u>Fines</u>	<u>Monitors</u>
2001	2	\$62,600,000	1
2002	3	\$18,800,000	0
2003	4	\$104,600,000	3
2004	8	\$278,013,478	7
2005	11	\$1,355,721,089	9
2006	12	\$727,465,126	7
2007	35	\$626,881,157	18
2008	8	\$146,428,842	6

*Statistics based on Huron engagements, press releases, DPAs, NPAs, news articles, Congressional Committees and other public documents.



Monitor - Selection

- ◆ Corporation & Agency should discuss:
 - The necessary qualifications in light of the agreement and underlying issues
 - The role the Monitor will play and what qualities, expertise, and skills the monitor should have
- ◆ Monitor traits should include:
 - Highly qualified & respected, instills public confidence
 - Utmost integrity
 - Capability and insight to recognize all issues & technical requirements
 - Proven ability to locate, mobilize and lead the right resources
 - No perceived, potential and/or actual conflicts of interests
- ◆ Consider a pool of qualified candidates, as practicable.
- ◆ Gain an understanding of the Monitor's approach/methodology/workplan.
- ◆ Corporation selects Monitor from candidates and Agency considers and approves.
- ◆ Willingness and ability to be impartial.
- ◆ A commitment from the Corporation that it will not employ or be affiliated with the Monitor for at least one year from the date the monitorship is terminated.
- ◆ Monitor understands how to balance costs/benefits and balance multi-party needs against costs/benefits.

Monitor - Duration

- ◆ Duration of Monitorship should correlate with the existing problems and types of remedial measures necessary to satisfy the Monitor's mandate.
- ◆ Criteria to be considered:
 - Nature, depth, pervasiveness and seriousness of the underlying misconduct
 - Involvement of Executive and/or Senior Management in underlying misconduct
 - Means by which the underlying misconduct was discovered and/or brought to the attention of the Government
 - Corporation's size, structure, history, reputation and culture
 - Industry's history, reputation and culture
 - Scale and complexity of remedial measures and their stage upon commencement of Monitorship
- ◆ Provision to shorten or lengthen Monitorship duration based upon Corporation's success or failure in complying with the terms of the Agreement.

Monitor – Priorities and Actions

- ◆ Primary responsibility is to assess and monitor compliance with the terms of the agreement, with particular emphasis on those terms specifically designed to address and reduce the risk of recurrence of the Corporation's misconduct.
- ◆ Evaluating internal controls, fraud risk & vulnerabilities, and Corporate ethics and compliance programs.
- ◆ Assessing Corporation's proposed remedial and/or new internal controls, compliance aspects or other changes impacting risk.
- ◆ Evaluating whether a Corporation has both adopted and effectively implemented remedial or new controls and ethics and compliance programs.
- ◆ Monitor should not investigate historical misconduct, but an understanding of historical misconduct may be necessary to a Monitor's evaluation of the effectiveness of the Corporation's compliance with the agreement.

Monitor – Recommendations and Communications

- ◆ Regular and timely communications between the Monitor and the Agency & Corporation as a result of working closely with them in the course of monitoring duties.
- ◆ Monitor will generally report to the Agency before the Corporation.
- ◆ Monitor may make periodic reports to both the Agency and the Corporation:
 - Monitor's activities, progress and workplan changes
 - Observations and/or Findings
 - Corporation's compliance with the terms of the Agreement
 - Changes necessary to foster Corporation's compliance
 - Expansion examinations
- ◆ Monitor formalizes findings and recommendations.
- ◆ Corporation evaluates findings and recommendations, making arguments for/against responsive actions.
- ◆ A realistic timetable is established for the Corporation to implement recommendations and responsive actions to findings.
- ◆ Monitor assesses Corporation's compliance with timetable over course of monitorship period, with periodic and final reporting to the Agency.

Monitor – Discovery of New Misconduct

- ◆ Per the Agreement, there may be specific previously undisclosed or new misconduct that the Monitor must report directly to the Agency and not to the Corporation.
- ◆ Factors influencing the Monitor's decision to report to the Agency, but not the Corporation, may include misconduct that:
 - Poses a threat or risk to public health, safety, the environment or of otherwise substantial harm
 - Involves Executive and/or Senior Management
 - Obstructs justice (i.e., destruction of evidence)
 - Provides the Government with the opportunity to apply proactive and/or covert investigative techniques
- ◆ Factors influencing the Monitor's decision to not report possible misconduct to the Agency include:
 - Non-credible and/or unsupported allegations of misconduct
 - Misconduct of external parties to the Corporation having no impact on the Agreement
- ◆ Monitor should have the discretion to take additional and discreet investigative steps relating to allegations of misconduct that arise to resolve the necessity to report.

Monitor – Intrinsic Value to Governmental Agency

- ◆ Assurance of Corporation's compliance with Agreement.
- ◆ Recognition, identification and, possibly examination of issues of importance to Agencies:
 - Criminal acts
 - Deceptive acts
 - Parties of Interest
 - Third-parties
- ◆ Experienced in the collection and preservation of evidence.
- ◆ “Thinks like an Agent”
 - Knowledgeable about Jencks
 - Understands legal issues and how to work-around, work-through or avoid them
 - Exercises “Agent Skepticism”
 - Develops and chases leads – i.e. not an auditor checklist
 - Wins hearts and minds
 - Multi-purpose and effective interviews
 - Able to protect information/resources
- ◆ Within a specific scope, an experienced onsite “Inspector General” or Watchdog.

Monitor – Intrinsic Value to Corporation

- ◆ Assurance of Corporation's compliance with Agreement.
- ◆ Experienced business advice concerning internal controls, fraud risk, compliance, accounting, management, IT and operational & financial process improvements.
- ◆ Buffer with the Agency.
- ◆ Experienced working with External and Corporate Counsel, Executive Management, Boards of Directors, Internal & External Auditors and Law Enforcement/Regulatory Agencies.
- ◆ Recognizes significant enterprise risks.
- ◆ Balance of controls (cost/benefit).
- ◆ Recognition, identification and ability to examine issues of importance to the Corporation:
 - Criminal acts
 - Deceptive acts
 - "Trouble Employees"
 - Internal Fraud
 - External Fraud

Keys to a Successful Monitor

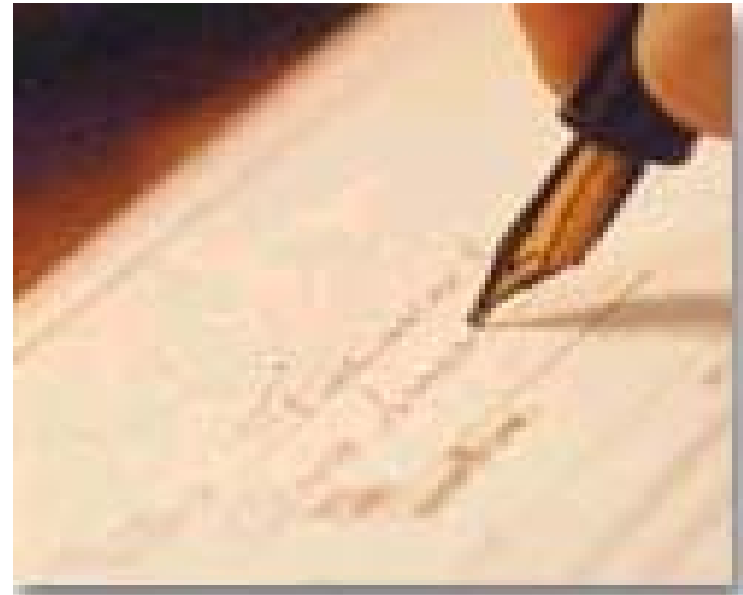
- ◆ High degree of active interaction and communication with the Monitoring Agency
- ◆ Balancing of costs/benefits within the scope of work necessary to accomplish the monitoring objectives

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John has more than 23 years of experience with compliance matters related to Federal government and Healthcare contracting. John focuses a large portion of his time assisting clients with a variety of financial accounting, cost analyses and allocation issues imposed by regulatory requirements for Federal contracting and healthcare programs. John has extensive experience related to assisting government contractors with proposal preparation, change order/request for equitable adjustment proposals, responding to government (Federal and State) audits and investigations (civil and criminal), as well as assisting clients and their legal counsel in the negotiation and resolution of these matters. John has also assisted clients in responding to various healthcare compliance related matters both on the Federal and state level. In addition has assisted clients with internal compliance related efforts including program design, implementation, oversight and training development, and delivery.

Professional experience

- Performed as the lead government appointed monitor for a U.S. division of a major international supplier of cement and aggregates (ready mix concrete and asphalt).
- Assisted major hospital corporation respond to and address Federal investigation issues related to various aspects of the Medicare/Medicaid programs.
- Have led monitoring assignment for aerospace and defense manufacturer related to an Air Force settlement agreement.
- Assisted various clients in resolving various CAS and FAR non-compliance matters alleged by the DCAA and/or DoD's Criminal Investigation Service. As part of these engagements, John has assisted, as requested, in the actual negotiation and resolution of these matters.
- Served as a "neutral third-party" in the resolution of a purchase price dispute between two major U.S. defense contractors. The disputed matters (e.g. percentage of completion, reserves for DCAA audits, etc.) were related to U.S. Government contracts.
- Assisted a major international information technology consulting firm respond to, negotiate and resolve DCAA audit findings of various Cost Accounting Standards (CAS) violations. The engagement also included a complete redesign of the firm's cost structure for U.S. Government contracts as well as preparation of the CASB Disclosure Statements and implementation of policies and procedures to ensure ongoing compliance with the FAR and CAS.
- Assisted a major international engineering and construction firm to redesign its U.S. government contract cost structure. This involved analyzing the Company's current cost structure to identify improvements for cost recovery, while ensuring compliance with the applicable CAS and FAR requirements. In addition, he assisted in the preparation and negotiation of applicable cost impact proposals resulting from the implementation of the new structure

- Assisted numerous clients in the review, design and implementation of various internal control policies and procedures for compliance with applicable Federal procurement rules and regulations including purchasing, estimating, labor report systems, etc

Education and certification

- Bachelor of Science, Accounting, Marquette University, Milwaukee, WI
- Certified Public Accountant (Illinois)

Professional associations

- Member, American Institute of Certified Public Accountants
- Member, Illinois CPA Society
- Associate Member, American Bar Association

John Hanson

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John is a Director in Huron Consulting Group's Fraud Investigations Practice. He has more than 18 years of fraud investigation, forensic accounting and audit experience.

Professional experience

The focus of John's professional experience has been in federal criminal law enforcement, having served more than nine years as a Special Agent of the Federal Bureau of Investigation (FBI), where he specialized in White Collar Crime. As an FBI Agent, John investigated a wide variety of complex fraud schemes and financial crimes. John's substantial expertise and contributions in the field of fraud investigations was recognized by a promotion to Supervisory Special Agent and Instructor at the FBI Academy, the premier law enforcement training academy in the world. In this role, he developed and implemented fraud and investigative training curriculum for New Agent Trainees and conducted advanced fraud related in-service training for experienced FBI Agents.

Prior to his Government service, he spent five years as the Director of Internal Audit and Quality Control for a large privately held mortgage origination and servicing company.

Representative examples of John's experience include:

- Conducted hundreds of investigations involving embezzlements, money laundering, identity theft, telemarketing fraud, copyright fraud, bankruptcy fraud, interstate transportation of stolen property, political corruption, false statements, securities fraud, health care fraud, mortgage fraud, charitable fraud, bank fraud and financial statement fraud.
- Identified and investigated an employee conflict of interest and kickback scheme involving the steering of contracts to repair foreclosed properties to a construction company owned by a related party.
- Combined forensic accounting techniques with traditional fraud investigation techniques on multiple engagements at large, publicly held companies, as well as a world renowned not-for-profit health services provider, where allegations existed concerning the manipulation of financial records to trigger bonus thresholds or otherwise wrongfully benefit executives.
- Managed an engagement involving money laundering that was international in scope and concerned the movement and tracing of tens of millions of narco-dollars by means of the Black Market Peso Exchange. Examined the Bank Secrecy Act and anti-money laundering compliance measures in place at a major U.S. banking institution, leading to a fine being levied against the bank of over \$50MM
- Managed an engagement with the DOJ and the FBI on a complex RICO matter involving 16 defendants, many located internationally, who operated a sophisticated lottery scheme to defraud victims around the world of more than \$100MM, utilizing a complex series of

financial transactions and corporate identities to launder the funds using, among other means, off-shore banks and correspondent banking accounts in the U.S.

- Conducted a fraud vulnerability and risk assessment at a \$6 Billion/year privately held enterprise of companies, primarily in the automotive industry. In addition to identifying significant fraud vulnerabilities, several false vendors and non-business related expense claims were also uncovered. Worked with the company to design and remediate controls to prevent and detect fraud.
- Managed an embezzlement investigation at a large international bank where a trusted senior employee used his title, knowledge and authority to embezzle funds over a ten-year period. Identified in excess of \$100,000 in additional theft and provided recommendations to strengthen controls.

Testimonial experience

- Testified during trial as the closing/summary witness on behalf of the Government in a high-profile case receiving national media attention.
- Testified before numerous Grand Juries in preparation of indictment and/or to explain complex accounting issues.

Education and certification

- BS, Accounting, University of New Orleans
- Certified Public Accountant, Louisiana
- Certified Fraud Examiner

Professional associations

- Association of Certified Fraud Examiners
- American Institute of Certified Public Accountants

Civic involvement

- Board of Trustees and Audit Committee – Hugh O'Brian Youth Leadership Organization, International
- Member, Executive Committee of the Distinguished Alumni Council – Hugh O'Brian Youth Leadership Organization, International