



Under the Threat of Corporate Indictment, to Pay or Not to Pay?

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Although a corporation obviously cannot be put in prison, saber-rattling by the government concerning a possible indictment is indeed a draconian threat, as Arthur Andersen learned in 2002, when it was charged with obstruction of justice for its role with the Enron scandal. The firm was indicted in March 2002, convicted by a jury in June 2002, and by August of that year had ceased to exist as a going professional concern. By the time its conviction was overturned on appeal by the 5th Circuit in 2005, the damage was long since done, with the partnership dissolved, the employees dismissed, and the value of the Arthur Andersen name irreparably lost.

Perhaps the most important factor for in-house corporate counsel to consider is whether there is any reason to believe that the government suspects that senior corporate officials of the company who are not yet under investigation may have been aware of and/or have condoned the alleged criminal conduct which is under investigation. If the government does not trust the company's key decision makers, paying the fees of corporate employees who are already under investigation can only heighten their suspicion that the organization itself is corrupt and should be made to pay the ultimate price.

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