

PRACTICE AND PROCEDURE

Indictments Lurking in Civil Cases

BY MATTHEW G. JACOBS

You're defending a deposition in a vanilla lender liability case when the examining attorney marks as the next exhibit your client's bankruptcy schedules from a three-year-old bankruptcy filing. The attorney then asks your client about a representation in one schedule that doesn't quite agree with the financial statement she submitted to the bank.

Loud, obnoxious alarm bells should begin to ring in your head. You should

Matthew G. Jacobs (matthew.jacobs@dlapiper.com) is a former federal prosecutor and a partner in the Sacramento office of DLA Piper Rudnick Gray Cary. His practice focuses on trials and litigation, including defending businesses and individuals in actions brought by local, state, and federal government agencies.

be asking yourself whether this is just another bad fact in the case that you'll have to deal with or whether your client is walking into an indictment. After all, one of the statements, either to a federally insured financial institution or to the federal bankruptcy court, appears to be false—and a false statement to either would violate federal law.

The same conundrum can arise in a variety of contexts. For example, you're handling a dissolution case in which the husband and wife are fighting over dividing their property. The husband asserts that the wife, a retailer, was skimming from the till—so the business's tax returns cannot be relied on as accurately representing its income.

Or say you're defending an employment case in which the plaintiff asserts she was fired because she alerted authorities to illegal corporate conduct. Though you may have concluded that the allegations of illegality are frivolous, there may be law enforcement officials out there who aren't quite sure. Perhaps the plaintiff has found an interested ear so that your corporate client, or its senior officers or employees, are at risk of criminal prosecution.

In fact, most civil cases allege wrongdoing of one sort or another that could also constitute crimes. Even contract cases often allege fraud. Identifying and analyzing

First Legal Support Services

ATTORNEY SERVICES

Court	Service of Process
- E-Filings	- Summons & Complaints
- PDF Filings	- Subpoenas
- Fax Filings	- Investigations
- E-Research	- Document Production

Ground Courier Messenger

- Motorcycles
- Bicycles
- Cars
- Trucks

1-800-889-0111

"First Legal Support is the support you need."

TRADEMARK & COPYRIGHT SEARCHES

TRADEMARK-Supply word and/or design plus goods or services.

SEARCH FEES:

- COMBINED SEARCH - \$315 (U.S., State, Expanded Common Law and Internet)
- TRADEMARK OFFICE - \$135
- STATE TRADEMARK - \$140
- EXPANDED COMMON LAW - \$165
- DESIGNS - \$210 per International class
- COPYRIGHT - \$180
- PATENT SEARCH - \$450 (minimum)

INTERNATIONAL SEARCHING

DOCUMENT PREPARATION

(for attorneys only - applications, Section 8 & 15, Assignments, renewals.)

RESEARCH- (SEC - 10K's, ICC, FCC, COURT RECORDS, CONGRESS.)

APPROVED- Our services meet standards set for us by a D.C. Court of Appeals Committee.

Over 100 years total staff experience - not connected with the Federal Government.

GOVERNMENT LIAISON SERVICES, INC.

200 North Glebe Rd., Suite 321
Arlington, VA 22203
Phone: (703) 524-8200
FAX: (703) 525-8451

Major credit cards accepted.

TOLL FREE: 1-800-642-6564

WWW.TRADEMARKINFO.COM

SINCE 1957

these potential criminal issues early on can prevent a host of headaches down the road.

CLEAR CRIMINAL IMPLICATIONS

If there is an actual threat of criminal investigation or prosecution in your case, consult a criminal lawyer—quickly. Perhaps the situation calls for an assertion of the Fifth Amendment privilege before real damage is done, or for a motion to stay the civil case pending the resolution of a criminal investigation. (See *Pacers, Inc. v. Superior Court*, 162 Cal. App. 3d 686 (1984).) Perhaps your client should now be willing to resolve the matter on less advantageous terms than he or she previously demanded. Or perhaps there is nothing to worry about and you should stay the course. Get some seasoned advice to be sure.

CAUTIONARY FLAGS

In cases in which the threat of criminal prosecution is less clear, certain red flags should alert you that it may be lurking.

One warning signal is a sudden and unexplained change in the lineup of opposing counsel. If, for example, a former criminal prosecutor is suddenly taking the depositions for the opposing firm, or such an attorney is suddenly associated with the case for the other side, your antenna should go up.

Also, be alert for additions to the "cc" list on letters from opposing counsel. If you don't know everyone on the list, question who the new people are and why they are being notified. Of course, the addition of a "cc" to correspondence is more likely to occur in civil cases in which you're already adverse to the government. However, if the SEC is suddenly sending copies of its letters to an assistant U.S. Attorney, or the regional water board is suddenly sending copies of letters to a deputy attorney general, something is probably up.

Also beware of subpoenas, civil investigative demands, and requests for information from government

agencies. Though they may look and feel purely civil in nature, the information your client provides in response can be turned over to criminal investigators. Snoop around as best you can to figure out the government's true intent in requesting or demanding information.

You should be aware that certain types of matters just naturally attract more government attention than

others. If a property dispute suddenly uncovers evidence that your client illegally dumped or stored hazardous waste, watch out. If the government breach of contract case you're prosecuting suddenly precipitates a request for all source documents supporting an invoice, beware. And if the U.S. Trustee suddenly inserts itself into your bankruptcy litigation, you're on notice. **■**

Great Moments of Invention

Mesopotamia: 3,524 B.C.

A shipbuilder near the Euphrates River invents the wheel.

Two weeks later

Some guy on the other side of the river steals his idea.



And the demand for intellectual property protection is born.

Los Angeles, a center for patent litigation, now has a preeminent law firm exclusively devoted to intellectual property litigation and prosecution.

Our work speaks for itself. In 2004, the widely regarded *IP Law & Business Patent Litigation Survey* named Connolly Bove one of the top ten patent litigation firms. The same year, the firm represented clients in the issuance of over 400 U.S. patents. Connolly Bove was also successful in protecting Pfizer Inc's patents for Lipitor® in 2005. In the LA office, all of our attorneys hold degrees in engineering or science and are registered with the U.S. Patent and Trademark Office.

Make sure your client's greatest inventions don't end up on the wrong side of the river. Contact us to discuss your IP needs.

213.787.2500 • www.cblh.com



CONNOLLY BOVE LODGE & HUTZ LLP

ATTORNEYS AT LAW

IP Smart. Business Savvy. Client Connected™

355 S. Grand Ave., #3150 • Los Angeles, CA 90071

Wilmington, DE • Washington D.C. • Los Angeles, CA