

DOJ lawsuit could dampen future role of in-house counsel

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The U.S. Department of Justice's controversial decision to file criminal charges against Lauren C. Stevens, a North Carolina attorney employed by drug manufacturer GlaxoSmithKline, raises questions about whether lawyers working for companies are now firmly in the government's enforcement crosshairs and if the future role of in-house counsel will be diminished as a result.

Stephen G. Huggard, a former federal prosecutor and now chairman of the white-collar and government enforcement group at Edwards, Angell, Palmer & Dodge in Boston, said he believes the case has potential "rule-changing" implications — especially if Stevens is convicted — and is likely to chill future communications between in-house counsel and the government.

Huggard predicts it will also drive companies that had been trying to save on costs by having in-house counsel respond to federal inquiries to now seek additional legal advice.

"They're going to need outside counsel for nearly everything," he said.

Wrong cause of action

Stevens, now a retired lawyer who served as vice president and associate general counsel for the pharmaceutical giant, was indicted last November by a federal grand jury in Maryland on six counts of making false statements, falsifying or concealing documents, and obstructing a 2002 investigation by the Food and Drug Administration into the company's unapproved marketing practices of the antidepressant Wellbutrin.

The case, *United States v. Stevens*, has drawn national attention in large part because neither GSK nor other company executives, even those alleged to have engaged in the illegal off-label marketing has been charged thus far.

She stands accused of responding to the FDA inquiry by signing and sending a series of letters to the agency in which she falsely denied GSK paid doctors to illegally tout the drug to other physicians as a weight loss aid at hundreds of promotional events between 2001 and 2002, according to U.S. Attorney Carmen M. Ortiz, whose office is prosecuting the case.

Prosecutors say Stevens also promised to turn over slides used by the doctors during their presentations, but failed to do so.

Stevens pleaded not guilty in December. Her trial is scheduled to begin Feb. 1.

Brien T. O'Connor of Ropes & Gray in Boston and attorneys from Steptoe & Johnson in Washington, D.C., represent Stevens. O'Connor said Stevens did not obstruct the FDA's investigation and called the government's charges "not the right cause of action."

A statement her attorneys released after her indictment suggests she hopes to mount an advice-of-counsel defense in which she relied on the advice of King & Spalding, a nationally known law firm experienced in dealing with the FDA.

In a motion filed on Dec. 17, 2010, prosecutors argue Stevens should not be allowed to pursue an advice-of-counsel defense unless she can show she gave the law firm full information about her contacts with the FDA on behalf of the company and relied on their advice in good faith.

Gauntlet throw-down

Huggard said the case is a gauntlet throw-down by the federal prosecutors designed to send a message that the government is serious about going after not just CEOs, but the so-called "gatekeepers" like attorneys and accountants when corporate wrongdoing arises.

"I think this is a very aggressive play by the government," Huggard said. "They are definitely trying to get the attention of in-house counsel."

Denis M. King, a professional liability defense lawyer and former federal prosecutor at Goulston & Storrs in Boston, agrees that while it is unusual for the government to single out in-house counsel, the move is not entirely unprecedented and may signal only that prosecutors believe their case against Stevens is strong enough to eventually blow open the doors to a broader case against others within the company.

"It would not surprise me if in this investigation that other people are being