

Axinn at the 2024 ABA White Collar Crime Conference

A photograph of a modern building's curved glass facade, showing multiple floors and windows, set against a light blue sky.

3 MIN READ

March 11, 2024, 12:34 PM

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The 2024 ABA White Collar Crime Conference in San Francisco was filled with insightful discussion on hot topics in recent U.S. criminal enforcement as Department of Justice enforcers offered views into current and future enforcement strategies. Axinn partners [Dan Oakes](#) and [James Attridge](#) attended, and share the following key highlights:

- ***Antitrust Enforcement*** Antitrust took center stage on a panel featuring Emma Burnham (Director of Criminal Enforcement, DOJ Antitrust Division) and Paula Blizzard (Senior Assistant Attorney General, California Department of Justice), who described federal and state enforcement priorities regarding criminal monopolization, wage fixing, and leniency, among other topics.
- Burnham highlighted the DOJ's increased use of proactive investigation methods, including wiretaps and other covert techniques, to develop stronger evidence and bring indictments more quickly than the Division has in the past. This emphasis underscores recent changes to the leniency program intended to use cooperators to capture evidence of cartel conduct while it happens. Also, despite the Division's recent trial record on labor market enforcement, Burnham stressed that the Division remains committed to criminal enforcement of no-poach, no-hire, and non-solicit agreements.

- Blizzard, on the other hand, made headlines for pledging to “reinvigorate” enforcement of California’s Cartwright Act, by criminally prosecuting antitrust crimes under the state competition law she described as “broader and deeper” than the Sherman Act. In relation to this potential enforcement frontier, California has considered instituting a leniency policy. Blizzard also discussed pending California legislation aimed at voiding labor non-compete agreements and appears to be focused on labor agreements occurring within the State of California.
- ***New Whistleblower Policy.*** In a keynote speech, Deputy Attorney General Lisa Monaco introduced a potentially groundbreaking new pilot program to encourage increased whistleblower reporting. Citing success of existing, but patchwork, federal whistleblower programs, Monaco said the pilot program will seek to reach a broad range of corporate conduct, and incentivize individuals to report and potentially “qualify to receive a portion of the resulting forfeiture.” This whistleblower pilot is aimed to further create a race to self-report — as does the Antitrust Division leniency policy and other recent DOJ policy innovations regarding voluntary self-disclosure. It will be fascinating to see how this policy develops and whether it applies to antitrust offenses.
- ***Corporate Clawbacks:*** As we recently described, the DOJ has made good on its promise to require cooperating companies to force executive accountability by obtaining compensation clawbacks from responsible individuals. In a keynote speech, Acting Assistant Attorney General Nicole M. Argentieri boasted successes of the Criminal Division in giving “a dollar-for-dollar credit to companies that claw back or withhold compensation from culpable employees” to “ensure[] that the actual wrongdoers are actually paying for their misconduct.” Argentieri highlighted the recent FCPA case of SAP— now the eighth company to take advantage of the clawback pilot — which experienced a 40% fine reduction in its criminal penalty, in part through its efforts to withhold over \$100,000 in compensation from certain employees.

The announcements and comments underscore the DOJ’s recent laser focus on increasing voluntary self-reporting. The Criminal Division continues to add new tools—both carrots and sticks—to encourage early and complete disclosure of corporate wrongdoing.

[W]e recognized there’s another way we can encourage individuals to report misconduct: by rewarding whistleblowers. And how do we do that? Money.



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