

Lecture 5: Corporate Crime (continued)

WHITE COLLAR CRIME

Corporate Abuse Of Power, Fraud, And Economic Exploitation

Corporate crime with **political and economic consequences**, rather than violent consequences.

Ex.: restraints of trade; rebates; patent, trademark, and copyright violations; misrepresentations in advertising; unfair labor practices; financial manipulations; bribery of public officials; and war crimes

Abuse Of Power

E.g., bribery; PACs; aggressive lobbying

Harm to public:

- Reduced tax liability for corporations
- Increased freedom to raise prices
- Increased freedom to underpay workers
- Influence leads to policies favoring the interests of corporations over those of ordinary citizens.

Crimes Against Citizens And Taxpayers

Defrauding the government

- **Defense Contract Fraud**
 - Charging unreasonable prices
 - Cost overruns
 - Falsified test data
 - Double-billing
 - Delivery of defective products/systems

- **Health Care Provider Fraud**
 - Manipulating numerical codes
 - Kickbacks
 - Medicare fraud
 - Medicaid fraud

Health Care Provider Fraud: A Case Study

Omnicare Agrees To Pay \$100 Million In Last Two Months To Settle Medicare Fraud Cases In 42 States.

In one case, a patient named Beatrice Schiff died at the age of 98. However, her bill for prescription drugs lived on for nearly five months after her death. An Omnicare subsidiary charged Medicaid for her drugs.

Omnicare also allegedly re-sold leftover pills that the state of Illinois had already paid for, and illegally switched patients from tablets to far more expensive capsules to get higher reimbursement from the state of Maine.

- **Corporate Tax Evasion**

- Padding cost figures
- Manipulating financial records
- Depletion allowances
- Asset depreciation tables
- Investment Tax Credits
- Tax Shelters
 - E.g., “Son of Boss”
 - American Jobs Creation Act of 2004

Corporate Tax Evasion: A Case Study

From www.irs.gov:

Beaulieu Group Pays \$32 Million; Two Executives of Beaulieu Step Down from Corporate Positions

Beaulieu, formerly doing business as Beaulieu of America, Inc., pleaded guilty, in June 2007, to filing a false tax return. According to the plea agreement, in 1986, Beaulieu entered into a purchase agreement with a European equipment manufacturer (Barmag AG) for the purchase of four 12-position spinning machines for the production of carpet yarn at the Beaulieu's Bridgeport, Alabama plant.

In 1988, Beaulieu financed the purchase of the machinery through an operating lease. The lease included an option to purchase the equipment at fair market value at any time after the second anniversary of the commencement date of the lease. On March 10, 1993, Beaulieu exercised its right to purchase the equipment for a total amount of \$12,000,000.

After exercising the buyout provision, Beaulieu capitalized the four Barmag machines and depreciated the cost of the machines during the years 1995 through 2000. **On its Partnership Form 1065, for the 1995 through 2000 tax years, Beaulieu knowingly overstated its depreciation deduction for the Barmag equipment, in the total amount of \$5,919,093.**

Beaulieu also purchased 29 Volkmann twisters during the years 1992 through 1995, paying significantly more for each Volkmann twister than if it had purchased the machines directly from the manufacturer. These machines depreciated during the years 1992 through 2000; however, **on its Partnership Form 1065, for the 1992 through 2000 tax years, Beaulieu knowingly overstated its depreciation deduction in the total amount of \$1,049,836.**

Crimes Against Consumers: Price Fixing

Price Fixing – an agreement between **competing corporations** to **fix prices** at a certain level

- Usual form is **parallel pricing**
- Price fixing is prohibited by the Sherman Act of 1980 as a form of “restraint of trade.”
- Some examples: agreement to sell at a common target price; set a common "minimum" price; buy the product from a supplier at a specified "maximum" price; adhere to a price book or list price; engage in cooperative price advertising; limit discounts; discontinue a free service or fix the price of one component of an overall service; adhere uniformly to previously-announced prices and terms of sale; establish uniform costs and markups; impose mandatory surcharges; purposefully reduce output or sales in order to charge higher prices; or purposefully share or "pool" markets, territories, or customers

Crimes Against Consumers: Price Gouging

Price Gouging – seller prices much higher than is seen as fair (**systematic overcharging**)

Ex. News reports indicate that a hurricane will strike sometime over the weekend. Joe Manager raises the price of his existing stock of milk and water in anticipation of the approaching storm.

- A felony in some states during civil emergencies.
- Defense: price increase mostly reflects increased costs, such as running an emergency generator, or hazard pay for workers.

Crimes Against Consumers: False Advertising

- Use of **deliberately false** statements or deception in **advertising**, in order to gain a commercial advantage.
- Advertising is regulated by the Federal Trade Commission (FTC), but the 50 states have also enacted “Little FTC” acts.
- Response to false advertising is typically to require a modification or discontinuation of a misleading advertising campaign.
- Criminal prosecutions are rare.

Crimes Against Employees

- **Economic Exploitation**

- (E.g., driving down wages)

- **Corporate Stealing from Employees**

- (E.g., making employees work after clocking out without providing additional pay)

- **Unfair Labor Practices**

- (E.g., terminating employee because the employee joined a labor union)

Unfair Labor Practices: Relevant Laws

- *National Labor Relations Act (NLRA)*
 - Protects the rights of most workers in the private sector to organize labor unions, to engage in collective bargaining, and to take part in strikes and other forms of concerted activity in support of their demands.
 - Does not cover agricultural employees, domestic employees, supervisors, independent contractors, and certain close relatives of individual employers.

- ***Fair Labor Standards Act of 1938 (a/k/a Wages and Hours Bill)***
 - Establishes a national minimum wage; tool for **enforcement of wages**
 - Guarantees *time and a half* for overtime in certain jobs
 - Prohibits "oppressive child labor"
 - Applies only to "employees who are engaged in interstate commerce or in the production of goods for commerce, or who are employed by an enterprise engaged in commerce or in the production of goods for commerce."
 - Does not apply to independent contractors
 - Court will look at the "economic reality" of the relationship between the putative employer and the worker to determine whether the worker is, in fact, an independent contractor