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Monsanto Whistleblower Wants SEC to Go after Deloitte

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Last month, the Securities and Exchange Commission announced the award of more than \$22 million to a whistleblower “whose detailed tip and extensive assistance helped the agency halt a well-hidden fraud at the company where the whistleblower worked.”

The Deloitte logo, consisting of the word "Deloitte" in a bold, black, sans-serif font, followed by a small green dot.

The SEC didn't identify the company.

But it turns out that the company was Monsanto.

Earlier this year, the SEC announced that agribusiness giant Monsanto Company agreed to pay an \$80 million penalty and retain an independent compliance consultant to settle charges that it violated accounting rules and misstated company earnings as it pertained to its flagship product Roundup.

Three accounting and sales executives also agreed to pay penalties to settle charges against them.

The whistleblower remains anonymous. But his attorney is Stuart Meissner of Meissner Associates in New York.

Meissner raised concerns about the role of outside auditors in this and other SEC accounting matters.

“We hope the agency will probe Monsanto's outside auditor Deloitte for the role we believe it played in enabling the company to overstate earnings and issue misleading financial statements – not only once, but twice,” Meissner said.

“There was an initial misstatement by Monsanto and a subsequent restatement –the restatement is actually the bigger issue of the two in my view,” Meissner said. “When auditors are allowed to audit their own mistakes, it is difficult for them to be independent and objective. And when independence is impaired, the professional skepticism needed to recognize and flush out improprieties by management is not present. Professional skepticism of the auditor is the last line of defense for a management team that may have a clear bias in reporting positive results.

“To this day, Monsanto investors still do not have accurate financial statements for the periods involved in the case. I do not believe that investors have been able to reasonably access the performance of the company,

including whether or not Monsanto hit the mid-teen percentage growth targets management committed to in 2010. If a true independent auditor not associated with the original financials had been appointed to audit the restated financials, I believe there would be a higher likelihood that investors would know the true performance of the company and be in a better position to make fully informed decisions.”

Meissner is a former prosecutor and member of the New York Attorney General’s office who assisted in the original drafting of the SEC’s whistleblower rules.

How did this Monsanto whistleblower come in the door?

“I believe he heard of me through marketing,” Meissner told Corporate Crime Reporter in an interview last week. “Initially, we took the bull by the horns and marketed in movie theaters throughout the New York area. And that resulted in a fair amount of publicity. It was in sync with the movie — Wall Street — Money Never Sleeps.”

You ran an ad before the movie started?

“Yes. As a result of those ads and the resulting publicity, our firm name got out there. That was in 2010.”

Has the Monsanto whistleblower’s name been made public?

“No.”

That was his choice?

“Yes.”

The SEC did not even reveal which company it was, or which case it was. They just said — a whistleblower got a \$22 million award. But you put out a press release identifying the whistleblower as the Monsanto whistleblower.

“Yes. The SEC, in any of these cases, does not put out that information. It puts out very little information in general. They do not want to give any inkling as to who the whistleblower is.

“It’s up to the whistleblower about which information they want to release.”

How many whistleblower cases that come in the door do you take?

“Very few. My office has reviewed maybe 200 over the years. We have filed under ten of those cases.”

What is your screening process like?

“We want the SEC to take every submission we make and we want it to stand above and beyond what they usually achieve. We want the SEC to know that when they receive a matter from my firm — that this must be something significant.”

“I put on my prosecutor’s hat and I look at the quality of the information and the source of the information. Is it reliable? Were they in a position to have the information that they say they have? Do they come across as credible? Would they have any axes to grind? Are there any issues based on the rules that the SEC has implemented that may cause a problem in filing the case? What kind of role will that play in any filing?”

“Although you can be anonymous in a whistleblower submission to the SEC, at some point the enforcement attorneys, because of the information, may start to narrow down who the whistleblower is.”

The whistleblower was a financial executive at Monsanto?

“I don’t know about executive. He certainly was not an assembly line worker. And he wasn’t an officer. He was a regular guy.”

What was his complaint?

“To boil it down, it relates to not accounting for rebates that the firm was providing its Roundup customers. The goal was to meet quarterly earnings estimates. The allegation was that Monsanto artificially inflated these revenues by giving these rebates to the customers without accounting for those rebates in their financials. They were giving the impression that these were real sales.”

“The SEC brought a complaint against Monsanto based on this whistleblower’s complaint — and earlier this year they settled with Monsanto for \$80 million. Then the SEC announced recently that the whistleblower was going to receive \$22 million.”

When did the whistleblower file the complaint?

“We haven’t disclosed that.”

Was the whistleblower with the company when he filed the complaint?

“Yes.”

Is the whistleblower still with the company?

“No.”

Monsanto was represented in this case by David Anders of Wachtell Lipton. Did you deal with the Monsanto attorneys?

“Not at all. I didn’t even know who they were.”

When you file the complaint, do you go to the SEC’s office?

“Today, filing the complaint is on line. When I started, there wasn’t even a whistleblower office. There were no rules. The rules came about after the law was passed. Once the law was passed, people could put in whistleblower claims even though there were no rules. No office. They passed the rules within the year following the passage of the law.”

“Now there is a whole website where people can file complaints online. There is no verbal interaction at all.”

“If there is a claim that is similar to something that I have filed before — another accounting fraud case — I may give a call to some of the enforcement attorneys I have worked with and say — I have this case, keep an eye out for it. It’s helpful to flag the office to look out for this case.”

How long does it take for the SEC to get back to you?

“Normally, you will hear something as soon as two or three weeks. Other times it can be a couple of months. And they do say that just because they don’t take immediate action on a particular case, it doesn’t mean it won’t happen. They might get follow up tips a year or two later and it may trigger something. You could file something and two or three years later, you’ll hear something back.”

“I did have that in a situation where a foreign country was interested in something that we filed. And it came in years later. But generally speaking, something will come back within a couple of months.”

Do you get a good sense from that initial response whether it is going to move or not?

“You do. But again, there can be hiccups along the way. You can have initial email exchange where they ask for more information, documents, then we move on from email to a phone conference just with me, and then maybe a phone conference with the whistleblower who goes by John Doe. Then they may come back and say — we have some more questions. It gets to the point if you are anonymous, it gets difficult. They are pursuing an investigation and as time goes on they get a feel as to who the whistleblower is. From a logistics standpoint, it makes it more difficult to assist the SEC.”

“I had a group of SEC attorneys come to my office and meet with the whistleblower. They see him, but still no name. The reason they come to my office is because if you go to the SEC, you have to give ID. They all came down with their computers. They took information. It looked like it was going somewhere. They requested information from the company. But much of this is based on memory. In that particular case, the documents that they received didn’t have everything he remembered. It didn’t move forward because of that. Although something can get started, it doesn’t mean it will go all the way.”

In cases that move forward, toward the end of the investigation, does the SEC usually request a face to face and an ID?

“No. They can’t. The law allows for whistleblowers to be anonymous throughout the process. They require a name only to make out the bounty check.”

Was that the case in Monsanto — up until the writing of the check, the SEC didn’t know the name of the whistleblower?

“No. In this case, my client didn’t have an issue with the SEC knowing who he was. That was much easier. We had many in person meetings in Washington and on the phone.”

And that makes it easier for the SEC?

“It makes it easier for everyone.”

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