



U.S. Department of Justice

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JUL 24 2006

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July 18, 2006

Mr. Michael S. Greco
President
American Bar Association
Governmental Affairs Office
321 North Clark Street
Chicago, IL 60610

Dear Mr. Greco:

Thank you for your May 2, 2006, letter to Attorney General Gonzales outlining the American Bar Association's views on the use of waivers of the attorney-client privilege. The Department of Justice shares your commitment to the attorney-client privilege and work product doctrines as fundamental elements of our legal system. We are also committed to encouraging responsible corporate stewardship and corporate governance, a goal the ABA no doubt shares as well. We appreciate the opportunity to respond to your proposed revision to the Thompson Memorandum as part of our continuing dialogue on the issue of corporate cooperation in corporate fraud investigations.

As you are aware, President Bush, Congress, and the American people have all embraced a zero tolerance policy when it comes to corporate fraud. The Department of Justice is committed to fully and fairly enforcing the landmark Sarbanes-Oxley legislation of 2002 and prosecuting those in corporate America who would abuse their positions to enrich themselves unlawfully. We seek to protect the American public and to restore confidence in our financial markets. And we are proud of our record in that regard—from July 2002 through March 2006, the Department secured well over 1000 corporate fraud convictions.

One key element of our success has been the ability to secure the corporation's cooperation. Our policy, as set forth in the Thompson Memorandum, provides that the degree to which a corporation cooperates with a criminal investigation may be a factor to be considered by prosecutors when determining whether or not to charge the corporation. There are numerous ways in which a corporation may indicate and provide a degree of cooperation that, under the Thompson Memorandum, will impact a decision on the charging of the corporation. One such factor, but certainly not the only factor, can be whether the corporation has waived its attorney-client and work product protections. In

Mr. Michael S. Greco

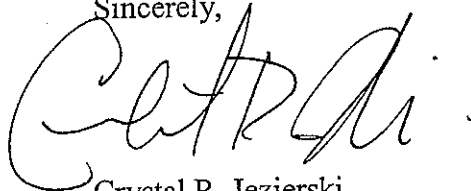
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such circumstances, corporations are generally represented by sophisticated counsel and make informed and considered decisions on whether to offer such waivers, to agree to requests for them from prosecutors, or to refuse such requests.

Although some have suggested that prosecutors routinely seek waivers of privileges, giving rise to a "culture of waiver," that should not occur under our guidelines, and we believe it does not routinely occur. Instead, waivers should be sought only when based upon a need for timely, complete, and accurate information and only with supervisory approval after a review of the underlying facts and circumstances. As we have recently confirmed through the McCallum Memorandum, clear guidelines for and supervisory oversight of any waiver requests are critical.

Thank you again for contacting the Department and for sharing your concerns. We hope to address the concerns you have raised, and view our previous meetings and the open lines of communication as important steps toward that goal. We can all agree that the Department should support both the societal benefits provided by traditional privileges, such as the attorney-client privilege, and those arising from the vigorous enforcement of the criminal laws against wrongdoers regardless of their stature or status. We look forward to continuing to work with you on these efforts. Please do not hesitate to contact this office if we may be of assistance with this or other matters.

Sincerely,

A handwritten signature in cursive script, appearing to read "Crystal R. Jezierski".

Crystal R. Jezierski
Director