



I'm from the Government and I'm Here to Help

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On October 24, 2012, Neil H. MacBride, United States Attorney for the Eastern District of Virginia, participated in a U.S. Chamber of Commerce panel to discuss federal regulatory overreach and its potential impact on the business community.

Arguing that the Department of Justice is more than an occasional friend of the business community, MacBride pointed to two recent cases in the Eastern District of Virginia where his office was taking up the cause of businesses whose intellectual property had allegedly been stolen. On October 18, 2012, MacBride and DOJ announced the indictment of South Korea-based Kolon Industries, Inc. as well as five of its executives and employees. The indictment alleges a multi-year conspiracy to engage in industrial espionage and includes a forfeiture notice of at least \$225 million, representing the proceeds of sales and payments to the indicted employees. At issue were DuPont's trade secrets related to the development and manufacture of Kevlar. MacBride also noted the recent convictions of four members of the IMAGiNE Group, an online piracy group responsible for surreptitiously recording major motion pictures and other copyrighted materials and then selling them online. The defendants acknowledged that the reasonably foreseeable infringement exceeded \$400,000.

Corporate victims of industrial espionage should be aware of and participate actively in criminal prosecutions involving their intellectual property. Organizational victims must be specifically identified in court pleadings under Federal Rule of Criminal Procedure 12.4, and are afforded the same rights as other victims in federal criminal cases, including the right to full and timely restitution. Where lost sales may fully compensate a victim in a counterfeit goods case, the United States Sentencing Guidelines also allow the Court, in trade secrets cases, to consider the cost of developing that information or the reduction in the value of that information that resulted from the offense. In addition,

the Crime Victims? Rights Act requires that victims be afforded a reasonable opportunity to be heard at various stages of a prosecution, including sentencing.

Although interaction with law enforcement officers often means a person or corporate entity is the target of a criminal investigation, there are also times where agents and prosecutors seek, in part, to help victims recover losses resulting from the theft of their intellectual property or other business torts. Recognizing whether you are a subject, target, victim or witness necessarily determines whether the government may really be here to help.

For more information about this topic, please contact the authors or any member of the Williams Mullen White Collar & Investigations Team.

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