

FTC ENFORCEMENT AGAINST INDIVIDUALS:

Legal Standards Impacting Individual Liability for Alleged Violations Enforced by the FTC's Bureau of Consumer Protection

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Officers, directors, and management-level employees of corporate entities often fail to recognize that they can be held personally liable under the Federal Trade Commission Act (FTC Act)¹. In fact, in recent years, the Federal Trade Commission (FTC or Commission) has increasingly brought actions against individuals in their personal capacity, and has held such individuals jointly and severally liable with other named individual and corporate defendants for the total amount of consumer injury. Liability can be imposed even in situations where individuals do not have actual knowledge of the alleged corporate wrongdoings, and do not have any express intent to defraud consumers.

This article addresses the breadth of individual liability in the context of actions brought by the FTC's Bureau of Consumer Protection, and highlights ten aspects of individual liability that should be considered by corporate officers, directors, and other management-level employees.

THE FTC ROUTINELY ENFORCES AGAINST INDIVIDUALS.

Section 5(a) of the FTC Act prohibits unfair or deceptive acts or practices in or affecting commerce.² In addition, Section 12 of the FTC Act makes it unlawful to disseminate, or cause to be disseminated, any false advertisement to induce the purchase of food, drugs, devices, services or cosmetics.³ The FTC may initiate federal district court proceedings to enjoin violations of the FTC Act, and to secure other equitable relief such as restitution and disgorgement of ill-gotten gains.⁴

¹ Individuals may also be personally liable for violations of the Federal Food, Drug, and Cosmetic Act (FFDCA) and other federal or state laws, including for example, state fraud statutes.

² 15 U.S.C. § 45(a).

³ 15 U.S.C. § 52.

⁴ 15 U.S.C. § 53(b).

*a corporate officer or
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It is well-established that a corporate officer or other employee can be held individually liable for company misrepresentations and other malfeasance that violate the FTC Act. Specifically, courts have taken the position that an individual may be liable under the FTC Act “for corporate practices if the FTC first can prove the corporate practices were misrepresentations or omissions of a kind usually relied on by reasonably prudent persons and that consumer injury resulted.”⁵ Once corporate liability is established, the FTC must then generally demonstrate that “the individual defendants participated directly in the practices or acts or had the authority to control them.”⁶ Authority to control the company can be evidenced by active involvement in business affairs and the making of corporate policy, including assuming the duties of a corporate officer.⁷ Importantly, in a small closely-held corporation, an individual’s status as a corporate officer gives rise to a presumption of ability to control.

THE FTC OPERATING MANUAL PROVIDES IMPORTANT GUIDANCE REGARDING INDIVIDUAL LIABILITY.

The FTC Operating Manual provides the following additional guidance on the “capacity and liability of individuals”:

“Whether or not an individual who is an officer, employee, or stockholder of a corporation charged with law violations may properly be subject to a cease and desist order in an individual capacity depends on a number of factors. Among these are whether or not the individual is sole or majority stockholder of the corporate respondent involved; whether or not the individual directed, formulated, and controlled the policies, acts, and practices of the corporate respondent; whether or not the individual played an active role in the alleged violations; whether or not under the facts and circumstances shown there is reason to believe that an order may be evaded unless the individual is named personally; and whether or not there are unusual or unique circumstances present which would render the naming of an individual personally unfair or unjust. Specific proof of the likelihood of future violation is not a requisite for including an individual in an order in his or her individual capacity.”⁸

⁵ See e.g., *FTC v. Amy Travel Service, Inc.*, 875 F.2d 564, at 573 (7th Cir. 1989) (citing *FTC v. Kitco of Nevada, Inc.*, 612 F.Supp.1282 (D. Minn. 1985)).

⁶ See e.g., *FTC v. Amy Travel Service, Inc.*, 875 F.2d 564, at 573-574; *FTC v. Transnet Wireless Corporation*, 506 F.Supp.2d 1247, 1270-71 (March 20, 2007) (emphasis added).

⁷ *Id.*

⁸ FTC Operating Manual, Chapter Four, available at <http://www.ftc.gov/foia/ch04administrativecomplaints.pdf> (last accessed December 29, 2010) (citing *FTC v. Standard Education Society*, 302 U.S. 112 (1937); *Steelco Stainless Steel, Inc. v. FTC*, 187 F.2d 693 (7th Cir. 1951); *Standard Distributors, Inc. v. FTC*, 211 F.2d 7 (2d Cir. 1954); *Benrus Watch Co. v. FTC*, 352 F.2d 313 (8th Cir. 1965); *Bascom Doyle v. FTC*, 356 F.2d 381 (5th Cir. 1966); *Sunshine Art Studios, Inc. v. FTC*, 481 F.2d 1171 (1st Cir. 1973); *Coran Bros. Corp.*, 72 F.T.C. 1 (1967); *Universal Electronics Corporation*, 78 F.T.C. 265 (1971); *Standard Educators, Inc.*, 79 F.T.C. 858 (1971); *L. G. Balfour*, 74 F.T.C. 345, 494 n. 1 (1968)).

The FTC and the courts have long recognized that the underlying principle of individual liability for corporate conduct is a belief that “one may not enjoy the benefits of fraudulent activity and then insulate one’s self from liability by contending that one did not participate directly in the fraudulent practices.”⁹

THE FTC WILL PURSUE ENFORCEMENT AGAINST INDIVIDUALS REGARDLESS OF THE CORPORATE STRUCTURE OF THE APPLICABLE CORPORATE ENTITY.

The FTC will pursue enforcement against individuals regardless of the structure of the corporate entity (e.g., Inc., LLP, or LLC). Establishing a “limited liability company” structure, for example, may not prevent the FTC from pursuing enforcement against individuals. In 2009, for instance, the FTC entered into a settlement agreement with RTC Research & Development LLC, one of its officers, and one of its managing members, for allegedly making false and unsubstantiated weight-loss claims for a product called Xenadrine EFX. Under the final order, all three defendants agreed to jointly and severally provide \$8 million for consumer redress.¹⁰

In addition, the FTC and courts carefully evaluate and peer behind corporate structures when assessing the appropriate extent of individual and/or corporate liability. For instance, when two or more corporations operate as a “common enterprise” while engaging in unfair and deceptive acts and practices, courts frequently hold them (and often their officers) jointly and severally liable for the misconduct.¹¹ When determining if a common enterprise exists, courts examine a variety of factors such as common control, the sharing of office space and officers, whether business is transacted through a maze of interrelated companies, the commingling of corporate funds and failure to maintain separation of companies, unified advertising and evidence that reveals that no real distinction existed between the corporate defendants.¹²

THE FTC IS NOT REQUIRED TO PROVE THAT AN INDIVIDUAL INTENDED TO DEFRAUD CONSUMERS IN ORDER TO HOLD HIM OR HER PERSONALLY LIABLE FOR CORPORATE MALFEASANCE.

The FTC is not required to prove that an individual defendant intended to defraud consumers in order to hold him or her liable for corporate malfeasance.¹³ The individual must have “knowledge” of the unlawful conduct, but the “knowledge” requirement may be satisfied by showing that the individual had “actual knowledge of

⁹ *FTC v. Amy Travel Service, Inc.*, 875 F.2d 564, at 574.

¹⁰ FTC Press Release, “FTC Concludes Case Against Marketers of Xenadrine EFX; Court Ruling Requires Final Defendant to Accept Settlement Terms” (April 24, 2009), available at <http://www.ftc.gov/opa/2009/04/xenadrine.shtm> (last accessed December 29, 2010); *FTC v. Chinery*, Stipulated Final Order for Permanent Injunction and Settlement of Claims for Monetary Relief as to All Defendants (March 31, 2009), available at <http://www.ftc.gov/os/caselist/chinery/090424stiporder.pdf> (last accessed December 29, 2010).

¹¹ See e.g., *FTC v. Capital Choice Consumer Credit, Inc.*, Final Judgment (February 19, 2004), available at <http://www.ftc.gov/os/caselist/capitalchoice/040311finaljudgcapchoice.pdf> (last accessed February 4, 2011).

¹² *Id.* at 76.

¹³ *FTC v. Pub’l Clearing House, Inc.*, 104 F.3d 1168, 1170 (9th Cir. 1997).

material misrepresentations, reckless indifference to the truth and falsity of such misrepresentations, or an awareness of a high probability of fraud with an intentional avoidance of the truth.”¹⁴

For example, a federal court recently imposed a judgment of \$18.9 million against operators of an “Internet kiosk” business opportunity program after finding they violated the FTC Act and the Commission’s Franchise Rule.¹⁵ The FTC’s complaint charged the defendants (which included, among others, a company called Network Services Depot and its key principals) with misrepresenting the earnings potential of the Internet kiosk business opportunity, and misrepresenting the availability and/or profitability of locations for the machines. The individual defendants argued that they were the victims of a fraudulent scheme perpetrated by another company, Bikini Vending Corp. (BVC), that was responsible for locating and installing the kiosks, and that the FTC could not prove that the individual defendants “knew or were recklessly indifferent to the validity of the representations.”

Although the defendants reportedly delegated the work of manufacturing, locating, and installing kiosks to BVC, the court noted that in its sales agreements, Network Services Depot assumed an affirmative contractual obligation to locate and obtain sites for its customers’ kiosk business opportunities, and also assumed an obligation to ensure that those kiosks ultimately became operational in a timely manner.¹⁶

The court criticized Network Services Depot and its key principals for failing to undertake even modest due diligence on behalf of their customers, and for largely ignoring numerous warning signs that something was amiss (e.g., multiple consumer complaints, admitted delays, and BVC’s suspicious financial practices and claims). By failing to investigate numerous consumer complaints, never trying to verify uncertain claims, and deliberately constructing a “Chinese wall” between Network Services Depot and BVC, the court ultimately found the individual defendants and Network Services Depot to be, among other things, “recklessly indifferent to the truth or falsity of the representations it was making to consumers.”

INDIVIDUAL DEFENDANTS MAY BE HELD JOINTLY AND SEVERALLY LIABLE WITH OTHER PARTIES, AND INDIVIDUAL LIABILITY MAY EXCEED THE AMOUNT OF MONEY THE INDIVIDUAL RECEIVED FROM HIS OR HER INVOLVEMENT IN THE ACTIVITY.

Not only can individuals be exposed to liability for corporate wrongdoings, but they are very frequently held jointly and severally liable with other named defendants for the total amount of consumer injury. In fact,

¹⁴ *FTC v. Amy Travel Service, Inc.*, 875 F.2d 564, at 574.

¹⁵ FTC Press Release, “FTC Obtains \$18.9 Million Judgment Against Ponzi Scheme Operators” (April 27, 2009), available at <http://www.ftc.gov/opa/2009/04/nsd.shtm> (last accessed December 28, 2010); *FTC v. Network Services Depot, Inc.*, Final Judgment and Order for Permanent Injunction and Other Equitable Relief (March 5, 2009), available at <http://www.ftc.gov/os/caselist/0423188/090305nsdjdgmt.pdf> (last accessed December 28, 2010).

¹⁶ *FTC v. Network Services Depot, Inc., et al.*, Order Granting Federal Trade Commission Motion for Summary Judgment (September 29, 2006), available at <http://www.ftc.gov/os/caselist/0423188/061212order423188.pdf> (last accessed December 28, 2010).

certain courts have expressly recognized that an individual defendant's liability may exceed the amount the particular defendant received from his or her participation in a deceptive scheme. For example, in *FTC v. Transnet Wireless Corporation*, the court provided the following with regard to individual liability:

"In crafting a remedy, the Court has the authority to exercise its full equitable powers under Section 13(b) of the FTC Act to remedy violations of Section 5 of the Act. *Gem Merchandising*, 87 F.3d at 469-70. Included in the panoply of remedies are monetary remedies, including disgorgement and restitution. *Gem Merchandising*, 87 F.3d at 469; *U.S. Oil & Gas*, 748 F.2d at 1432, 1434; *FTC v. Silueta Distrib. Inc.*, 1995-1 Trade Cas. (CCH) 70,918 at 74,100, 1995 WL 215313 (N.D.Cal.1995); *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1103 & n. 34 (9th Cir.1994), *cert denied*, 514 U.S. 1083, 115 S.Ct. 1794, 131 L.Ed.2d 722 (1995); *Figgie Int'l*, 994 F.2d at 606-8. In a deceptive sales scheme, restitution may be measured by the amount of loss suffered by the victim and the return to status quo. *Figgie Int'l*, 994 F.2d at 606-8; *Atlantex*, 1987-2 Trade Cas. at 59,256, 1987 WL 20384. Defendants who have violated Section 5 of the FTC Act can be held jointly and severally liable for the total amount of consumer injury. *Atlantex Assocs.*, 1987-2 Trade Cas. at 59,256, 1987 WL 20384; *FTC v. Sharp*, 782 F.Supp. 1445, 1452-54 (D.Nev.1991)."¹⁷

In another case, *FTC v. Windward Marketing, Ltd.*, individual defendants argued that any disgorgement of profits directed at them must be limited to the amount of profits they earned.¹⁸ The court indicated that "this position is incorrect...Defendants can be held jointly and severally liable for their violations of the Act...Thus, any Defendant's liability may exceed the amount that particular Defendant received from his participation in the scheme, and, instead, a Defendant may be liable for all the money Defendants received from the...scheme."¹⁹ In this case, the corporate defendant and the two individual defendants were jointly and severally liable for \$12,693,401.

THE FTC OFTEN DEMANDS THAT INDIVIDUALS TURN IN OR SELL TANGIBLE PERSONAL ASSETS TO SATISFY MONETARY JUDGMENTS.

The FTC often demands that individual defendants turn in or sell tangible personal assets to satisfy monetary judgments. For instance, in March 2010, as part of a settlement with the FTC, an allegedly deceptive robocall operation agreed to pay more than \$655,000 in consumer redress and be permanently banned from telemarketing. In addition to the \$655,000, the principal of the company specifically agreed to turn over the proceeds from the sale of his second home in Florida and two luxury cars, a Porsche 911

¹⁷ *FTC v. Transnet Wireless Corporation*, 506 F.Supp.2d 1247, at 1270-71.

¹⁸ *FTC v. Windward Marketing, Ltd.*, 1997 WL 33642380, at 15 (September 30, 1997).

¹⁹ *Id.*

and a Lexus luxury sedan.²⁰ Similarly, in October 2010, individual defendants that were part of an operation that allegedly falsely claimed ties to Google, and charged consumers hidden fees, agreed to provide cash and other assets that included two cars, interests in a Harley Davidson motorcycle and boat, and a gun collection in partial satisfaction of a joint and several \$29.5 million judgment.²¹

THE FTC CAN OBTAIN TAINTED FUNDS FROM “RELIEF DEFENDANTS” AND OTHER THIRD PARTIES.

The FTC can obtain money for consumer redress from “relief defendants” and other third parties who do not have a valid right to ill-gotten funds. In *FTC v. Transnet Wireless*, for example, the court noted that “federal courts may order equitable relief against a ‘nominal’ or ‘relief’ defendant, an individual who is not accused of wrongdoing, where that person has: (1) received ill-gotten funds; and (2) does not have a legitimate claim to those funds.”²² In that case, the wife of an individual defendant received \$1.6 million directly from the corporate defendants and nothing in the record indicated that she had a legitimate claim to the funds, or that she provided any services to warrant the payments. Therefore, the court determined that she (as a relief defendant) was required to pay the FTC \$1.6 million.²³

Similarly, in *FTC v. Telebrands Corp.*, the FTC sought and obtained consumer redress from marketers who made false and deceptive claims that a device would cause consumers to lose weight by applying electronic stimulation to their abdominal muscles.²⁴ The defendant marketers included two corporate defendants and their principal in his individual capacity. Notably, the FTC named the individual defendant’s wife as a “relief defendant” because she reportedly received unlawfully derived assets from her husband and had no legitimate claim to those assets.²⁵

Meanwhile, in *FTC v. Network Services Depot*, the court required the attorney of an individual defendant to turn over a portion of his fees under a “constructive trust” theory because it found that the attorney had

²⁰ FTC Press Release, “Auto Warranty Robocallers to Pay Over \$655,000 and Sell Assets for Consumer Redress” (March 25, 2010), available at <http://www.ftc.gov/opa/2010/03/voicetouch.shtm> (last accessed December 23, 2010); *FTC v. Voice Touch, Inc.*, Stipulated Final Judgment and Order for Permanent Injunction Against Defendants James A. Dunne and Voice Touch, Inc. (March 24, 2010), available at <http://www.ftc.gov/os/caselist/0823263/100325voicetouchstip.pdf> (last accessed December 23, 2010).

²¹ FTC Press Release, “FTC Settled with Defendants that Claimed Bogus Ties to Google and Unlawfully Charged Consumers Hidden Fees” (October 18, 2010), available at <http://www.ftc.gov/opa/2010/10/googlemoney.shtm> (last accessed December 22, 2010); *FTC v. Infusion Media, Inc., et al.*, Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief as to Infusion Media, Inc.; West Coast Internet Media, Inc.; Two Warnings, LLC; Two Part Investments, LLC; Platinum Teleservices, Inc.; Jonathan Eborn; Stephanie Burnside; Michael McLain Miller; and Tony Norton (October 4, 2010), available at <http://www.ftc.gov/os/caselist/0923060/101018googleorder.pdf> (last accessed December 23, 2010).

²² *FTC v. Transnet Wireless Corporation*, 506 F. Supp.2d 1247, at 1273.

²³ *Id.*

²⁴ *FTC v. Telebrands, Corp.*, Stipulation of Settlement and Final Order (December, 2008), available at <http://www.ftc.gov/os/caselist/telebrands/090114finalorder.pdf> (last accessed February 4, 2011); *FTC v. Telebrands, Corp.*, Complaint for Consumer Redress and Other Relief (August, 2007), available at <http://www.ftc.gov/os/caselist/telebrands/070730telebrandscmplnt.pdf> (last accessed February 4, 2011).

²⁵ *Id.*

been paid with tainted funds derived from the unlawful activities at issue, that the fee arrangements were not made in good faith, and that the attorney had sufficient notice to preclude his status as a *bona fide purchaser*.²⁶

THE FTC CAN OBTAIN AN ASSET FREEZE IN COURT WITHOUT PRIOR NOTICE.

Individuals should also be aware that the FTC may proceed directly to federal court to pursue enforcement, and in many instances, the Commission has pursued a temporary restraining order (TRO) along with an asset freeze of both business and personal assets.²⁷ For example, in July, 2007, at the request of the FTC, a federal judge issued a TRO barring an operation marketing Visa- and MasterCard-branded stored-value cards from making unauthorized debits from consumers' bank accounts, and froze the assets of EdebitPay, LLC, EDP Reporting, LLC, EDP Technologies Corporation, Secure Deposit Card, Inc., and two individual defendants.²⁸

Under the order, the individual defendants were only permitted to designate one account from which they could "pay reasonable, usual, ordinary, and necessary living expenses" or attorneys fees – and this was only if they, among other things, "obtained written authorization from counsel for the Commission for each ...withdrawal," and demonstrated "to the satisfaction of counsel for the Commission that the value of that Defendant's assets will not suffer unreasonable diminution due to such proposed expenditures..."²⁹

FTC SETTLEMENT AGREEMENTS AND ORDERS OFTEN PLACE SIGNIFICANT LIMITATIONS ON THE FUTURE BEHAVIOR AND ACTIONS OF INDIVIDUAL DEFENDANTS.

Individuals should also be aware that FTC orders and settlement agreements often place significant limitations on the future actions and behavior of individuals and corporate entities found to have violated the FTC Act.³⁰ Defendants can be permanently enjoined from engaging in certain behavior, subjected to compliance monitoring, reporting, and recordkeeping requirements, and be required to cooperate with the FTC in its ongoing litigation against other defendants. Such limitations can have a significant impact upon a

²⁶ *FTC v. Network Services Depot Inc.*, Final Judgment and Order for Permanent Injunction and Other Equitable Relief (March 5, 2009), available at <http://www.ftc.gov/os/caselist/0423188/090305nsdjdgmt.pdf> (last accessed December 29, 2010); *FTC v. Network Services Depot et al.*, Order Granting Plaintiff's Motion to Subject Retainer Funds for Consumer Redress (September 17, 2007), available at <http://www.ftc.gov/os/caselist/0423188/080917nsdorderftc.pdf> (last accessed December 29, 2010).

²⁷ See, e.g., Paul D. Rubin, "Ten Things to Consider When Under Investigation, or Subject to Enforcement, by the FTC for Alleged Advertising or Consumer Protection Violations," *Bloomberg Corporate Law Journal* (Vol. 1, Issue 1, 2006).

²⁸ *FTC v. EdebitPay, LLC*, Temporary Restraining Order with Asset Freeze, Appointment of Temporary Receiver, Immediate Access to Business Premises, Expedited Discovery, and Order to Show Cause Why a Preliminary Injunction Should Not Issue (July 30, 2007), available at <http://www.ftc.gov/os/caselist/0623125/070730edebitpaytro.pdf> (last accessed February 3, 2011).

²⁹ *Id.* at 8.

³⁰ In its Operating Manual, the FTC has expressly noted that "[i]t is well-established that the Commission is empowered to and should enter order of sufficient breadth to ensure that a respondent will not engage in similar or related violations of the law in the future...Within this framework, the Commission has wide discretion in shaping order provisions. The courts have consistently upheld orders which enjoin 'like and related' practices in addition to the specific illegal practices alleged in the complaint..." FTC Operating Manual, Chapter Five, available at <http://www.ftc.gov/foia/ch05orders.pdf> (last accessed December 29, 2010).

company's future operations, and on an individual defendant's ability to engage in new business ventures.

In November 2010, for example, the FTC entered into settlement agreements with In Deep Services, Inc., and two of its officers, for operating websites that allegedly deceived consumers by promising them free government grant money, and debiting consumers' bank accounts without their approval.³¹ In addition to imposing a significant joint and several monetary judgment, the settlement orders ban the defendants from marketing or selling any grant-related product or service, from marketing or selling any continuity or "negative option" program where consumers have to opt-out of being charged, from automatically debiting consumers' accounts without authorization, and from misrepresenting facts that would influence consumer decisions about whether to participate in a program.³² The settlement orders also require the individual defendants to, among other things: notify the FTC of any changes in their names, employment status, residence, or structure of any business entity that they directly or indirectly control; provide a written report to the FTC detailing the manner and form in which they have complied with the order; create and maintain certain records; and deliver copies of the order to certain listed individuals and entities.³³

Similarly, in another recent FTC settlement order, an officer of a payday loan marketing company was, among other things, required to pay \$850,000, barred from making certain misrepresentations, required to monitor his affiliates to ensure compliance with the order, and required to cooperate in very detailed and specific ways with the FTC in its ongoing litigation against other defendants.³⁴

THE FTC'S CRIMINAL LIAISON UNIT REGULARLY MAKES REFERRALS FOR CRIMINAL PROSECUTION.

The FTC's Criminal Liaison Unit (CLU) coordinates with criminal law enforcement agencies across the country to encourage the criminal prosecution of consumer fraud.³⁵ In fact, the FTC has indicated that dozens of FTC civil cases have resulted in concurrent or subsequent criminal prosecutions.

³¹ FTC Press Release, "FTC Settlements Permanently Shut Down 'Free Government Grants' Scam" (November 24, 2010), available at [http://www.ftc.gov/opa/2010/11/grant\\$.shtm](http://www.ftc.gov/opa/2010/11/grant$.shtm) (last accessed December 28, 2010); *FTC v. In Deep Services, Inc., et al.*, Final Order for Permanent Injunction and Monetary Judgment as to Defendant Ryan Champion (October 26, 2010), available at [http://www.ftc.gov/os/caselist/0923103/101124grant\\$4unoworder-champion.pdf](http://www.ftc.gov/os/caselist/0923103/101124grant$4unoworder-champion.pdf) (last accessed December 28, 2010); *FTC v. In Deep Services, Inc., et al.*, Final Order for Permanent Injunction and Monetary Judgment as to Defendant Joseph C. Fleming IV (October 26, 2010), available at [http://www.ftc.gov/os/caselist/0923103/101124grant\\$4unoworder-fleming.pdf](http://www.ftc.gov/os/caselist/0923103/101124grant$4unoworder-fleming.pdf) (last accessed December 28, 2010).

³² *Id.*

³³ *Id.*

³⁴ *FTC v. Swish Marketing, Inc.*, Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief (September 29, 2010), available at <http://www.ftc.gov/os/caselist/0723241/101004swishstip.pdf> (last accessed December 28, 2010). The FTC specifically required the settling individual defendant to, among other things, appear and provide truthful testimony in any related proceedings, prepare and sign a truthful affidavit, authenticate documents, describe the roles of other employees (including the other individual defendants), and answer relevant questions posed by the FTC.

³⁵ Among other things, the CLU "identifies criminal law enforcement agencies that may bring specific types of consumer fraud cases," "educates criminal law enforcers in areas of FTC expertise," "coordinates training with criminal authorities to help the FTC prepare cases for referral and parallel prosecutions," and "provides Special Assistant United States Attorneys to help prosecute the worst FTC Act violators." FTC, "Division of Enforcement" (November 15, 2010), available at <http://www.ftc.gov/bcp/bcpenf.shtm> (last accessed February 22, 2011).

For example, in February, 2011, the FTC announced that a federal judge imposed a nine-year prison sentence on a Canada-based consumer telemarketer who was charged by the U.S. Attorney for the Central District of California with defrauding elderly consumers by using fictitious claims about non-existent prizes and investments.³⁶ In addition to the prison sentence, the judge ordered the defendant to pay \$4.6 million in restitution for the 4,500 consumers he allegedly defrauded. The criminal case followed a civil lawsuit filed by the FTC, and had been referred to the U.S. Attorney for criminal prosecution by the FTC's CLU.³⁷

CONCLUSION.

Corporate officers, directors and other management level employees can be exposed to significant personal liability for corporate acts and practices that violate the FTC Act. Due to the complexity of these issues, companies and individuals should consult with FTC counsel whenever potential FTC regulatory compliance issues arise.

³⁶ FTC Press Release, "Canadian Telemarketer Previously Sued by FTC Gets Nine-Year Prison Sentence in Subsequent Criminal Case Filed by U.S. Attorney" (February 8, 2011), available at <http://www.ftc.gov/opa/2011/02/bezeredi.shtm> (last accessed February 22, 2011).

³⁷ *Id.*

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