

**COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON REGULATORY REFORM, COMMERCIAL AND  
ANTITRUST LAW**

**QUESTIONS FOR THE RECORD TO  
CHAD READLER  
ACTING ASSISTANT ATTORNEY GENERAL  
CIVIL DIVISION  
U.S. DEPARTMENT OF JUSTICE**

**Questions submitted for the Record from Subcommittee Chairman Marino**

1. The Attorney General's memo says that the third-party payment ban covers “all” cases litigated by DOJ and includes “cy pres” provisions. Just to be absolutely certain, does this include cases in which DOJ is the defendant and a judgment is paid out of the Judgment Fund?

**RESPONSE:** The June 5, 2017, Attorney General memorandum prohibits “any agreement on behalf of the United States in settlement of federal claims or charges, including agreements settling civil litigation, accepting plea agreements, or deferring or declining prosecution in a criminal matter, that directs or provides for a payment or loan to any non-governmental person or entity that is not a party to the dispute.” The policy sets forth three limited exceptions, but none of those exceptions relates to whether the Government is a defendant.

2. Certain state attorneys general are investigating whether false claims submitted to asbestos trusts violate state laws, including state false claims acts. For example, the Utah Attorney General has filed a legal action under the Utah False Claims Act based on the theory that Utah's Medicaid program may have been defrauded as a result of false claims submitted to asbestos trusts. The federal government could also examine whether Medicare has been defrauded as a result of similar false claims under the federal False Claims Act. Would you consider a parallel federal investigation?

**RESPONSE:** It is our understanding that although, the State of Utah has not yet filed a state False Claims Act suit, it recently filed an action in state court to enforce Civil Investigative Demands for documents from four asbestos trusts that allegedly made improper payments to claimants. See *Utah v. Armstrong World Indus. Asbestos Personal Injury Settlement Trust*, No. 170901496 (3d Dist. Ct. Mar. 7, 2017). In this enforcement action, Utah has argued that improper payments by these private trusts could implicate the state’s False Claims Act because (1) if the trust funds are depleted, states would bear the high cost of asbestos-related medical conditions, and (2) Medicare and Medicaid beneficiaries who receive funds from the trust may not be reimbursing those healthcare programs. The asbestos trusts have moved to dismiss the enforcement action, and that motion is pending. We will

**continue to monitor this matter to determine whether there is any appropriate action for the Department of Justice to undertake.**

**Questions submitted for the Record from Judiciary Ranking Member John Conyers, Jr.**

1. Would you recommend any changes to the False Claim Act, including its qui tam provisions, to make it an even more effective tool for the Civil Division?

**RESPONSE: The False Claims Act is a powerful tool in the Department's efforts to combat fraud on the Treasury. The Department believes the act is operating to protect taxpayer funds, and we do not currently recommend any changes to the False Claims Act.**

2. You mention in your prepared statement the work your Division does with respect to defending *Bivens* lawsuits against law enforcement officers. Would your defense work be made easier if there was a federal counterpart to section 1983 of title 42 of the United States Code?

**RESPONSE: The Civil Division does not, in the abstract, see any benefit to a federal counterpart to 42 U.S.C. § 1983, though our precise views would depend on the content of such a statute. Under current law, *Bivens* lawsuits provide a judicially created damages remedy implied directly under the Constitution, but the existence of a *Bivens* cause of action has been circumscribed by Supreme Court precedent and *Bivens* claims are subject to significant limitations and powerful defenses. The federal courts have limited these causes of action to certain specific contexts in which viable claims can be brought against federal officials. Claims falling outside of these contexts require the courts to consider and weigh the costs and benefits of allowing a damages action to proceed. Court precedent also focuses the claims in these cases on the defendant federal officials who were personally involved in the challenged conduct, thus eliminating respondeat superior liability. And each party bears its own attorneys' fees in *Bivens* cases. A federal counterpart to Section 1983 could potentially undermine these limitations on *Bivens* cases and would likely increase the filing of potentially meritless claims against federal officials. Such a result would not reduce the overall burdens of *Bivens* litigation.**

3. How important is private enforcement of the Telephone Consumer Protection Act?

**RESPONSE: Congress enacted the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, in large measure to address consumer "outrage[] over the proliferation of intrusive, nuisance calls to their homes from telemarketers." 47 U.S.C. § 227 note, finding (6). Congress chose to permit private lawsuits to enforce some of the TCPA's provisions, 47 U.S.C. § 227(b)(3), (c)(5), civil actions and forfeiture penalties by the Federal Communications Commission ("FCC"), and actions by state Attorneys General § 227(g)(1).**

**Congress determined that private enforcement of the TCPA is important for at least three reasons. First, telemarketers and others engaged in abusive practices are aware that any consumer may bring a private case against them seeking statutory damages. In Congress's view, although complaint submissions can help government officials prioritize enforcement efforts, federal resources do not allow for the investigation of every consumer complaint. Second, Congress concluded, based on its findings concerning automated calls, nuisance and privacy concerns, see 47 U.S.C. § 227 note, finding (12), that the TCPA's private right of action allows consumers to vindicate rights and seek compensation for injury. Third, Congress found that private consumer actions provide government enforcement officials with information and evidence on large-scale violators who may warrant government enforcement actions. As Congress recognized, discovery in private suits can lead to documents that make government investigations and enforcement actions more efficient and focused because private-party lawsuits and settlements can help establish that defendants were on notice that their telemarketing behavior was illegal. See *United States v. Dish Network LLC*, \_\_ F. Supp. 3d \_\_, No. 09-3073, 2017 WL 2427297, at \*40 (C.D. Ill. June 5, 2017) (handled by the Civil Division).**

#### **Questions submitted for the Record from Subcommittee Ranking Member Cicilline**

1. The New York Times reported that "officials across the government" have received "special waivers to disregard ethics rules." According to The New York Times, these waivers "offer additional evidence that lobbyists and industry executives who can now shape policies benefiting their former clients and companies have been allowed to work in the Trump administration, even with the president's vow to 'drain the swamp' of influence peddling." Have you received an ethics waiver? If so, please describe the nature of the waiver and how it affects your role at the Civil Division.

**RESPONSE: I have received ethics waivers to work on three sets of cases. First, I received an Ethics Pledge waiver and an authorization under 5 C.F.R. § 2635.502 to work on *American Insurance Ass'n and National Ass'n of Mutual Companies v. HUD* (D.D.C.). I sought this waiver and this authorization because I previously represented Nationwide Mutual Insurance Company, which although not a plaintiff in its own right is one of over 300 members of the American Insurance Association, one of two plaintiffs in this litigation. My previous representation of Nationwide was not in connection with this case. Second, I received an authorization under 5 C.F.R. §2635.502 to work on *PHH Corp. v. Consumer Financial Protection Bureau*. I sought this authorization because I previously represented the Chamber of Commerce, which participated in this case as an amicus, not a party. I have been advised that no Ethics Pledge waiver was required since the Chamber of Commerce is not a party to the litigation. Finally, I received two authorizations under 5 C.F.R. §2635.502 to work on cases challenging the President's Executive Order on Terrorist Entry, colloquially referred to as the Travel Ban cases. I sought the first authorization because of the participation of my former firm as counsel for an amicus participant. I sought the second authorization in connection with certain cases in which the plaintiffs have**

**sought documents from the President’s campaign organization, Donald J. Trump for President, Inc., which is a former client. My ethics advisors informed me that no Ethics Pledge waiver was required for either of these matters.**

2. The White House has also released ethics waivers for any attorney who practiced at the Jones Day law firm to “participate in communications and meetings where Jones Day represents the President, his campaign, the transition, or political entities supporting the President.” - As a former attorney at Jones Day, did you participate in communications and meetings where Jones Day represents the President, his campaign, the transition, or political entities supporting the President? If so, please describe whether you continue to be involved in this type of activity, the scope of the activity, whether this activity occurs or has occurred during your capacity as Acting Assistant Attorney General, and how it affects your role at the Justice Department.

**RESPONSE: I have not participated in any such communications or meetings.**

3. The Civil Division is responsible for defending President Trump in lawsuits relating to the President’s alleged violation of the Constitution’s restriction on accepting foreign gifts, or emoluments. Should the Department use government resources to defend President Trump in a case that solely concerns his private business interests?

**RESPONSE: By statute, the Department of Justice is responsible for the conduct of litigation in which an officer of the United States is a party. 28 U.S.C. § 516 provides: “Except as otherwise authorized by law, the conduct of litigation in which the United States, an agency, or officer thereof is a party . . . is reserved to officers of the Department of Justice, under the direction of the Attorney General.” That is, unless otherwise authorized by law, “only attorneys of the Department of Justice under the supervision of the Attorney General may represent the United States or its agencies or officers in litigation.” United States Attorneys’ Manual 4-1.100. The various suits filed against the President concerning his alleged violation of the Foreign Emoluments Clause of the Constitution are brought against him in his official capacity as President. Although the suit implicates the President’s private business interests, the lawsuits put at issue whether the President, as a holder of an “Office of Profit or Trust,” is in compliance with the Foreign Emoluments Clause. The Department of Justice therefore is properly representing the President in his official capacity in this litigation.**

Should the Department use government resources to defend President Trump in a case that solely concerns his private business interests?

**As discussed above, the Department is representing the President in suits filed against him in his official capacity.**

- a. Is there a clear distinction between the interests of the federal government and those of the private interests of the President Trump?

**The Department of Justice represents the President only in his official capacity and defends the Office of Presidency in the interest of the United States. The Department does not represent the private business interests of President Trump in these lawsuits.**

b. Are you aware of any payments received by the Trump International Hotel or other businesses in which the President has a financial interest from a foreign government or agent of a foreign government?

**I have no personal knowledge of such payments.**

4. Do you think that the FACT Act would lead to a reduction of fraud, and how would that impact payouts for future asbestos victims?

**RESPONSE: Regarding H.R. 906, which amends the bankruptcy code to increase required disclosure, we have no concerns about greater accountability or disclosure requirements for asbestos trusts. The language being considered by the House appears to strike a balance between disclosure of a trust's activities and individual privacy concerns. In some instances, to be sure, statutory disclosure requirements could be helpful in reducing fraud and ensuring a fair resolution for victims. However, we are not able to speculate as to whether the disclosure requirements proposed here would necessarily lead to a reduction of fraud or impact payouts to affected asbestos victims.**

5. In 1978, former Attorney General Griffin Bell stated "the President is best served if the Attorney General and the lawyers who assist him are free to exercise their professional judgments," and, "[j]ust as important, they must be perceived by the American people as being free to do so." Do you believe that it is important for the Justice Department to appear independent of the White House and that Justice Department attorneys should exercise their own professional judgment in faithfully enforcing the law?

**RESPONSE: Except as otherwise provided by law, the Attorney General and officers of the Department of Justice have authority to conduct all litigation, civil and criminal, to which the United States, its agencies, or departments are parties. 28 U.S.C. § 516. This power should be exercised with wisdom and discretion and used to promote the Government's best interest and prevent injustice. The Attorney General assists the President in exercising his constitutional responsibility under Article II, § 3 of the Constitution to "take Care that the Laws be faithfully executed."**

6. A recent report by the Justice Department Office of the Inspector General identified serious concerns relating to the handling of sexual misconduct within the Civil Division in violation of the Department's zero tolerance policy. According to the report, the Civil Division's penalties for substantiated allegations "were nothing more than written reprimands, title changes, and reassignment for cases in which the subject of the allegations were supervisory/senior attorneys." What is your response to the Inspector General's findings? Has the Civil Division implemented any of the Inspector General's recommendations to ensure the consistent enforcement of the Department's zero tolerance policy?

**RESPONSE:** In the Civil Division's response to the Office of the Inspector General's (OIG) report regarding the Division's handling of sexual misconduct in prior years, the Division acknowledged the OIG's findings and concurred with their four recommendations. Accordingly, to improve the Division's handling of sexual harassment and misconduct allegations and enforce the Department's zero tolerance policy, the Division on its own initiative, as well as in response to the OIG's findings, has taken several steps to address the concerns discussed in the OIG report.

Specifically, the Division has developed a system to electronically track allegations of misconduct made against Division employees; began offering supervisory training that includes a discussion of how supervisors should handle sexual misconduct allegations; reaffirmed the Division's commitment to preventing sexual harassment and misconduct in the workplace to all Civil Division employees and provided the Department's policy and information about how to report such allegations; hired a new Employee and Labor Relations Specialist to help ensure proper reporting of allegations; and started developing a revised awards policy. As a result of these efforts, I believe the overall effectiveness of the Division's employee relations program and handling of sexual misconduct allegations will improve and that the Department's zero tolerance policy will be enforced consistently.

7. The Inspector General also reported that senior attorneys in the Civil Division received performance awards and public recognition despite being under investigation or recent disciplined for sexual misconduct. Do you agree that rewarding sexual misconduct is completely inappropriate and may, as the Inspector General noted, "deter the reporting of future allegations and risks sending employees a message that Civil Division management does not take such complaints seriously"?

8. **RESPONSE:**

- a. What steps have you taken to prevent this from occurring in the future?

Since joining the Division in January 2017, I am not aware of any employees that have received awards or public recognition while being the subject of an ongoing sexual harassment or misconduct investigation. Currently, the Civil Division is developing guidance regarding awards given to and public recognition of an employee who is under investigation or has recently been disciplined for misconduct, including sexual harassment.

- b. Do you plan to report substantiated sexual misconduct cases for criminal investigation where appropriate?

The Division's Human Resources Office will report substantiated sexual misconduct allegations to the front office, headquarters and OIG as appropriate in accordance with the Privacy Act, Department policy, and other applicable rules and regulations

**that protect confidentiality, due process, and the integrity of investigation and management inquiries.**