

Kaplan & Walker LLP

The Recent Rise of the “Mega Fine”

Demonstrating the extraordinary costs of a compliance failure can be an extremely effective means of raising awareness in companies – particularly among senior managers – of the need for strong compliance and ethics programs. In the past two years, the cost of such failures – as measured by the imposition of “mega fines,” by which we mean federal corporate criminal fines of \$350 million or more – has increased dramatically. Because, to paraphrase Justice Holmes, a page of history can be worth a volume of logic, we thought the recent history summarized on this page might be helpful to compliance and ethics officers seeking to maintain momentum for their respective companies’ programs.

At the end of 2007 there had been only one “mega fine” in all of U.S. legal history:

- *Hoffman-LaRoche*: \$500 million (1999)

By early 2010, the list had grown eightfold:

- *Pfizer*: \$1.2 billion (2009)
- *Eli Lilly*: \$515 million (2009)
- *Hoffman-LaRoche*: \$500 million (1999)
- *Siemens*: \$450 million (2008)
- *Halliburton/KBR*: \$402 million (2009)
- *LG Display*: \$400 million (2008)
- *BAE Systems*: \$400 million (2010)
- *Air France-KLM*: \$350 million (2008)

Note that **these amounts** (some of which are approximate) **do not include settlements in related U.S. civil and regulatory cases or proceedings outside the United States**, and the “all-in” amounts for most of these cases far exceeds the amount of the U.S. criminal fine (e.g., the “all-in” number for Pfizer is about \$2.3 billion and for Siemens about \$1.6 billion.) And even such “all-in” amounts do not include other substantial costs, such as lawyers and investigator fees – as well as the often incalculable loss of business.