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Insights

The Yates Memo and Warner Chilcott – Fallout from the Trial

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Following up on a previous client alert item, a federal jury recently found W. Carl Reichel, former president of Warner Chilcott, not guilty on June 17, 2016 of conspiring to pay kickbacks to doctors in exchange for writing prescriptions. The jury deliberated two days before delivering a not guilty verdict in the criminal case. Mr. Reichel's trial began in late May.

This is the second high-profile setback for the federal government following the publication of the Yates Memo. The Yates Memo highlighted the Department of Justice's ("DOJ") push to hold more individuals personally accountable for corporate wrongdoing. However, the DOJ has now lost two cases since its publication, and prosecutors are having a hard time proving criminal intent in a corporate contextwith multiple decision-makers. The other case involved the acquittal of the President of Vascular Solutions, a device maker, for off-label promotion.

Warner Chilcott plead guilty last October to criminal charges of health-care fraud, arising from violations of the Anti-Kickback Statute. The corporation agreed to pay $125 million to resolve a DOJ investigation of its payments to physicians and other practices.

Allegations at the time stated that W. Carl Reichel strategized to give physicians money, free meals, and unearned speaking fees in exchange for prescribing Warner Chilcott pharmaceuticals.

In court documents, Mr. Reicel's attorneys said there was no evidence that he possessed the intent to violate the Anti-Kickback Statute or knew of any other illegal activities. The U.S. attorney's office in Boston was undeterred and still believes the case against Mr. Reichel "was supported by the facts and the law."