

When the Office is the Crime Scene



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The Mystery Novel



- Happy ending – properly structured investigation
- Investigation and remedial action
- Balance employer/employee rights
- 10 considerations

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1. Act Quickly

- Dishonesty rarely caught by direct observation
- Schemes likely ongoing
- Financial impact may be material– most likely be more than first suspected
- The employer must move quickly to stop the damage

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2. Hire Professional Help

- Attorney who has practiced in this area
- Law firms have white collar crime group
- Coordinate internal & external investigators
- Significant risk to mishandle case
- 2nd loss most painful



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Hire Professional Help

- Forensic accountant should be independent
- Yellow tape the crime scene
 - No computer searches
 - No office search
- Preserve incriminating evidence
- Chance of recovery increases dramatically



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3. Develop Investigation Plan

- Fraud investigation complex undertaking
- Success sensitive to documentation
- Proper plan will do following:
 - Maximizes efficiency
 - Ensures important steps of the investigation are not overlooked

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- Documents compliance with professional standards (e.g. planning, supervision and due professional care)
- Speeds completion of written report at the close of investigation
- Allows the fraud examiner to recall pertinent details of the work at a later date
- Allows greater efficiency on future assignments as a reminder of what works and what did not

Follow Steps of Typical Fraud investigation



- Document examination & computer forensic exam
- Interview neutral, third-party witnesses
- Interview corroborative witnesses
- Interview co-conspirators
- Interview suspect

4. Secure Data & Work Area

- Mirror hard drives of computer used by employee
- Mirror hard drive of server in a network
- Secure copies of all electronic backups
- Secure original data



- Cd's and thumb drives used to keep selected data off hard drives
- Search desk and office
- Once notified not allowed to touch computers or remove anything other than personal items from office
- Home computer
- Remote access
- Emails and deleted files are wonderful

5. Contact Insurer

- Failure to put insurer on notice can/will void coverage
 - 30 to 60 day notice provision
 - Earlier crime not reported
- Many policies pay investigative costs
 - Approved vendor list?
- Proof of Loss
 - Months after notification
 - Problems with FBI/USA determinations
- Statute of Limitations

6. Deal with “Alleged” Perpetrator

Three courses of action possible

1. Terminate the employee immediately
 - Owners usual preference
2. Place the employee on administrative leave with or without pay
 - Refer to employment agreement
 - Refer to company policy
 - Sufficient predication before action
3. Do not confront the employee until evidence developed
 - Hook the fish and let him swim around
 - Employee's duty to cooperate
 - Interviews to confront fraudster

Care Is Important



- Avoid exposure to defamation claims
- Was a crime really committed?
- Incompetence may appear to be criminal
- Fraudster may hide behind cloak of incompetence
- Avoid disclosure

7. Know Employer's Rights and Responsibilities

- Employer has a right to conduct a fraud investigation
 - May be required to investigate
- Actions taken by employer consistently applied to all employees
- Management has responsibility to the stockholders to investigate and seek to recover losses by theft
- May be required to report to agencies

8. Know Employee's Rights and Responsibilities

- Employee has certain rights to privacy
 - Fair Credit Reporting Act
 - Employee Polygraph Protection Act
- Always read employee handbook
- An employee has the right to sue their employer under certain circumstances
 - Fourth Amendment (unreasonable searches)
 - Fifth Amendment (incrimination)
 - Sixth Amendment (attorney)

State Actions

- Investigations conducted by a private company that are required by state or federal law
- Searches or interrogations conducted by outside investigators who are off-duty state, local or federal authorities
- Securities Exchange Act of 1934, Foreign Corrupt Practices Act of 1977 – company should be aware of the possible implications of state action
- Sarbanes-Oxley?

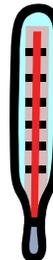
9. Perform Background Checks of Suspect

- Background checks and credit checks are a powerful tool
- They allow and can prove identification of “need” and “greed”
- Fair Credit Reporting Act concerns



10. Look for Other Schemes

- Be open – others may be involved in the fraud scheme
- Collusion with others within or outside of the organization
- Any employee with the authority to approve payment of an invoice can perpetrate a scheme
- The admitted fraud likely follows the 10% rule



Conclusion

- *Don't destroy evidence*
- This means computer data as well as hard copies
- Failure to preserve may make you just as liable
- Destruction of evidence can lead to
 - Obstruction of justice
 - Conspiracy
- Convictions – prison

Conclusion

- Investigations provide opportunity to assist company and help prevent future instances
- Some recommended areas may involve:
 - Review hiring policies
 - Restrict access to employee master files
 - Restrict access to vendor master files

Conclusion

- Separate the cash/banking function from the accounts receivable function
- Protect check stock and destroy obsolete stock
- Mail vendor checks
- Reconcile bank accounts on a timely basis
 - UCC section 7-4-406
- Rotate personnel or functions in critical financial areas on a regular basis

Recovery of Money and/or Getting a Pound of Flesh

- Most cases – \$ gone
- Court ordered restitution
- Civil judgment
- Referral to law enforcement
 - Federal, state, local
 - IRS



Thank you!



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