

Government Contracts Section

On June 29, the section held a luncheon program entitled “Honest Services Fraud: What Government Contractors, Government Attorneys and the Private Bar Need to Know,” which featured William “Widge” Devaney, co-chair of the Foreign Corrupt Practices Act (FCPA) & Anti-Corruption Group, Venable LLP; David Johnson, assistant U.S. attorney, Fraud & Public Corruption Section, District of Columbia; and Dr. George Ellard, inspector general at the National Security Agency. The discussion was moderated by Jeffrey Chiow, Government Contracts & Congressional Investigations, Venable LLP. The section would like to thank Venable LLP for hosting this event.

Section on Taxation

On June 28, the section held a webinar titled “Section 48D Qualified Therapeutic Research Projects Program and Form 8942.” The featured speakers were Brandon Carlton, attorney-advisor, Office of the Tax Legislative Counsel, U.S. Treasury Department’s Office of Tax Policy; Todd Reinstein, partner, Pepper Hamilton LLP; and Michelle Jewett, associate, Morrison & Foerster LLP. The section would like to thank Pepper Hamilton LLP for hosting the webinar.

Transportation & Transportation Security Law Section

On June 29, the section held a webinar titled “Regulatory Issues Impacting Disabled Airline Passengers.” The fea-

tured speakers were James Briggs, Airports Council International-North America; Doug Mullen, Air Transport Association; Mike Spollen, U.S. Department of Transportation; Supriya Raman, Federal Aviation Administration; and Jennifer Andrews, Eckert Seamans Cherin & Mellott LLC. The section would like to thank Airports Council International-North America for hosting the webinar. **TFL**

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of the executives who had arranged for the bonuses to be paid. The panel also discussed an earlier case in which Judge Sporkin rejected a consent decree negotiated by the Justice Department and private counsel for Microsoft. As a result of his refusal to approve the Microsoft settlement, the Court of Appeals for the District of Columbia reversed Judge Sporkin’s decision and removed Judge Sporkin from the case. *U.S. v. Microsoft*, 56 F.3d 1448, 1458 (D.C. Cir. 1995). The panel noted that, in 2004, Congress amended the Tunney Act, the legislation under which the federal courts enter consent judgments “proposed by the United States” if found to be in the “public interest” and specifically criticized the decision by the Court of Appeals rejecting Judge Sporkin’s refusal to approve the Microsoft settlement. One of the sponsoring U.S. senators, Sen. Herb Kohl (D-Wisc.), noted in his commentary on the amendment that, in the *Microsoft* case, the Court of Appeals’ decision to reverse Judge Sporkin’s ruling on the Microsoft consent decree “made a potentially serious mistake by formulating a rule that, so long as procedural niceties are followed, all antitrust consent decrees must be approved unless they are a

‘mockery.’” 150 *Cong. Rec.* S13610-02, 2004 WL 714783 at 16. Sen. Kohl also noted that he and three other U.S. senators—Sens. Orrin Hatch (R-Utah), Patrick Leahy (D-Vt.), and Mike DeWine (R-Ohio)—introduced a “Managers’ Amendment” to the amendment that made it clear that the Tunney Act amendment “requires ... the courts [to] engage in more than merely ‘rubber-stamping’ those decrees. ... In addition ... addresses a concern raised recently by a string of court opinions that appear to limit the depth of review required by the Tunney Act. ... This bill makes clear that the Tunney Act requires what it has always required, and that mere rubber-stamping is not acceptable.” *Id.* at 19.

Speakers at the second panel at the symposium included Harvey Pitt, former chairman of the Securities and Exchange Commission; Reid Figel, former chief of the Securities and Commodities Fraud Unit in the U.S. Attorney’s Office, Southern District of New York; George Canellos, director of SEC’s New York Regional Office; and Robert Mundheim, of Counsel at Shearman & Sterling. The panelists discussed the issues and procedures that should be considered when nego-

tiating a consent decree with the federal government that imposes monetary and other obligations, costs, and burdens on a corporation for the acts of individual corporate executives. The panel reviewed the following questions: Who should the decision-maker be? What processes should be used? What factors should be considered by all three sets of lawyers during the negotiations? How should a proposed settlement be presented (and by whom) in order to obtain a successful review and approval by the court with oversight for the consent decree? In addition, the speakers discussed the implications for the reorganization of the SEC’s Division of Enforcement, including the delegation of the enhanced authority given to staff—for example, the ability to issue orders of investigation. **TFL**

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