

JUST ANTI-CORRUPTION

Teva whistleblower says SEC is taking too long to determine award

Kelly Swanson 01 May 2019

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After a two year delay, an unnamed person who claims to have alerted US authorities to foreign bribery at Israeli company Teva Pharmaceutical Industries has sued the US Securities and Exchange Commission for taking too long in assessing whether he is entitled to a bounty award.

In the US Court of Appeals for the DC Circuit, an anonymous whistleblower filed a petition on 29 April asking the SEC to issue a preliminary determination on his whistleblower reward claim within 60 days.

The whistleblower, referred to in the petition as John Doe, submitted a 42-page tip in 2011 detailing an alleged Foreign Corrupt Practices Act violation by the Israeli pharmaceutical company.

Following the tip, officials from the SEC, including the now SEC FCPA unit chief Charles Cain and SEC senior counsel Michael Catoe, discussed the case with the whistleblower and his attorneys. According to the petition, the whistleblower and his attorneys had at least 31 follow-up conversations with SEC and US Department of Justice personnel.

At the time the petitioner was represented by Andy Rickman and Christopher Connors; both of them also represented a whistleblower in a foreign bribery probe into German healthcare firm Fresenius (<https://www.wsj.com/articles/german-dialysis-firm-reaches-agreement-in-bribery-probe-11551119500>), which recently settled FCPA charges.

Rickman and Connors will be well-known to FCPA defence lawyers and prosecutors alike. The pair have sought to corner the market of FCPA whistleblowers. Rickman, for example, claims to have submitted whistleblower awards claims for clients from over 50 countries.

“It shouldn’t take years for the SEC to figure out how our client contributed to the Teva case,” said Rickman and Connors in an email. “This doesn’t involve a complex mystery that requires gumshoes and bloodhounds to solve; it’s a simple question about how our client contributed to the case.”

In 2016 Teva agreed to pay a combined \$519 million

(<https://globalinvestigationsreview.com/article/jac/1079231/teva-pharmaceutical-to-pay-usd519-million-to-resolve-fcpa-allegations>) to settle allegations by the DOJ and SEC of bribery in Russia, Ukraine and Mexico.

Following the settlement, the whistleblower filed a claim for an award but has heard nothing in return except for a “boilerplate” letter from the SEC confirming receipt of the claim, according to the petition.

Counsel to the whistleblower on the petition, William Copley at Weisbrod Matteis & Copley, wrote that the two year delay is “unusual” and “unreasonable” given the “delay at issue involves a simple task.”

“In this case, the SEC needs only apply the straightforward statutory criteria... to facts and evidence that the commission already possesses,” counsel to the whistleblower wrote.

Hinting that delays have become a pattern for the SEC’s office of the whistleblower, Copley wrote that he was contemporaneously filing a separate petition for a similar delay in determining a separate whistleblower’s potential SEC award.

“The SEC’s delay and indifference towards my clients’ rights are indefensible, and we are confident that the court will agree,” Copley wrote in an email to GIR.

The SEC’s office of the whistleblower received around 5,200 tips in 2018, an increase of 18% from 2017 and a 76% increase from 2012. In 2018, the commission awarded more dollars to whistleblowers than in all prior years combined, according to an [annual report](https://www.sec.gov/sec-2018-annual-report-whistleblower-program.pdf) (<https://www.sec.gov/sec-2018-annual-report-whistleblower-program.pdf>) by the office of the whistleblower.

A successful whistleblower whose information leads to an enforcement action is entitled to between 10% and 30% (<https://www.sec.gov/whistleblower/frequently-asked-questions>) of the total monetary penalty collected by the SEC and related actions brought by other regulatory and law enforcement authorities. In the Teva case, if the SEC determines that the whistleblower is entitled to an award, he could receive anywhere from \$52 million to \$156 million.

To date, there have been no publicly known instances of the SEC giving an award to a whistleblower who provided a tip that led to an FCPA case.

The SEC declined to comment.

Counsel to whistleblower in 2011 claim

Andy Rickman in Washington, DC

Christopher Connors in Chicago

Counsel to “John Doe”

Weisbrod Matteis & Copley

William Copley in Washington, DC

Counsel to Teva in 2016 settlement

Willkie Farr & Gallagher

Martin Weinstein in Washington, DC

Kirkland & Ellis

Mark Filip in Washington, DC

For the DOJ

Trial attorneys Rohan A Virginkar (now at Foley & Lardner) and John-Alex Romano of the criminal division's fraud section

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