



# GOODWIN Q+A

## WITH JOSEPH F. SAVAGE, JR.

### WHITE COLLAR SPOTLIGHT: JOSEPH F. SAVAGE, JR.

Joe Savage, a partner in Goodwin's Securities Litigation & White Collar Defense group, has a national practice that concentrates on white collar criminal defense, governmental investigations work and complex civil litigation. He recently sat down to discuss some of the trends he's observed in the white collar space as well as his passion for investments in the entertainment world, including multiple minor-league baseball teams and race horses. "I'm the worst athlete in the world, but I like competition," Savage said.

#### What cases are you watching now and why?

Well, to start, there are fewer to watch. Under the Trump administration there are the lowest number of white-collar criminal cases in a generation — in 20 years. The lowest number of SEC enforcement actions in 30 years. There's a rollback in FCPA, there's a rollback in antitrust, and DOJ collected a half a billion dollars less this year than the previous year in False Claims Act cases. The Justice Department is a much more business-friendly environment. There are trends across the board where they've either adjusted policies to be more flexible to corporations or they've declined cases or have been less aggressive about cases. That's providing some opportunities for us to get better results for our clients than was possible under previous administrations. At least on the white collar side, prosecutors and regulators have more flexibility.

#### Are you surprised at the significant difference between the current administration and previous ones?

Not any more, not after the first 60 days. AG Sessions went to work immediately on rolling back a number of policies that the Obama administration had put in place. And so it was clear they were going to be very aggressive in implementing their priorities and vision so it doesn't surprise now, two years in. The results would have been impossible to see just a year in since so much was in the pipeline from the prior administration. But now what is

coming out of the pipeline is the result of current policies, emphasis on things like immigration and opioids and gangs and less on financial crimes.

#### Are you seeing state attorneys general step in where the feds have otherwise declined?

State AG's are continuing to pursue False Claims Act cases that DOJ is declining to intervene in. It may just be that relators are getting more aggressive about pressing for their cases there and state AG's have a higher tolerance for risk than maybe DOJ does. But consistent with that, one of the policies AG Sessions put in place is that in cases where it might make bad federal law DOJ may now not just decline to intervene but also to move to dismiss to case. In other words, not only does DOJ not want to pursue it, but they don't want the whistleblowers to pursue it either. In one case DOJ dismissed the case due to the burden of discovery on the FDA. It seems they are going to fewer, maybe stronger or otherwise easier, cases.

#### Are there other unexpected or unanticipated trends that you counseling clients about?

One of the things we are seeing is an increasing trend in False Claims Act cases pursuing the private equity firms that made investments in companies that run into a problem with the government. We've successfully resolved several of those around the country and are involved in

a couple now. I think there is an economic reality that contributes to this enforcement trend — there seem to be fewer premium low risk deals but still lots of private equity money chasing health care deals so a lot of the private equity firms may be taking chances on companies that had a challenging compliance history. They buy a company that they might have passed on a couple of years ago in hopes of turning it around, but the government jumps in and says the company has got a problem and they want triple damages. Since a lot of these companies don't have an ability to pay a punitive government demand, the government and whistleblowers try to chase the investors because that's where the money is.

We've been pretty aggressive in trying to get the word out to the PE community that to avoid being sued, you've got to take certain steps as board members. You can't just treat the company like you're an employee. If you follow the corporate formalities, upgrade the compliance — that's your best protection on these sorts of deals.

#### Has anything new arisen recently?

The federal prosecutors in Boston have always been aggressive in the healthcare arena and there appears to be a wave of cases coming to fruition here where the DOJ takes the novel position that it's an anti-kickback violation when pharmaceutical companies donate money to co-pay charities that then use the money for paying the co-pay of needy patients who then are able to afford the high-cost specialty drugs. DOJ is trying to show the charities are not legitimate and are just conduits. The problem is when law enforcement tries to make policy about what drugs people should have access to it's the patients that get caught in the middle. In any event there have been at least 3 settlements by companies and likely more on the horizon.

#### What's it like to have Joe Savage as your lawyer?

Nobody who comes to Goodwin has just me as their lawyer; they have the resources of the terrific white collar team we have. Personally, coming from a long-term government background, more than 13 years at various places in DOJ, you come with a perspective on the problem that puts the emphasis on the practical. In other words, none of the cases I'm in is there an academic approach. This is a serious business problem that demands a practical solution. I also think there's some judgment that comes with having done both sides of it for a long time that brings ultimately an ability to have a creative outcome because you've seen flavors of the same problems in the past and

you are sensitive to the needs and motivations of both sides. I also think that personal relationships are critical, obviously with our clients so you understand not just the business problems but the emotion that come with these sorts of cases where your integrity is being challenged. But also it's important to have sufficiently strong relationships with the regulators — a healthy mix of respect and open communication — over time so that your viewpoint gets heard. While most of our best work is killing off the investigations that you never hear about there's nothing more professionally rewarding than trying a case and winning it on behalf of a human being.

#### What do you spend your time doing when you're not at work?

I got more hobbies than I should. It's bad. I'm a horrible but enthusiastic golfer, which I did this morning and then came in and right before we met I was reading a proposed investment in a minor league baseball team in Montana, which would be the fourth team I've invested in with a bunch of other lawyers in Boston and friends going back to college. Pedro Martinez played there; I didn't have to read much further. We've got the single A short season Mahoning Valley Scrappers, that's Youngstown. Think CC Sabathia. We've had the Mobile Bay Bears. Think Jake Peavy. We've got the Dayton Dragons, which holds the longest consecutive sellout streak of any sports team in the world. We're in our 17th year of sellouts. When I'm not fooling around with tiny baseball investments, I've been in horse partnerships for 12 years. We've been in the Kentucky Derby three of the last 10 years. We owned the only horse to beat American Pharoah. I love to learn about these new worlds so I invested in restaurants (that was a bad idea), and my daughter's a theater producer, which went much better. But if I keep at all these hobbies I am actually going to have to work forever so I'm glad I like my job so much.

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