

CLIENT ALERT

Court Orders Opening of Pandora's Box

March 12, 2014

In *U.S. ex rel. Barko v. Halliburton Co.* (D.D.C. Mar. 6, 2014), the court ordered the defendants in a *qui tam* FCA case to produce internal reports and other documents that were prepared during the course of internal investigations initiated in response to "tips" regarding potential misconduct, even when the tips were made directly to the defendants' Law Department, the reports were transmitted to the Law Department, and the investigations were initiated and managed by senior in-house attorneys. The court concluded that the materials were not protected by the attorney-client privilege because the investigations were "undertaken pursuant to regulatory law and corporate policy" — i.e., the contract clause required by the FAR Mandatory Disclosure rules, which set forth requirements for a contractor's code of business ethics and conduct, compliance program, and internal controls system—"rather than for the purpose of obtaining legal advice," and that they were not protected by the work product doctrine because they were not prepared in anticipation of litigation.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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