

Maybe the LDA Does Have Teeth: DOJ Files an Unprecedented Enforcement Action

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On June 7, 2013—in a first-of-its-kind action—the Department of Justice (DOJ), through the United States Attorney's Office (USAO) for the District of Columbia, filed a civil suit in U.S. District Court in Washington, DC, against Biassi Business Services, Inc. (BBSI), alleging 165 separate, knowing violations of the Lobbying Disclosure Act (LDA). In its complaint, the USAO alleges: 28 knowing failures by BBSI to timely file Form LD-2 quarterly reports; 13 knowing failures to remedy delinquencies in those quarterly reports; 96 knowing failures—by BBSI and by its five listed lobbyists—to timely file Form LD-203 semi-annual reports; and 28 knowing failures—by BBSI and its lobbyists—to remedy delinquencies regarding these semi-annual reports. Because each of these alleged violations carries a separate penalty or fine of \$200,000, if the USAO were to obtain the entirety of the relief it seeks in its complaint, BBSI would face a total penalty or fine of \$33 million.

BBSI is a West Hempstead, New York, firm, which, according to publicly available information, appears to have been engaged primarily in the personal computer business. However, according to the complaint filed by the USAO, BBSI in 2001 filed a lobbying registration statement under the LDA, identifying The Africa Committee, Inc., as its client and listing Mensah A. Biassi and Patricia Ann Biassi as lobbyists. BBSI filed an amended registration in February 2009, again naming The Africa Committee as its client and listing the Biassis and three additional persons as lobbyists. All violations alleged in the USAO's complaint against BBSI occurred after February 2009.

As noted, prior to filing this action against BBSI, the USAO for DC had never before filed suit to carry out its statutory authority to enforce the registration and reporting requirements of the LDA. Since passage of

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the LDA in 1995 until December 2011, the USAO resolved three previous failure to file cases through settlement, with total fines of \$47,000. In 2011, the USAO settled its first LDA enforcement case after passage of the Honest Leadership and Open Government Act (HLOGA), reaching a \$45,000 settlement with a lobbying firm. In 2012, the USAO reached civil settlements with—and obtained civil penalties totaling \$80,000 from—two LDA registrants from what the Government Accountability Office, in its April 2013 report to Congress on LDA compliance, refers to as the USAO's “chronic offenders” list.

The “chronic” nature of BBSI's alleged conduct is a key factor in the USAO's unprecedented decision to file suit. At the outset of its complaint in this matter, the USAO states that “because BBSI has failed to remedy its unlawful actions *despite a plethora of notices* from the House, Senate, and the U.S. Attorney's Office, the United States brings this action.” (Emphasis added.)

As the total of 165 alleged violations—and \$33 million in potential penalties and fines—makes clear, the USAO structured its complaint against BBSI in such a way as to maximize the potential cost to BBSI. The USAO maximized the potential exposure for BBSI by employing several interesting—if not debatable—charging mechanisms, including:

- With respect to 13 LD-2 reports and 28 LD-203 reports, charging initial failures to file these reports in a timely manner and separately charging subsequent failures to remedy these same delinquent filings within 60 days of receiving notices of delinquency.
- As already noted, charging BBSI, the registrant, with its individual lobbyists' failures to timely file their LD-203 reports and their subsequent failures to remedy delinquencies with respect to these forms. This reflects an interpretation of the LDA by DOJ to which all organizations registered under the LDA should take heed.
- With respect to each of the LD-2 reports and each of the LD-203 reports that were not filed by BBSI in a timely manner, charging separate violations for failure to file with the U.S. House of Representatives and separate violations for failure to file with the U.S. Senate.

Clearly, the USAO structured its complaint against BBSI not only to address the alleged conduct of BBSI, but also to send a loud and unmistakable message of deterrence to the lobbying community at large: chronic non-compliance with LDA requirements can have very costly consequences. And even though the BBSI complaint addresses an extreme case, it provides an important reminder for *all* registrants under the LDA: adoption of, and commitment to, an effective formal LDA compliance program pays.