



BOUSQUET HOLSTEIN PLLC



STAY OUT OF THE HEADLINES

WHAT TO DO IF FRAUD OCCURS IN YOUR ORGANIZATION
AND HOW TO PREVENT IT

THURSDAY, MAY 15, 2014
MARLEY EDUCATION CENTER, CROUSE HOSPITAL

PRESENTED BY:

**Bousquet Holstein PLLC and
Grossman St. Amour Certified Public Accountants PLLC**

PRESENTERS:



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Stay Out of the Headlines How to Prevent Fraud in Your Organization



John L. Valentino, Esq.
Linda Gabor, CPA, CFE

May 15, 2014

Introduction

- Goals
 - Focus on occupational fraud
- Presenters
 - John L. Valentino, Esq.
 - Linda Gabor, CPA, CFE
- Research
 - Joshua S. Werbeck, Esq.

Introduction

- Study by Association for Certified Fraud Examiners completed in 2012:
 - Small businesses particularly vulnerable
 - Most perpetrators are first-time offenders
 - Most organizations do not recover losses

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Introduction

- Recent fraud cases in the news:
 - Manlius church endowment
 - Marcellus Highway Department employees
 - Auburn Teachers' Union
- Most cases don't make the news

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The Fraudster

- Can be anyone
- Higher level of authority typically result in much higher losses
- Longer term employees also result in higher losses
- Most are first time offenders with clean employment histories

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The Fraudster

Fraud Triangle –
(first identified by sociologist Donald Cressy)

- Incentive – Financial need on part of perpetrator – medical bills, gambling, living beyond means ...
- Rationalization – Fraudster rationalizes the behavior – “I’ll pay it back”, “they owe me”, “steal the money or lose my house”....
- Opportunity – Fraudster sees an internal control weakness. Usually begins with small dollar amounts



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Signals to Look For

- 81% displayed behavioral “red flags”
 - Living beyond means, financial difficulties, unusual close relationships with vendors or customers and excessive control issues
- Employees who never or rarely take time off
- Employees who take multiple loans against 401k plan or hardship withdrawals



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Types of Fraud

- Asset misappropriation
- Financial reporting
- Asset misappropriation is most common, accounting for 87% of the frauds in the ACFE study



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Asset Misappropriation

- Can occur before or after the transaction is entered into the system
- Can be stealing of cash, inventory or other assets



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Cash Skimming

- Money stolen before transactions are entered are typically “cash skimming” schemes
 - Typical “no sale” in cash register
 - Hard to trace because there is no paper trail
 - Can be during or outside business hours
 - Can also happen in service industries – ie, doctors visit not entered into system



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Accounts Receivable Lapping

- Payment from Customer A is stolen and then payment from Customer B is used to cover Customer A’s account Repeat....
- Unless account can be adjusted or credited, it must perpetually continue

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Common Areas of Focus

- Sales and Accounts Receivable –
 - Who processes payments to customer accounts?
 - Who has access to post credits to accounts?
 - Who makes bank deposits?
 - Review of returns

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Purchase Related Schemes

- Fraudulent checks –
 - Issuing checks to self
 - Intercepting checks and converting payee
- Fraudulent vendors –
 - Setting up “dummy” company in payables system
 - Submit false invoices for payment

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Common Areas of Focus

- Purchasing and Payables –
 - New vendor approval process
 - Review of vendor information in payables system
 - Who reviews expense reimbursements?
 - Who signs checks? Verify with bank
 - What bank accounts are active?

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Payroll Related Schemes

- Fictitious employees –
 - Payroll clerk puts family members or friends on payroll
- False hours –
 - Overtime or hours not worked
- Inflated pay-rates –
 - Payroll Clerk inflates own or others pay rates

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Common Areas of Focus

- Payroll –
 - Who reviews payroll registers?
 - In house or third party payroll processor?
 - Is payroll expense tied out to general ledger?

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How to Protect your Company

The risk of being caught most often persuades potential fraudsters from committing fraud

- Internal controls and communication–
 - Risk assessment - Understand where your most vulnerable areas are
- Surprise Audits

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Risk Assessment

- Identify –
 - Incentives and pressures
 - Risk of management override of controls
 - Reputation risk
 - Information technology risk



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Whistleblower

- Establish a formal whistleblower policy
- Most frauds are detected on tips
- Consider use of a hotline



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Small Organizations

- Board of Directors involvement –
 - Person with financial expertise on the board
 - Board review of reconciliations
 - Check signing requirements – 2 signatures on larger checks
- Supervisory review -
 - Review of reconciliations, edit reports, etc.
 - “Surprise” mini audits of transactions


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Employment Best Practices

- Business should establish strategic hiring procedures –
 - For all new employees:
 - Check references
 - Ask about gaps in employment history
 - Complete background checks


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NOVIGUIT HOLDINGS INC. 

Employment Best Practices

- In hiring and firing, be careful not to use unlawfully discriminatory practices –
 - For example, do not simply exclude all applicants with criminal convictions because of such convictions
 - Article 23-A of New York Correction’s Law
 - Exceptions:
 - There is a direct relationship between the previous criminal offenses and the specific employment sought; or
 - Granting of the employment would involve an unreasonable risk to property or safety


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NOVIGUIT HOLDINGS INC. 

Employment Best Practices

- Information Technology Policies –
 - Businesses should have IT policies in place that –
 - Provide for monitoring of electronics
 - Require that logging software to track and save activity is activated
 - Automatic document destruction concerns



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NOVIGUIT HOLDINGS INC. 

Employment Best Practices

- Other best practices –
 - Affirmative obligation to report suspected fraud
 - Anti-retaliation provision to protect employees that report fraud
 - Policies for document destruction and removal



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What Not To Do If You Suspect Fraud

- Avoid quick and emotional reactions –
 - Avoid alerting the suspect
 - Avoid immediately terminating employees
 - Avoid any open or public response to the suspected fraud



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What You Should Do

- Conduct business as usual
- Preserve evidence –
 - Consult with information technology professionals
 - Create footprints or mirror images of hard drives
 - Ensure automatic deletion is disabled
 - If you need assistance, contact electronic forensic specialists



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What You Should Do

- Consider monitoring suspected fraud for a short period to confirm suspicions and develop evidence
- Consult with your attorney and accountant
 - Specialized advice
 - Particular fraud credentials (CFE)
 - Protect the attorney-client privilege

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What Does a Fraud Examiner Do?

- How different than regular audit –
 - A financial statement audit is not designed to detect fraud
 - Common misconception is that an external audit looks at all transactions – that would be impossible:
 - Materiality
 - Financial statement audits focus on material accounts. Could miss smaller items that fall under scope.
 - Risk Assessment
 - Auditors perform a risk assessment and focus on higher risk areas.

Very few frauds are caught on external audit for these reasons



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What Does a Fraud Examiner Do?

- Before Fraud is suspected –
 - Perform internal control review
 - Assist in risk assessment process
 - Suggestions for improving controls
 - Interview employees

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What Does a Fraud Examiner Do?

- After Fraud is suspected –
 - Interview employees and suspected fraudster
 - Review records for evidence of misappropriation
 - Maintain trail of evidence
 - Document fraud investigation
 - Provide expert testimony
 - Work with attorneys to prepare case

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Responding To Fraud

- Be sure your insurance carrier is notified –
 - Notice periods may be short
 - May be required to file complaint with police

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VERGLEICHENDE RECHTSLEHRE

Responding To Fraud Confronting The Employee

- Confronting the suspected fraudster should be completed strategically
- Consider the following –
 - Who will conduct the interviews?
 - In-house vs. external interviews



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VERGLEICHENDE RECHTSLEHRE

Responding To Fraud Dealing With The Employee

- Upon gathering all the evidence and completing the necessary interviews, consider your objectives
- With those objectives in mind, you will need to deal with the employee
 - If he or she admits to the fraud, it's possible to make a deal for the return of the money
 - Attorney ethical considerations
 - Confession of judgment
 - Separation agreements
 - Avoid employee payroll deductions



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Responding To Fraud Legal Causes Of Action

- Businesses may seek prosecution of wrongdoers, which may result in paid restitution to the business
 - Contacting the police or District Attorney's Office
 - Working with the ADA's Office



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Responding To Fraud Legal Causes Of Action

- Even without criminal prosecution, businesses may commence civil action based on the following causes of action, and others –
 - Conversion
 - Breach of fiduciary duty
 - Common law fraud
- Civil action standard for success

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Don't wait until you're in the headlines

- Here's what you can do now –
 - Review your policies and procedures
 - Review your technology and monitoring
 - Conduct a fraud examination
 - Contact a professional if you need help

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Conclusion

Questions and Answers



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Optimize Opportunities

ABOUT GROSSMAN ST. AMOUR CPAS PLLC

Located in the heart of the Syracuse business district, Grossman St. Amour CPAs has been doing business for over 50 years. The Firm is 42 employees strong, including 9 partners averaging over 25 years of public accounting experience, and 29 certified public accountants on staff. The Firm provides businesses, individuals, and not-for-profits with professional services in the areas of accounting, audit, taxation, business planning and valuation, financial planning, investment management, and fraud examination and deterrence. Contact us, and let's talk about how we can optimize opportunities for your business.

Services

Accounting & Auditing

- Audit & Attest Engagements
- Bookkeeping
- Financial Statement Preparation
- Internal Control Review
- Fraud Examination and Deterrence
- Peer Review

Consulting

- Business Formation and Valuation
- Financial, Benefits, & Retirement Planning
- Merger, Acquisition & Succession Planning
- Management Consulting
- Real Estate Planning
- Technology Consulting

Tax

- Income Tax Return Preparation
- Payroll and Sales Tax Return Preparation
- Tax Planning for Businesses
- Tax Planning for Individuals
- IRS and State Tax Audit Representation

Primary Industries Served

Affordable Housing
Construction
Employee Benefit Plans
Equestrian Businesses
Fire Districts
Government & Municipalities
LGBT and Non-Traditional Families
Manufacturing
Real Estate
Retail & Distribution
Medical Practices & Healthcare
Not-for-profit
Professional Services
Public School Districts

Who We Are

Partners and Senior Managers

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Services provided

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Linda Gabor, CPA, CFE **Partner—Audit Services Group**

Linda has been with Grossman St. Amour CPAs PLLC since June 2007. She is a licensed Certified Public Accountant and Certified Fraud Examiner in the State of New York.

As partner in charge of the audit services group, Linda practices in the areas of audit and attest engagements, financial statement preparation, internal control review and fraud examination and deterrence. Her audit experience includes affordable housing, employee benefit plans, healthcare, manufacturing, not-for-profit, public school districts and retail distribution organizations.

Prior to joining Grossman St. Amour CPAs PLLC, Linda obtained 13 years of public accounting experience in the audit and business advisory services practices of a large, international public accounting firm.

Linda is an employee benefit specialist responsible for the audit of pension plans and for the review of pension plan financial statements. She also has expertise in not-for-profit accounting, cash flow statement preparation, OMB A-133 regulatory audit requirements, inventory accounting and special agreed upon attest services. Linda also leads the firm's Peer Review practice.

Education

- ◇ Bachelor of Science degree in Accounting and Economics— Le Moyne College

Community Service

- ◇ JDRF Central New York Chapter—Member, Board of Directors
- ◇ Le Moyne College—Member of the Board of Regents
- ◇ Vera House, Inc.— Former Member of Board of Directors and Chair of Finance Committee (2001—2013)

Professional Memberships

- ◇ American Institute of Certified Public Accountants
- ◇ American Institute of Certified Public Accountants— Government Audit Quality Center
- ◇ American Institute of Certified Public Accountants— Employee Benefit Plan and Government Audit Quality Centers
- ◇ New York State Society of Certified Public Accountants
- ◇ PrimeGlobal, An Association of Independent Accounting Firms
- ◇ Affordable Housing Association of Certified Public Accountants
- ◇ Association of Certified Fraud Examiners



BOUSQUET HOLSTEIN PLLC

Firm Profile

Bousquet Holstein PLLC is a versatile law firm representing clients across many industries. The firm's clientele is comprised of businesses and individual clients for whom we provide legal advice and counsel on a broad range of matters covering thirty practice areas.

Our attorneys are counselors, strategists, and advocates whose goal is to develop a long-term relationship with each of our clients - one that is based on the trust that develops when a law firm understands the client's business and objectives, anticipates the client's needs, and provides prompt, high-quality, and consistently valuable service. An in-depth understanding of the economics of business transactions is one of the firm's defining characteristics. We enthusiastically address the challenges presented by new projects and have embraced new areas of the law as we anticipate our clients' needs for us to master emerging legal trends.

We are organized in practice groups - flexible collections of attorneys and other professionals who bring different facets of expertise to the particular area of practice. This interdisciplinary team approach allows us to achieve creative and complete solutions for our clients. Our professional staff does not fit into any preconceived mold. We have an extraordinarily talented group of individuals, each of whom has a passion for his or her work and for the connections made with our clients. In addition to a strong commitment to our practice, our professionals believe that it is their responsibility to contribute to our community and make it a better place for all to live. The commitments we have collectively and individually made to our community are an integral part of who we are.



BOUSQUET HOLSTEIN PLLC

Practice Areas

Agriculture
Alternative Dispute Resolution
Appellate Advocacy
Banking and Financial Institutions
Bankruptcy
Brownfields
Business Transactions
Economic Development Incentives
Elder Law & Special Needs Planning
Employee Benefits & ERISA
Employment and Discrimination
Energy
Environmental, Land Use, and Zoning
Estate Planning & Administration
Equipment Leasing and Financing
Government Relations
Health Care
Immigration & Naturalization
Intellectual Property
Litigation
Matrimonial
Mergers and Acquisitions
Municipal Representation
Not-For-Profit Organizations
Professional Practices
Real Estate
Tax Planning and Advocacy
Telecommunications
Trusts
Venture Capital and Private Placement



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Practice

John is a member of the firm and serves on its Board of Managers. John practices in the areas of litigation, employment and discrimination, business transactions, appellate law, and professional practices.

John represents employers, executives and other professionals in federal and state court litigation over business and commercial matters, and over claims such as breach of employment contracts, shareholder disputes, retaliation, and discrimination, non-compete agreements, sexual harassment, and a variety of other business, labor and employment-related legal claims. He has provided representation before various federal and state agencies, including the New York State Division of Human Rights, the Department of Labor, the Unemployment Insurance Appeal Board and the Equal Employment Opportunity Commission. John advises employers preparing and implementing employment policies regarding sexual harassment, drug testing, and employment termination and employment references. He has also been successful in representing employees in discrimination, harassment and retaliation matters.

John has written articles and lectured on various legal topics, including contract law, business transactions, sexual harassment, discrimination, employment at will and temporary employees. He develops programs for employers to use in educating their employees on sensitive employment matters, such as sexual harassment.

Recent Experience

- Settled lawsuit on behalf of employee claiming sexual harassment and retaliation for \$300,000;
- Obtained dismissals of employment discrimination claims before the New York State Division of Human Rights and the Equal Opportunity Commission;
- Resolved lawsuits in New York State Supreme Court and in the United States District Court on behalf of clients suing their former employers;
- Implemented drug testing, sexual harassment, and other employment policies for employers;

Practice Areas

Appellate
Business Transactions
Employment and Discrimination
Litigation
Professional Practices

Education

J.D., Syracuse University
College of Law, *magna cum laude*, 1987

B.A., Le Moyne College, *cum laude*, 1984

Admissions

- New York
- United States District Court, Northern, Western, and Eastern Districts
- New York State District Courts
- United States Court of Appeals, Second Circuit



John L. Valentino, Page 2

- Represented professionals in licensing matters before the Office of Professional Discipline;
- Represented shareholders in disputes with other shareholders.

Professional and Community Involvement

- New York State Bar Association
- Onondaga County Bar Association
- Syracuse Symphony Orchestra, Board of Directors
- RLS Career Center, Former President
- Landmark Theatre, Syracuse, Former Counsel



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Practice

Joshua joined Bousquet Holstein PLLC, formerly known as Green & Seifter, Attorneys, PLLC, in September 2010. Joshua's primary practice areas include Health Care, Business Transactions, Employment Law, and Tax Law.

Health Care

Joshua advises physician groups, hospitals, and other health care providers on regulatory compliance, corporate and transactional issues, and government investigatory matters, including New York and Federal health care regulations, the HIPAA Privacy Rule, Stark Law, Anti-Kickback Statute, and Office of Inspector General ("OIG") or N.Y.S. Office of Medicaid Inspector General ("OMIG") investigations.

Joshua has experience representing physicians, pharmacists, and other health care professionals included on the OMIG or OMG Medicaid or Medicare Exclusion Lists – also known as the List of Excluded Individuals and Entities ("LEIE"). Joshua represents health care professionals at every stage of the Exclusion List process including the initial investigation and potential sanction through the administrative appeal for removal from the Exclusion List.

Joshua is well versed in the federal and New York State laws and regulations regarding the formation and business of Accountable Care Organizations ("ACO"). Along with the Health Care Practice Group, he has worked with a number of health care providers and organizations applying for participation in the federal Medicare Shared Savings Program ("MSSP") as ACOs, including organizations that have achieved federal certification.

Business Law

Joshua is a business attorney who advises businesses and owners in every part of establishment, operation, and purchase and sale of assets and interests. Joshua regularly advises individuals and business on the initial formation of business entities, including LLCs, Corporations, and Not-For-Profit Corporations, general corporate matters, such as buy-sell agreements, stock purchases, and non-compete agreements, tax compliance issues, and in many aspects of business transactions.

Practice Areas

Health Care
Business Transactions
Employment and Discrimination
Tax Planning and Advocacy
Economic Development
Real Estate

Education

J.D., Syracuse University
College of Law, 2010, *cum laude*, *Order of Barristers*

B.A., Sienna College, 2007,
magna cum laude

Admissions

- New York
- United States District Court,
Northern District of New York

Joshua S. Werbeck, Page 2

Employment and Discrimination

Joshua advises businesses and individuals on employment and labor law matters, including employment contracts, implementation of company policies and handbooks, employment termination issues, workers' compensation issues, wage and overtime requirements under New York and federal law, and Davis Bacon or prevailing wage requirements. Joshua regularly represents businesses and individuals before the N.Y.S. Division of Human Rights regarding discrimination and sexual harassment complaints, as well as representation before federal and state courts on employment discrimination related matters.

Educational Background

Before joining Bousquet Holstein PLLC, Joshua graduated from Siena College and Syracuse University College of Law ("SUCOL"). While in law school, Joshua represented the Class of 2010 on SUCOL's Student Senate and served as Executive Director of the Moot Court Honor Society, a trial and appellate advocacy organization with instructional and competitive functions.

Joshua interned with the Civil Division of the United States Attorney's Office for the Northern District of New York ("NDNY") during the 2008 through 2009 academic year where he assisted in federal enforcement of the Stark Law and Anti-Kickback Statute, among other matters. Joshua also worked as a member of the Low Income Tax Payer Clinic at SUCOL where he represented individuals before the United States Tax Court and Internal Revenue Service and as a member of the Syracuse University College of Law Bankruptcy Clinic where he represented individuals before the U.S. Bankruptcy Court.

By graduation, Joshua had earned several awards, including the C.A.L.I. Excellent Award for the highest grade in his Legal Writing course and the New York State Academy of Trial Lawyers Leadership Award for his leadership of the Moot Court Honor Society and its annual trial and appellate competitions. Joshua was also inducted into Justinian Honorary Law Society and the National Order of Barristers.

Recent Experience

- Joshua represented a pharmacist included on the N.Y.S. Medicaid Exclusion List and Federal Medicare Exclusion List for over 20 years and successfully achieved removal from both. Despite the long period of inclusion on the Exclusion Lists, Josh negotiated immediate removal from both with zero monetary penalties.
- Joshua represents the Syracuse Adult Kickball Association ("SAKA") and has advised its owners on formation, tax issues, sports law, and real estate matters, including obtaining site-planning and special permit approval for operation of its athletic facility in the Town of Salina.

Joshua S. Werbeck, Page 3

- Joshua has represented numerous businesses before the N.Y.S. Division of Human Rights ("DHR") and, in a number of cases, achieved a no probable cause determination to dismiss the claims of discrimination or harassment before a protracted investigation.
- Joshua represents individuals and businesses in disputes with the N.Y.S. Department of Taxation and Finance and the Federal IRS. Tax issues Josh has addressed include representation of businesses facing sales tax and tax credit audits, representation of individuals facing challenge to their business deductions, and advising companies on corporate tax matters, including the accumulated earnings tax.

Professional and Community Involvement

Joshua is a lifelong resident of Central New York ("CNY") having grown-up in North Syracuse and graduated from Cicero-North Syracuse High School ("CNS") where he served as Senior Class President. Today, Joshua is a member of the Board of Directors for Sarah House, a hospital hospitality house in Syracuse. He also volunteers as a Family Court Advocate at the Onondaga County Courthouse for Vera House, a comprehensive domestic and sexual violence service agency.

Joshua Werbeck is a member of the following professional organizations:

- American Health Lawyers Association
- American Bar Association
- New York State Bar Association
- Onondaga County Bar Association