



MAY 2011

## Former In-House Counsel Acquitted In Federal Prosecution

On Tuesday, May 10, 2011, the Honorable Roger W. Titus of the United States District Court, District of Maryland, acquitted former GlaxoSmithKline (Glaxo) in-house attorney Lauren Stevens on all federal criminal charges. In his ruling from the bench, Judge Titus commented on the statutory safe harbor provision for the advice of counsel in obstruction of justice cases and criticized an earlier Massachusetts court's decision that had resulted in the production of documents protected by attorney-client privilege.

As previously stated in our legal update entitled [Feds Target In-House Lawyer](#), the Department of Justice (DOJ) had indicted Stevens, former associate general counsel at Glaxo, on six counts, including obstructing an official proceeding, concealing and falsifying documents to influence a federal agency, and making false statements to the Food and Drug Administration (FDA).<sup>1</sup> The DOJ accused Stevens of making false statements in a series of letters and accompanying documents, as well as concealing and covering up documents and other evidence in an FDA investigation of Glaxo's promotion of Wellbutrin for off-label purposes.<sup>2</sup>

In granting the defendant's Rule 29 motion for judgment of acquittal, Judge Titus noted that the granting of such motions is rare. In fact, this is the first such motion he has ever granted. In this case, however, Judge Titus found that Glaxo did not engage Stevens to assist in perpetrating a crime or a fraud, and thus, the safe harbor provision of 18 U.S.C. § 1515(c) protected Stevens as to the counts for obstruction of justice. "The [s]afe [h]arbor [p]rovision is designed specifically to protect an attorney who is acting in accordance with the obligation that every lawyer has to zealously represent his or her client and place their position in the most favorable possible light," Judge Titus ruled.<sup>3</sup> Judge Titus further commented that "[t]he Subcommittee on Criminal Justice had received complaints of prosecutors harassing members of the defense bar, and that vigorously and zealously representing a client is [not] a basis for charging an offense under the Obstruction of Justice chapter."<sup>4</sup>

Holding that the statements at issue were made in good faith, Judge Titus noted that Stevens clearly sought and obtained the advice and counsel of numerous lawyers, both in making her decisions and in writing the letters.<sup>5</sup> He declared that "it would be a miscarriage of justice to

permit this case to go to the jury."<sup>6</sup>

In his decision, Judge Titus also characterized as "unfortunate" an earlier Massachusetts order requiring production of a vast number of documents that ordinarily would have been privileged.<sup>7</sup> He concluded that prosecutors should not have been granted access to these documents, because the crime fraud exception to the attorney-client privilege requires that the advice of the attorney be for the purpose of assisting the client in engaging in or planning a criminal or fraudulent scheme.<sup>8</sup> In this case, Stevens was engaged in a bona fide representation of Glaxo.<sup>9</sup>

Finally, Judge Titus declared that he would not hesitate to preside over the trial and sentence a lawyer where appropriate, but that "the defendant in this case should never have been prosecuted...."<sup>10</sup>

---

## CONTACT US

If you have any questions or would like to discuss a potential or pending investigation, please contact [Edward J. Heath](#), [Craig A. Raabe](#), [Ronald W. Zdrojeski](#), or [Nuala E. Dronney](#).

### **Stamford**

1055 Washington Boulevard  
Stamford, CT 06901-2249  
(203) 462-7500

### **New York**

885 Third Avenue, 28th Floor  
New York, NY 10022-4834  
(212) 451-2900

### **Hartford**

280 Trumbull Street  
Hartford, CT 06103-3597  
(860) 275-8200

### **Boston**

One Boston Place, 25th Floor  
Boston, MA 02108-4404  
(617) 557-5900

---

<sup>1</sup> Legal update, *Feds Target In-House Lawyer*, February 2011.

<sup>2</sup> *Id.*

<sup>3</sup> Transcript, *United States v. Lauren Stevens*, Criminal Action No. RWT-10-694 (May 10, 2011) (D.Md.) 6.

<sup>4</sup> Transcript at 6.

<sup>5</sup> Transcript at 7.

<sup>6</sup> Transcript at 9.

<sup>7</sup> Transcript at 5.

<sup>8</sup> Transcript at 4.

<sup>9</sup> Transcript at 5.

<sup>10</sup> Transcript at 9-10.

*contents of this communication may contain attorney advertising under the laws of various states. Prior results do not guarantee a similar outcome.*

