

Finding Employer Can Require Employees to Cooperate in Internal Investigation, Federal Court Tosses Executive Severance Suit

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On January 26, the Southern District of New York dismissed claims for severance and stock benefits brought by two former executives of professional services firm Marsh & McLennan Companies, Inc., arising out of their termination for refusal to cooperate with an internal investigation.

Marsh terminated the two former executives' employment when they refused to be interviewed in Marsh's internal investigation into the New York Attorney General's ("NYAG") 2004 allegations regarding "bid-rigging" in the insurance industry. The plaintiffs were later convicted on one count of Restraint of Trade and Competition, although those convictions were later vacated. The plaintiffs brought suit for, among others things, severance benefits under ERISA and for the value of their forfeited equity awards under state law.

The district court found that plaintiffs' claims for severance benefits under ERISA were barred because they did not meet the eligibility requirements based on the plain language of Marsh's severance plan – they were not terminated for lack of required job skills, as a part of a restructuring, or because their positions were eliminated.

As for the plaintiffs' state law claims, the district court examined whether Marsh's decision to terminate the former executives for refusing to be interviewed as part of the internal investigation was for "cause." This depended on whether Marsh's requirement that they be interviewed was reasonable despite the plaintiffs' fear that Marsh, who was cooperating with the NYAG's investigation, might provide the NYAG with incriminating statements made during those interviews.

The district court found that Marsh was reasonable as a matter of law to require its employees to cooperate in its internal investigation, on the grounds that companies under government investigation must be able to require their employees divulge what they know about alleged wrongdoing to the company. Going even further, the court found that Marsh would have been reasonable to require that the plaintiffs cooperate with, and be interviewed by, the NYAG, because a company cannot cooperate with the government unless it seeks full cooperation from its employees.