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Christie Delivers Pay-To-Play Warning In Birdsall Case

By **Martin Bricketto**

Law360, New York (March 29, 2013, 8:35 PM ET) -- The recent indictment of New Jersey engineering firm Birdsall Services Group and several of its top executives shows that Gov. Chris Christie's administration will prosecute alleged pay-to-play abuses with the same aggressiveness he exhibited as U.S. attorney, warning other government contractors to foster a culture of compliance when it comes to political contributions, experts say.

New Jersey Attorney General Jeffrey Chiesa on Tuesday announced the indictment of Eatontown-based Birdsall and seven current and former executives, including the firm's former CEO and largest shareholder Howard Birdsall, over an alleged plot to mask illegal corporate campaign contributions as personal employee donations and evade the state's pay-to-play restrictions.

The case against Birdsall — which reported collecting nearly \$28.4 million in 2011 via public contracts and agreements in the state — underscores that trying to dodge such requirements can mean more than a slap on the wrist.

"I think the attorney general's office is clearly sending a message to all businesses that operate in New Jersey. Quite simply, that advice would be 'follow the law,'" said former New York City criminal court judge Margaret Finerty, a partner with Getnick & Getnick LLP.

"Companies need to send a message to employees, top down, [of] 'We are an honest company, we are an ethical company and honest business is good business,'" she added.

While it may not be a surprise that state authorities brought more charges after securing the guilty pleas of two former BSG marketing employees and an initial indictment against former Executive Vice President Thomas Rospos, attorneys told Law360 that they were still struck by the sheer number and rank of those who now face possible jail time.

"To have the whole C-suite taken out — I haven't seen many, if any, of these cases, especially in connection with campaign and election law enforcement," said Day Pitney LLP Managing Partner Stan Twardy, a former U.S. attorney for the District of Connecticut.

Prosecutors contend that the illicit donations were in place of Birdsall doling out political cash that could prevent it from winning government contracts.

Shareholders and other Birdsall employees allegedly cut checks of \$300 or less — which aren't subject to reporting requirements — that were bundled and sent to campaigns or political organizations, according to authorities, who say Birdsall then reimbursed personnel. The executives indicted Tuesday have each been accused of making tens of thousands of dollars in political contributions that were illegally reimbursed.

Authorities also claim that Birdsall personnel failed to disclose those contributions as part of forms filed with the state's campaign finance regulator and submitted numerous false certifications that the company was in compliance with pay-to-play rules when vying for public contracts.

The allegedly concerted effort to circumvent pay-to-play restrictions is what distinguishes the case from more technical, civil violations, according to Ronald Jacobs, the co-chair of Venable LLP's political law group.

"New Jersey probably has the most complicated pay-to-play rule in the country, and the only way it works is if you comply, and compliance is normally a civil function," Jacobs said. "Here, you had a company that, according to the attorney general, wanted to get around it. I think you have to go after a company like that."

The case may not be entirely unique in a state that has long battled corruption related to government contracts, but it is what one would expect from an administration headed by Christie, according to Stern & Kilcullen LLC partner Herbert J. Stern, a former U.S. attorney for the District of New Jersey and federal judge.

The governor was known for his hard-charging style and political corruption busts as U.S. attorney for New Jersey from 2002 to 2008, and Chiesa worked in the U.S. attorney's office from 2002 to 2009, last serving as the executive assistant U.S. attorney.

"People have the right to expect that there won't be a federal type and a state type [of law enforcement], but rather vigorous prosecution from both," Stern said. "With Chris and his background, I think he expects the same kind of prosecution."

Still, the administration isn't the first to employ federal prosecution methods — such as using lower-level personnel to shed light on alleged abuses further up the corporate ladder — and likely wouldn't be alone in going after such alleged conduct, according to Paul Josephson, the partner-in-charge of Hill Wallack LLP's regulatory and government affairs group.

"I think any attorney general presented with this set of facts would have taken this action," he said.

BSG's alleged conduct may be extreme, but the case should still put other firms that handle government business on notice, according to attorneys.

"If I were the CEO or I was the general counsel of any entity that provides services to the state, I would make sure there was memo or directive that went out to remind people that you can't make political contributions that aren't in compliance with the reporting laws," Twardy said.

Companies should strive to create a culture of compliance, according to Jacobs.

"You can't mess around with this stuff, and I think [the case] is a useful reminder that you not only have to worry about screening contributions, but you also have to make sure the company has procedures and policies to prevent executives from trying to get around the law," he said.

--Editing by Elizabeth Bowen and Lindsay Naylor.