

## Chapter 8 Fact Patterns

1. Defendant A has pleaded guilty to one count of money laundering in violation of 18 U.S.C. § 1956. Defendant A is a successful advertising agency that employs 200 people. The sole owner of the advertising agency (Owner) was approached by his neighbor (Neighbor) who stated that he needed “help cashing some checks.” Neighbor proposed that he would write \$10,000 checks to Defendant A, and that Defendant A need not provide any advertising services. Instead, Neighbor asked Defendant A to return \$9,000 in cash to Neighbor and to keep the remainder for itself. Owner agreed, and this arrangement continued for several months, with Defendant A taking in over \$250,000 in checks from Neighbor, before Neighbor was arrested for being part of a criminal operation.

During the period in which Defendant A was involved in the scheme, it continued to conduct its other legitimate business. There is no other evidence of illegal activity in the company’s past.

The current market value of Defendant A’s assets is approximately \$3 million. The company’s annual net income was approximately \$200,000.

Defendant A has cooperated with the investigation and Owner has written a statement accepting responsibility on behalf of the company.

The court has previously sentenced Owner to a prison term and a \$20,000 fine for this activity.

### **How would the company’s guidelines be calculated in this case?**

*The company’s fine would be calculated according to Chapter 8, Part C.*

*a) In this case, the provisions of §§8C2.2 through 8C2.9 would apply because (1) it is unlikely that the court would find that Defendant A was a criminal purpose organization<sup>1</sup> and (2) convictions pursuant to 18 U.S.C. § 1956 are sentenced under §2S1.1. See USSG USSG §§ 8C1.1, 8C2.1.*

*b) The first inquiry under §8C2.2(a) is whether Defendant A has the ability to pay restitution. In this case, Defendant A likely has sufficient assets that can be liquidated to assist in paying restitution. If not, an installment schedule can be arranged to allow Defendant A to pay restitution over time out of its net income.*

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<sup>1</sup>*There is no case law clarifying how courts are to determine whether an organization “operated primarily for a criminal purpose or primarily by criminal means,” but it is unlikely that a company that has existed for many years prior to the fraudulent activity, and which also has legitimate business would be considered a criminal purpose organization.*

c) §8C2.3(a) directs the court to calculate Defendant A's offense level according to the applicable Chapter Two guideline, in this case, §2S1.1. The offense level in this case is 22 (base offense level of 8 + 12 for the \$250,000 in laundered funds + 2 because defendant was convicted under 18 U.S.C. § 1956).

d) Under §8C2.4, the base fine is \$1,200,000 according to the Offense Level Fine Table. This amount is used because it is greater than either the pecuniary loss or pecuniary gain in this case.

e) Under §8C2.5, the court would calculate Defendant A's culpability score, beginning with 5 points pursuant to §8C2.5(a).

- Pursuant to §8C2.5(b)(3)(A)(I), the court will add 3 points to the culpability score because Defendant A has 200 employees and Owner is "high-level personnel" who participated in the offense .
- The total culpability level for Defendant A, assuming the addition of the 2 points pursuant to §8C2.5(b)(3)(A)(I) and a reduction of two points for acceptance of responsibility pursuant to §8C2.5(g)(2), is 6.

f) Under §8C2.6, the minimum and maximum multipliers are 1.20 and 2.40 respectively.

g) Pursuant to §8C2.7, the fine range is \$1,440,000-\$2,880,000. However, under 18 U.S.C. § 3571(c)(3) the statutory maximum fine is \$500,000. See 18 U.S.C. § 1956(a)(1); see also 18 U.S.C. § 3571(c). Accordingly, the guideline fine is \$500,000. See USSG §8C3.1(b).

h) Pursuant to §8C3.4, the court may elect to offset Defendant A's fine by \$20,000, the amount owner was fined.

**1A.** Assume the same facts as Fact Pattern 1, except Defendant A has pleaded guilty to three counts of money laundering.

**How will the guideline fine be calculated?**

a) As noted in the Commentary to §8C3.1, the maximum fine authorized by statute may increase when an organization is convicted of multiple counts. If Defendant A has pleaded guilty to three counts, its statutory maximum fine will be \$1,500,000. Accordingly, the guideline fine range will be \$1,440,000-\$1,500,000.

b) Pursuant to §8C2.2(b), after establishing the guideline fine range, the court would make a preliminary determination whether Defendant A is able to pay the minimum of the guideline fine range. Because Defendant A has sufficient assets that can be liquidated to pay the fine, or can arrange to pay the fine out of ongoing income through an installment schedule, the court will go on to set the fine within the range, according to the factors set out in §8C2.8. See United States v. Acambaro Mexican Rest., Inc., 631 F.3d 880 (8th

*Cir. 2010) (Sentencing court must make specific factual findings on the record regarding defendant's ability to pay fine).*

2. Defendant B has pleaded guilty to one count of Medicare Fraud in violation of 42 U.S.C. § 1320a-7b. Defendant B is a company that provides ambulance transport services and employs 75 people. Defendant B improperly billed Medicare for ambulance transportation for individuals who did not meet the regulatory requirements for reimbursement in non-emergency situations. Defendant's office manager created transfer forms falsely indicating that patients were confined to bed, unable to ambulate, and unable to sit in a chair or wheelchair. Defendant's head paramedic signed the transfer form and included information regarding the specific patients before submitting them for billing.

Records demonstrate that Medicare has reimbursed Defendant B \$275,000 based on 900 fraudulent claims. During the two-year period in which the fraudulent claims were filed, Defendant B transported a total of 3000 patients. There is no evidence of other fraud in the company's 15-year history.

The current market value of the company's assets is approximately \$2 million. The company's annual net income was approximately \$175,000.

The company has cooperated with the investigation and the company's president has written a statement accepting responsibility on behalf of the company.

### **How would the company's guidelines be calculated in this case?**

*The company's fine would be calculated according to Chapter 8, Part C.*

*a) In this case, the provisions of §§8C2.2 through 8C2.9 would apply because (1) it is unlikely that the court would find that Defendant B was a criminal purpose organization<sup>2</sup> and (2) convictions pursuant to 42 U.S.C. § 1320a-7b are sentenced under §2B1.1. See USSG §§ 8C1.1, 8C2.1.*

*b) The first inquiry under §8C2.2(a) is whether Defendant B has the ability to pay restitution. In this case, Defendant B likely has some assets that can be liquidated to assist in paying restitution. If not, an installment schedule can be arranged to allow Defendant B to pay restitution over time out of its net income.*

*c) §8C2.3(a) directs the court to calculate Defendant B's offense level according to the applicable Chapter Two guideline, in this case, §2B1.1. The offense level in this case is*

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<sup>2</sup>*There is no case law clarifying how courts are to determine whether an organization "operated primarily for a criminal purpose or primarily by criminal means," but it is unlikely that a company that has existed for many years prior to the fraudulent activity, and which also has legitimate business would be considered a criminal purpose organization.*

18 (base offense level of 6 + 12 for the \$275,000 loss).

d) Under §8C2.4, the base fine is \$350,000 according to the Offense Level Fine Table. This amount is used because it is greater than either the pecuniary loss or pecuniary gain in this case.

e) Under §8C2.5, the court would calculate Defendant B's culpability score, beginning with 5 points pursuant to §8C2.5(a).

- Pursuant to §8C2.5(b)(4), the court may add 2 points to the culpability score if it finds that either of the two individual defendants are "substantial authority personnel" or some other "substantial authority personnel participated in, condoned, or was willfully ignorant of the offense." There is no case law interpreting the term "substantial authority personnel," but it is defined in §8A1.2, application note 3(c).
- The total culpability level for Defendant B, assuming the addition of the 2 points pursuant to §8C2.5(b)(4) and a reduction of two points for acceptance of responsibility pursuant to §8C2.5(g)(2), is 5.

f) Under §8C2.6, the minimum and maximum multipliers are 1.00 and 2.00 respectively.

g) Pursuant to §8C2.7, the fine range is \$350,000-\$700,000. However, pursuant to §8C3.1(a), the maximum guideline fine is limited by 18 U.S.C. § 3571(c)(3), which limits fines for organizations to \$500,000 for felony convictions in the absence of a greater amount of pecuniary gain or loss. Accordingly, the guideline fine range is \$350,000-\$500,000.

h) Pursuant to §8C2.2(b), the court would then make a preliminary determination whether Defendant B is able to pay the minimum of the guideline fine range. Because Defendant B has sufficient assets that can be liquidated to pay the fine, or can arrange to pay the fine out of ongoing income through an installment schedule, the court will go on to set the fine within the range, according to the factors set out in §8C2.8. See United States v. Acambaro Mexican Rest., Inc., 631 F.3d 880 (8th Cir. 2010) (Sentencing court must make specific factual findings on the record regarding defendant's ability to pay fine).

- 2A. Assume the same facts as in Fact Pattern 2, but Defendant B only operated during the period in which the 900 fraudulent bills were submitted, and during that period Defendant B transported only 975 patients.

**How would the guidelines be calculated in this case?**

*In this case, the court may determine that Defendant B is a criminal purpose organization pursuant to §8C1.1. If the court makes such a determination, the guidelines*

*provide that the fine “shall be set at an amount (subject to the statutory maximum) sufficient to divest the organization of all its net assets.” As noted above, there is a statutory maximum fine of \$500,000. Because even this is not sufficient to divest the organization of its net assets, the guideline fine would be \$500,000.*

3. Defendant C is a corporation that has pleaded guilty to one count of making contributions in the name of another person in violation of 2 U.S.C. § 441f. The brother of Defendant C’s CEO is a candidate for congress. In an effort to help his brother’s campaign, the CEO approaches fifteen employees and suggests that the corporation will give them a \$3,000 bonus in exchange for making a \$2,500 donation to the brother’s campaign.

**How would the company’s guidelines be calculated in this case?**

*The company’s fine would be calculated according to §8C2.10.*

*a) The guideline offense level for violations of 2 U.S.C. § 441f is determined under §2C1.8. Because §2C1.8 is not listed in §8C2.1(a), the Fine Guidelines do not apply.*

*b) The fines for all counts not covered under §8C2.1 are governed by §8C2.10, which provides that “the court should determine an appropriate fine by applying the provisions of 18 U.S.C. §§ 3553 and 3572.”*