



U.S. Department of Justice

Environment and Natural Resources Division

Assistant Attorney General
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Telephone (202) 514-2701
Facsimile (202) 514-0557

DIRECTIVE 99-20

GLOBAL SETTLEMENT POLICY¹

U.S. Attorneys' Manual § 5-11.115 (August 23, 1995) provides that the approval of the Assistant Attorney General (AAG) of the Environment and Natural Resources Division (ENRD) is required for any "global settlement" that addresses or compromises both civil claims and criminal charges.² This memorandum identifies issues to be considered when deciding whether a global settlement is appropriate in a given case and sets forth criteria by which the Assistant Attorney General will assess requests for approval of such settlements as proposed by a U.S. Attorney's Office or from within ENRD.

The Department and many United States Attorneys' Offices have parallel proceedings policies that provide civil and criminal attorneys with flexibility, within legal, ethical and prudential constraints, to share information, to consult on legal issues, to conduct investigations jointly, and to pursue parallel proceedings. Such coordinated efforts may obtain both civil and criminal remedies,

¹This action is taken pursuant to the authority set forth at 28 CFR § 0.130

² The U.S. Attorney's Manual states:

Without the express approval of the Assistant Attorney General, Environment and Natural Resources Division, in any criminal case arising under the statutes identified in USAM 5-11.101 no plea agreement will be negotiated which compromises the right of the United States to any civil or administrative remedies under those statutes. Efforts by defendants to effect such remedies may arise in the context of so-called "global settlement" offers.

USAM § 5-11.115 (August 23, 1994). "Global settlements" under this provision differ from the term as used elsewhere in the Manual to identify multi-district criminal plea agreements. See USAM § 9-27.641.

through adjudication or settlement, and such global settlements may be desirable, subject to the appropriate policies.

Defense counsel may ask in settlement negotiations in either a civil or criminal case for a global settlement in which the defendant receives releases from both civil and criminal liability. These requests, when made late in the negotiation process and when the government has pursued the case civilly or criminally, but not both, pose particular concern. Experience has demonstrated that these eleventh-hour global resolutions can be problematic because there is insufficient time to marshal all the information needed to address the terms of the resolution fully and to obtain needed agency authorization for civil resolutions, thus putting the government at risk in the negotiations. For these reasons, last-minute global settlements where there has not been an ongoing parallel proceeding are disfavored.

Defense attorneys sometimes seek to negotiate civil resolutions with criminal prosecutors, including waivers of any further civil liability; similarly, defense attorneys sometimes seek to resolve criminal matters, including waivers of criminal liability, with civil government attorneys. The government is put at risk when its criminal prosecutors agree to civil terms with which they may not be familiar or may not fully understand, and vice versa. This policy seeks, in part, to ensure that the interests of the people of the United States are represented in each case in which there may be a global settlement by a government attorney with the appropriate training and expertise.

Each global settlement proposal must be evaluated on its own merits, and the AAG's approval will depend on an assessment of all the circumstances. Generally, approval of such settlements requires that the following important conditions have been met:

1. Criminal plea agreements must be handled by criminal attorneys and civil settlements by civil attorneys. The criminal plea agreements and civil settlements should generally be negotiated separately. Each resolution -- criminal and civil -- should be negotiated by attorneys who have the appropriate (civil or criminal) training and who are working within the appropriate unit of ENRD or a U.S. Attorney's Office.
2. Each part of the settlement must separately satisfy the appropriate criminal and civil criteria. The criminal plea agreement must satisfy the criteria set out in the Principles of Federal Prosecution and in other Department of Justice policies for consideration of a plea agreement. The civil settlement must satisfy the policies of the Justice Department, and in addition should to the same extent as other civil settlements conform to the policies of affected client agencies.
3. With respect to a civil settlement, all affected client agencies must approve the settlement. Other agencies may have their

own requirements for approval of civil settlements. For example, an agency may require headquarters approval of global settlement. If the affected client agencies require concurrence, such concurrence must be obtained from them prior to entering into a global settlement.

4. There should be separate documents memorializing the criminal plea agreement and the civil settlement. The criminal plea agreement and the civil settlement should be set out in separate documents. Criminal releases should be made only in the criminal plea agreement documents, and civil releases in the civil documents.

5. A defendant may not trade civil relief in exchange for a reduction in criminal penalty. As noted in #2., above, the criminal plea agreement must satisfy the appropriate Department criteria.

We urge early consultation on any proposal for a possible global settlement. Requests for approval of a global settlement must be accompanied by a memorandum describing the settlement and the reasons why it should be approved. Requests should be submitted, at the latest, three weeks in advance of the date by which the settlement must be finalized.

The memorandum should, at a minimum, address the above criteria. With respect to criterion (5.) above, the memorandum should include a description of the context in which the negotiations were carried out sufficient to demonstrate that there is no trading between civil and criminal penalties.

This policy provides only internal guidelines for the Department of Justice. The guidelines do not create any rights, substantive or procedural that are enforceable at law by any party. No limitations are hereby placed on otherwise lawful prerogatives of the Department of Justice.

Questions on the procedures to be followed for a global settlement, including any of the criteria set forth above, should be directed to either the Chief of the Environmental Crimes Section or the Chief of the Environmental Enforcement Section of the Environment and Natural Resources Division.

DATE: Brian Lee 1996

Lois J. Schiffer