

## COST OF COMPLIANCE SETTLEMENTS HAMMERING PROFITS

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Last week, America's largest bank reported a 7.3 percent drop in earnings—its first quarterly loss in a decade. This drop was largely due to the \$9.2 billion legal reserves it set aside in the third quarter, followed by an additional \$850 million set aside in the fourth quarter, in order to prepare for further regulatory settlements with Washington. As compliance legal woes mount, bottom lines are being adversely affected.

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### To Settle or Litigate?

Whether or not to settle with a legal adversary is one of the first questions a litigator has to address for his or her client. In some cases, it is a matter of weighing the odds of “winning the verdict” while in others, it is a question of the overall cost—win or lose. The bank referred to above opted for a “conciliatory” \$13 billion settlement approach toward government regulators, preferring to allocate legal resources to settlement rather than protracted court room battles.

Such a strategy allows organizations to put the crisis behind them and move forward with the expansion of their core business. Compliance battles drain resources from nearly all of a company's departments—legal, financial, compliance and HR—and detract from efforts otherwise directed toward achieving performance benchmarks set by the board's agenda.

### Data Privacy Compliance Costs

A study conducted by the Ponemon Institute found that the average cost of data privacy compliance was \$3.5 million per organization reporting while the average cost of noncompliance-related problems was \$9.4 million, including penalties, fees, business disruption and lost productivity, as well as legal and non-legal settlement fees.

### Independent Professionals Also Affected

It is not just the big financial services companies whose profitability is harmed when forced to settle with the government over noncompliance allegations. In Arizona, a cardiac surgery practice agreed to pay a \$100,000 settlement with the Department of Health and Human Services' Office of Civil Rights (OCR) rather than litigate charges of violating the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Charges were based on alleged failure to have adequate policies and procedures to comply with the HIPAA Privacy and Security Rules and having “limited safeguards in place to protect patients' electronic protected health information.” As the director of OCR explained, “OCR expects full compliance no matter the size of a covered entity.”

### Hundreds of Millions Set Aside For 2014

As a result of the record settlement—and reserves—disclosed by the bank, three other U.S. banks have announced that they too will be setting aside “extra money” to pay for potential litigation costs, including fines and settlements. Said reserves are rumored to be in the hundreds of millions of dollars for each institution.