Janette Wipper:
There is some confusion whether this is an investigation or a review. Based on Oracle's reported earnings last quarter, 10% of its revenue came from government sales. With the implementation of the "Fair Pay and Safe Workplaces" Executive Order, Oracle will have to start reporting violations and that puts Oracle at a different place compared to other small contractors. We are taken aback by the way this review has gone. The evidence is pretty significant that corporation for is low.

Hiring and Recruiting portion of the NOV:
Janette: Compared to general labor workforce and found significant violations in the peer groups. With respect to compensation with regard to gender and race shows ranges from three standard deviations. The OFCCP did not create anything. Everything is out of your data. Other contractors have given us expert reports. It is easy to replicate and pick our analysis apart. We believe we have exhausted the process in the six months. If you have a rebuttal analysis we would be happy to discuss that.

Gary: Every time we have communicated and raised questions, we have indicated that Oracle is interested in conciliation in an honest way. We believe there is an issue of conduct that has gone on with this review. I have dealt with OFCCP folks throughout the country and have never seen these issues. I think we have to get past the characterizations, all of the issues down to lies that have occurred. I think we have to address specific issues. We have to address specific standards. We have to look at specific issues and individuals and look at that

Janette: We are not interested in specific comparators we are looking at systemic issues. We are not going to engage in a cohort analysis. We are not talking about that in the tech workforce. The tech companies discriminates against women, African Americans, Hispanics, etc. Let's talk about the violations: Do you have a rebuttal?

Jeanette: Let's start with the first one, recruiting.

Gary: Please explain what the violation is?

Janette: We have looked at EEO reports, Silicon Valley availability, BLS, and compared availability to your applicants. You are hiring more Asians on H1B in PT1 jobs than the availability.

Gary: Is the allegation is that Oracle discriminated?

Janette: We are looking at the violations that you are not following affirmative action practices.

Gary: Please explain.

Janette: We are not willing to provide more information until you give us more information and provide actual interest in conciliating this matter. We are all lawyers and we aren't going to give you everything. If we are going to end up in litigation why would we share? You wouldn't even end up coming here. It is hard for me to think you are interested in settling. Give us an analysis and an expert report. We understand that you will have a back and forth from you. We haven't heard the part where there is engagement.

Gary: We 43 audits in the past three and half years and no other office of the OFCCP that has accused Oracle of discrimination in recruiting.

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Janette: The facts are different in this audit. I don't think you have any other office that has the number of Asians that the HQ office does and the number of H1B employees.

Gary: What do you see as the remedy for the recruiting violation?

Janette: I am not prepared today to address it. But, in general Oracle needs to make more recruiting efforts to the non Asian workforce.

Gary: We normally see the violation and the corrective action. We don't see that here. I'm saying let's start with something easy: the recruiting violation. I'm willing to have someone from your staff go back through the records and let us know what you have asked for.

Janette: It sounds like you are asking for specifics.

Gary: No, you haven't even asked for specifics or provided an answer to our questions on recruiting.

Janette: You are not the only source of information. You know employees have confidential input that we get. The employee are there, they feel whether they are welcome or not. The employee referral program is one of them.

Gary: Well, if you think the employee referral program is at fault then why not say that. I appreciate it if you have confidential sources and don't want to share names. But, you can share the issues brought forward to you. Let's assume if Oracle can demonstrate that it has done the kind of outreach done under OFCCP guidance and used reasonable sources for blacks and Hispanics, and we engage all those good faith efforts, remember a substantial portion of the applicants are from other countries.

Janette: Shouldn't your workforce look like your comparator companies?

Gary: It depends. I don't know.

Ian: Oracle has been the least cooperative companies when it comes to providing documents. This is detailed in the NOV. Just show us your analysis and tell us what you do to reach out to the minority community.

Gary: That is all you have to do. I'm willing to have you make an independent assessment.

Janette: Well, we didn't get the second year compensation data. You provided three years of data in other regions.

Gary: We asked why you wanted the other years.

Janette: For the same reason you want year one. You should know why.

Ian: We aren't influenced by the FCCM arguments. The question is: Is there enough to state a violation? You have this process now to state why we are wrong. You may wish you got that chance but we are ready to hear your position.

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Gary: If you want to get a position statement on why the NOV is wrong, we can do that.

Janette: For example, explain why your applicant pool is filled with Asians. Tell us why we are wrong. Tell us why it is justified.

Gary: We gave you all applications without concern to who was minimally qualified.

Jeanette: We used your job groups and your LCAs on prevailing wage. We looked at the data that you issued to the DOL for H1B. We looked at the prevailing wage through that to determine how much employees should be paid. We would like to see it if you have an explanation of why your records look like they do. We have gotten more information today than ever before.

Ian: We have been trying to meet since April.

Gary: Ian, that was premature. This is the first time we have heard the information presented today. We asked questions and did not get responses.

Ian: If a simple statement that this meeting results in more hostility I don't know where we go.

Gary: What do you want?

Jeanette: Response on the applicant flow? Why it is incorrect or why it is explained by non-discriminatory explanation or justification. Do you want to talk about the other violation?

Gary: Sure.

Janette: The difference between the hiring and recruiting compared to the same occupation codes. We did not do an analysis on applicant flow. We did hires to availability.

Erin: Does the hiring violation depend on the recruiting violation?

Ian: It is put in as one violation and we will acknowledge it as one violation.

Erin: So you think the applicant flow is tainted with discrimination?

Janette: Yes. Do you want to talk about compensation?

Gary: Yes.

Janette: We used all the variables in the data. We used Oracle's own categories. We see the problem concentrated on the tech side: product development, information tech and support. All of those groups there are issues against women. This is within job. In product development on race for African Americans too. We believe this is a very conservative approach. We don't see evidence that support supervisor. It breaks up the grouping so small so it would create an exemption against discrimination laws testing. The second defense about intangibles we see as a week defense. Employees believe that career level and title have to do with pay. Are the intangibles documented? Why are people paid differently if based on intangible factors? Why are women or blacks or Hispanics always impacted? Sometimes a group would be favored and sometimes not if there were not a problem.

Gary: I understand your point about supervisor creating small numbers and not being able to use statistics. In product development you might have 100 different products from Cloud to PeopleSoft. In supervisor, Juana for example, could be managing a fusion application to go to DOD versus Erin managing a legacy product. The difference in product, as represented by supervisor, creates a different skill set.

Janette: Do you have a document?

Gary: It is a reality. You could ask Hoan or Hea Jung to ask employees if anyone complains about pay and they would say well yes everyone complains because of the limited increases. In one of the onsite interviews a woman brought up her low pay. When asked why? The employee said it was because her product was not successful. The importance of the product is important in compensation. All of these things matter. This is individualized. We could walk you through support. Some employees don't have a comparator in job title, product; in different job titles you have different skills. Because of market, the new hires tend to get paid more than those employees that have been at Oracle for a while. The reality is that whether it helps or hinders a statistical analysis, the questions were never asked in the interview as to what each team does as far as skills and product.

Janette: Well if women or Asians are impacted, wouldn't it be helpful to look into it?

Gary: Yes, it is important to look at someone as how they are related to their team. When a focal review is done the question is looked at as far as how people look in compensation compared to their comparators. Additionally, we will get data by looking at the compensation report, we sort by department and supervisor to illustrate what is going on. We tell compliance officers this is what is going on.

Shauna: In response to question on compensation by Janette Wipper responded to comp question with a referral to Lisa Gordon.

Gary: You can come in and talk to some managers and tell us what you think some of the jobs and find out if you think they are doing the same thing even if we think they are doing different things.

Ian: Are you saying that the statistical analysis is so nuanced that it can't be done and not a different one is needed?

Gary: Both: We are saying that a different one needs to be done and we need to be able to look at cohorts and can't draw systemic conclusions because the jobs are different so a different one needs to be done. Your analysis does not show the differences between jobs. Asking about jobs was NEVER DONE IN THE INVESTIGATION. You never asked us to explain the differences. If you had asked why there are differences then we would be having a different discussion.

Janette: This is a difficult one to accept. Oracle has been a contractor for years and we have not seen documentation of the required self audit. Not having it documented is problematic. On products, it is my understanding that Oracle's cloud business is 25% of the business. I don't understand why what product a person is working on isn't documented.

Gary: No one has ever asked to see our databases. There is one coming up and we welcome Juan to come on site and look at the data at CASF.

Janette: That would be good for him to see that.

Gary: The discussion on supervisor has never occurred.

Ian: So you are familiar with the agencies perspective. Using small groups for analysis could be defined as comp discrimination.

Erin: Your allegation says that there is a compensation issue. Not that women and men are being steered into different product lines with different pay, correct.

Janette: You can make that argument but if most of the women end up in lower paid jobs and the men end up in higher paid jobs then we will argue that the comp system is tainted.

Gary: Your position is that women were denied pay compared to similarly situated males. That is not the case.

Janette: If you look at the product data and it shows that women are in the lower paid products we will argue that this is a steering issue. Then it will be up to the judge to decide.

Gary: We are trying to provide an explanation that has never been looked at in the audit. For example, when we bring people in like people with cloud and people with PeopleSoft; both are at different market values.

Ian: You are getting to the theory that I just said that it has to be further defined. Are you saying it has to be justified? You are making that defense?

Erin: No, we are looking at what the person is actually doing. There are differences based on the product the person is working on. What we hear you say is there must be job channeling.

Janette: I don't think a large portion of Oracle's work is in cloud. We are in a difficult position to take any explanation that isn't documented.

Gary: There was never any analysis as to what people do.

Janette: Arguing against job title will be difficult. I have seen companies present all kinds of defenses unsuccessfully in my past litigation experience. I have looked at a paragraph you have provided on compensation but not much else.

Erin: That is not what we are arguing.

Gary: All of your new guidelines talk about similarly situated employees.

Ian: We have looked at job titles that are over narrow groups but when we look at what people do we think they are artificial. We agree that job title is not a determining factor.

Erin: It seems because you have gone to the job title level that you are saying that is a determining factor.

Janette: No, that is what the employee's are saying. To go back to our initial point, we think it has been a one way street. We are the only party that has provided any remedies. We are not in a position to share because it has not been a two way street.

Gary: What are you asking for on compensation?

Ian: Maybe you have said all there is to say, or maybe you have more to say or maybe you want to go ahead and explain how there are objective factors to explain pay differences. We are looking at is there is more and if this is it.

Gary: How do we look forward on conciliation? We are looking for a proposal.

Ian: Our findings are supported by the information in the NOV. You are aware of the information we have that we are moving forward on. We are wondering if you have more to say if not we will proceed with litigation. We have dealt with you before on Latches and we know what will happen if there is a delay.

Janette Provided Settlement Information:

Compensation:

One year: 22 million for all violations. Women and Asian not counted twice. 7.7 million for women in product, African Americans 250 thousand; Asians 13 to 14 million, info tech 670 thousand for females and 487 thousand for females in support. 3,561 employees.

Three years: 66 million

Juana: Any non-monetary aspects?

Janette: Yes we would want to propose some changes. For example training in pay equity analysis. Clearly documenting what the justification is for discrepancies, pay transparency and explaining to the employees. There are a variety of ideas we would have for policy changes as part of any settlement.

Hiring:

64 to 168 million for review period depending on mitigation evidence.

20 million for blacks and 20 million for Hispanics.

Gary: Are you going to give us information on how you determined these numbers and do you take into account some employees may not have comparators?

Janette: Yes in the event we are engaged in conciliation.

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Ian: These are not hard numbers but with compensation, numbers are more firm. We will ask you for more information. Formula for this calculation is described in the agency directive under remedies on the Agency's website.

Erin: Is this the number for hiring and compensation?

Janette: Yes.

[redacted]

Janette: Yes the employee referral program, job posting and sourcing. Some ideas on how to change the recruiting program before the application is submitted.

Gary: How do you want us to proceed?

Ian: It is helpful you've asked. If we move to that phase, there is a lot to do. If we get stuck on the liability part there isn't much to do. It depends on your response. If you say you are not liable then there isn't much to go to from there.

Gary: Well, there is a wide range to look at on the hiring and recruiting. I think some of the information you received is new to you. Your statistics may show more victims than are actual victims. We will provide recruiting data and it depends on whether you will consider the factors and explanations.

Janette: That is jumping ahead. If there wasn't discrimination in the company a woman making more than a man could even be making more if there wasn't discrimination in the company. We have to get through the disagreements, move to remedies then to policies.

Ian: The Agency has put forth all it has and Oracle has to decide to respond meaningfully and relatively quickly. I don't know what your response will be but I feel we are in the position of what is done next. I think you need to discuss and decide what you want to do next.

Juana: I agree.

Gary: Ian, there is still your part in this. We don't want to get back to you telling us we are liars and cheats.

Ian: This is a big case for the OFCCP. If you don't provide meaningful information we are prepared to go forward to litigation. I have to wait to see what your response is before we move forward.

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