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## Walmart's Massive Bribery Scandal: What Happens Now?

By: Ben W. Heineman Jr.

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*Revelations that the company may have hushed up evidence of kickbacks to Mexican officials could drag down past and present executives.*



Senior Walmart executives stopped a far-ranging investigation into pervasive bribery in Mexico, which the company engaged in so it could build stores quickly and obtain market dominance.

So alleges a lengthy, carefully reported *New York Times* [story](#) that is likely to set off an explosion affecting America's eighth largest company and its top leaders, including present and past CEOs. Although facts have to be established by the authorities, this piece is a must read because it presents a detailed case that something was rotten in both Mexico City and Bentonville (Walmart's Arkansas headquarters).

The essence of the allegations is that the head of Walmart in Mexico and his chief lieutenants, including the Mexican general counsel and chief auditor, knowingly orchestrated bribes of Mexican officials to obtain building permits, zoning variances, and environmental clearances, and that they also falsified records to hide the payments. When the lawyer in Mexico directly responsible for bribery payments had a change of heart and reported the scheme to Walmart lawyers in the United States, those lawyers hired an independent firm which recommended a major inquiry. This was rejected by senior Walmart management which instead told an internal Walmart investigative unit to look into it.

That unit, too, said that a major inquiry was warranted. But top Walmart leaders in the U.S. referred the matter back to the Walmart general counsel in Mexico -- the very lawyer who was allegedly at the center of the bribery scheme.

Unsurprisingly, the Mexican general counsel promptly closed the matter, finding no problems and suggesting no disciplinary measures for senior Walmart leaders in Mexico.

Although the *Times'* story was not clear about the implications, the following are distinct possibilities:

- Investigation of criminal or civil violations in Mexico by the Justice Department or the Securities and Exchange Commission under the U.S. Foreign Corrupt Practices Act (FCPA), which prohibits bribery of foreign officials and falsification of records. This investigation could expand to Walmart activities in other countries.
- Investigation by Mexican authorities of allegedly widespread Walmart bribes and other irregularities. Such an inquiry will have to overcome political hurdles because so many officials may have been involved, and because Walmart is one of Mexico's largest employers (it has more than 200,000 Mexican employees).
- A new, robust internal investigation by Walmart (according to the article, it started a new inquiry in December after learning of the *Times'* reporting, but its scope is unclear). It is hard to imagine, after this story, that the Walmart board of directors can avoid appointing an outside law firm and other forensic experts to examine what happened both with respect to underlying bribery/falsification of records and to rustication of the inquiry back to Mexico.

This could lead to the disciplining of existing directors, executives, or employees -- or attempts by the company to obtain from those individuals money damages for violations of law, of company codes, or of general fiduciary duties.

A related question is whether Walmart will, instead, try to shield itself through legal technicalities. It might claim, for example, that the time has run for any government action or that the payments were minor, facilitating payments for officials to perform duties required of them and thus not illegal under the FCPA (even if the payments were still probably illegal under Mexican law).

Former Walmart CEO and current board member Lee Scott, current CEO Mike Duke, and other present and past senior Walmart leaders (such as the former company general counsel) are mentioned in the story as having knowledge of the underlying problems and as possibly having some role in stopping a major independent inquiry. Again, what their actual role was and whether they have culpability will be determined in the future.

In recent years, Walmart has undertaken a major campaign to improve its reputation as a good corporate citizen by changing its practices in such areas as labor relations, environmental protection, and supply chain responsibility. This story will have an impact on that effort. Although its events allegedly took place in the last decade, the inquiry may implicate present members of the Walmart leadership group. The bribery allegations are likely to become a big story that, for a time, overwhelms Walmart's citizenship narrative.

As always, companies face a dilemma in these circumstances: try to sweep serious allegations under the rug and risk cover up charges, or undertake a thorough, wide-ranging inquiry that may implicate past and present leaders and cause the company great embarrassment.

The gist of the *Times*' story is the claim that Walmart swept Mexican bribery allegations under the rug once. The question for the company -- and the board of directors -- is whether Walmart should undertake today a systemic, independent inquiry about a highly sensitive matter.

If even half of the *Times*' story is credible, the answer for the board has to be an unequivocal "yes."

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