

## Your Paper Tracks

June 6, 2017 | [Thomas B. Hudson](#)

Way back when, in my Contracts class in law school, a professor whose name I cannot recall uttered a sentence I will never forget. His topic was corporations, and the point he was trying to make was that if you are operating your business in the form of a corporation, you must pay close attention to documenting things (similar concerns arise with a partnership, but the terms are a bit different).

He said, "Corporations are paper animals, and they must leave paper tracks." He was referring to the corporation's formative documents - its charter and bylaws - but he was also focusing on the records of corporate actions, typically minutes of meetings of the board of directors and, if the corporation has one, the board's executive committee.

What does this have to do with compliance, you ask? Keep on reading.

Assume that a state or federal regulator decides for whatever reason that two dealerships are misbehaving, violating state and federal compliance laws. The regulator wants to determine if those suspicions are warranted and decides to subpoena each dealership's corporate records going back five years.

The first dealership, Sharp Motors, responds by providing copies of minutes of its board of directors for the period. Unfortunately, Sharp's board has met only twice in that five-year period, and the minutes of its meetings deal with a few corporate matters, a couple of tax items, the golf resort selected for the next meeting, and raises for the board members. The minutes make no mention of any compliance issues.

The other dealership, Buttondown Autos, turns over quarterly board minutes for each quarter of the period in question. The minutes follow an agenda established by Buttondown's compliance officer, working with the dealership's corporate lawyer. A perusal of the minutes shows that each quarter, its board hears a report from the compliance officer about any new state or federal compliance requirements imposed on the dealership during the period, customer compliance complaints and the resolution of those complaints, and any required review, updating, and auditing of the dealership's Compliance Management System, including its Red Flags policy and its Safeguarding and Disposal policies. Early in the five-year period, the minutes reflect the board's appointment of the dealership's Red Flags and privacy officer, and they show a directive by the board to that officer to develop and maintain a Compliance Management System consisting of all compliance programs required by federal and state law, along with an

undertaking by the board to adequately fund that effort. Each quarterly record contains a description of any unresolved compliance action items that become part of the next quarterly meeting's agenda.

How do you suppose the regulator examining these records will react to them? If there's an enforcement action under way, and there is any room for the regulator to cut the dealership some slack, how much more leeway will Buttondown have because its records reflect a culture of compliance that is driven by attention from its top management? How successful will Sharp be in arguing that, despite the scarcity of any records to back up its claim, it takes care of its customers and really, really tries hard to comply with all those burdensome rules and regulations?

Now, go pull your dealership's corporate records off the shelf and take a close look at them. Do they resemble Sharp's, or are they more on the order of Buttondown's? If it's the former, it might be time to start laying the paper tracks of your corporation.

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