

Paper: 'No admit-No deny' settlements undercut accountability in civil enforcement

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The failure of federal watchdog agencies to require admissions of guilt from the targets of civil enforcement can trigger calls for greater accountability from the public, says a new paper from U. of I. law professors Verity Winship, left, and Jennifer K. Robbennolt. Credit: L. Brian Stauffer

Should federal regulatory agencies such as the Securities and Exchange

Commission require admissions of guilt from the targets of civil investigations? According to a new paper co-written by a pair of University of Illinois law professors, even though the federal watchdogs rely heavily on "No admit-No deny" settlements as an enforcement tool, the failure of regulatory bodies to require admissions of guilt can trigger claims of "rigged justice" and calls for greater accountability from the public.

Building on studies of the legal functions and effects of apologies, U. of I. law professors Verity Winship and Jennifer K. Robbennolt find that although the choice is often portrayed as binary - either an agency requires an [admission](#) of wrongdoing or it doesn't - the reality is more much nuanced.

"Holding big companies responsible has struck a chord with the public, so this paper is really about accountability in the context of civil enforcement through regulatory agencies like the SEC, the Environmental Protection Agency and the Department of Justice," said Winship, an expert on corporate litigation and securities enforcement.

An important piece is "really thinking about what it means to take responsibility," said Robbennolt, the Alice Curtis Campbell Professor of Law and co-director of the Illinois Program on Law, Behavior and Social Science.

"We're drawing on empirical work in psychology to think about what an admission of wrongdoing communicates, and how we can look in a more nuanced way at the type of admissions that are made - or not made," Robbennolt said. "We explore what it communicates when targets admit to particular facts, or admit that they had bad intentions or violated the law."

The paper speaks to the contrast between what companies will say

publicly and what they legally agree to admit in a settlement, highlighting the Wells Fargo "ghost accounts" scandal as a signal example of a company that issued an almost pro forma nonapology apology while escaping from the thornier issue of having to admit wrongdoing.

"The CEO of Wells Fargo said before Congress that he was 'deeply sorry' for what happened, but you won't find any admission of misconduct in the company's settlements with regulatory agencies," Winship said. "The question is whether the regulators' actions against Wells Fargo hold it accountable. And, more generally, do we want civil agencies to make enforcement targets - like Wells Fargo - admit that they did something wrong?"

The stakes are high because the choice of admissions policy goes to the heart of civil enforcement, the authors said.

"Civil enforcement by administrative agencies operates at the intersection of two sets of norms: the [criminal law enforcement](#) model, in which admissions of guilt are required, and the private settlement model, in which disclaimers of liability are an ordinary part of settlements between private parties," Winship said. "Civil enforcement policies sit uneasily at this intersection."

Despite that tension, Robbennolt and Winship both caution that settlements are an essential engine for administrative enforcement.

"We aren't making the argument that the watchdog agency should always require a full-throated admission of wrongdoing, in part because it would be very hard to have an efficient enforcement system if we didn't sometimes allow for a [settlement](#) without admitting wrongdoing," Winship said.

"Agencies have legitimate reasons to settle cases with and without

admissions," Robbennolt said. "We try and approach the question of admissions from the agency's perspective in trying to negotiate cases like this. What should the agency know about what different kinds of admissions communicate? Who might care about those messages? And what are the implications of admissions for the target of enforcement? We hope to help agencies make decisions about admissions in a more nuanced and effective way."

The paper will be published in the *Minnesota Law Review*.

The paper "Admissions of Guilt in Civil Enforcement" is available [online](#).

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