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The Sad Demise and Possible Revival of the Attorney-Client Privilege

In a recent article published in the *Banking Law Committee Journal*, Tom Vartanian, Michael Bromwich, and Karen Bloom focus on the role of attorney-client privilege and work product protection in regulatory and white-collar criminal investigations. Vartanian, Bromwich, and Bloom, "Assault on the Shrine: the Demise and Possible Revival of the Attorney-Client Privilege," *Banking Law Committee Journal*, at 15 (July 14, 2008) (Newsletter of the Am. Bar Ass'n Sec. of Bus. L. Comm. on Banking), is available at:

<http://www.abanet.org/buslaw/committees/CL130000pub/newsletter/200807/vartanian.pdf>.

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The article builds on previous articles written by the authors and describes the development of the Department of Justice's ("DOJ") policies contained in the December 2006 "McNulty memo" and responses and reactions to that memo. The authors conclude with an analysis of recent proposals for reforming the DOJ policies governing attorney-client privilege and work product protection.

The authors note that while it is unclear whether new DOJ guidance will be sufficient to stave off legislative action, continuing widespread criticism suggests that at a minimum the McNulty memo will be significantly modified. But even if the McNulty memo is substantially modified or superseded, the authors believe that pressure for privilege waivers will remain part of the fabric of government investigations of corporations, at least to some extent, for the foreseeable future. Although the authors believe it will take a sustained period of time for the damage done to the attorney-client privilege to be repaired, they believe that the importance of issues makes the repair project well worth the time and effort.

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