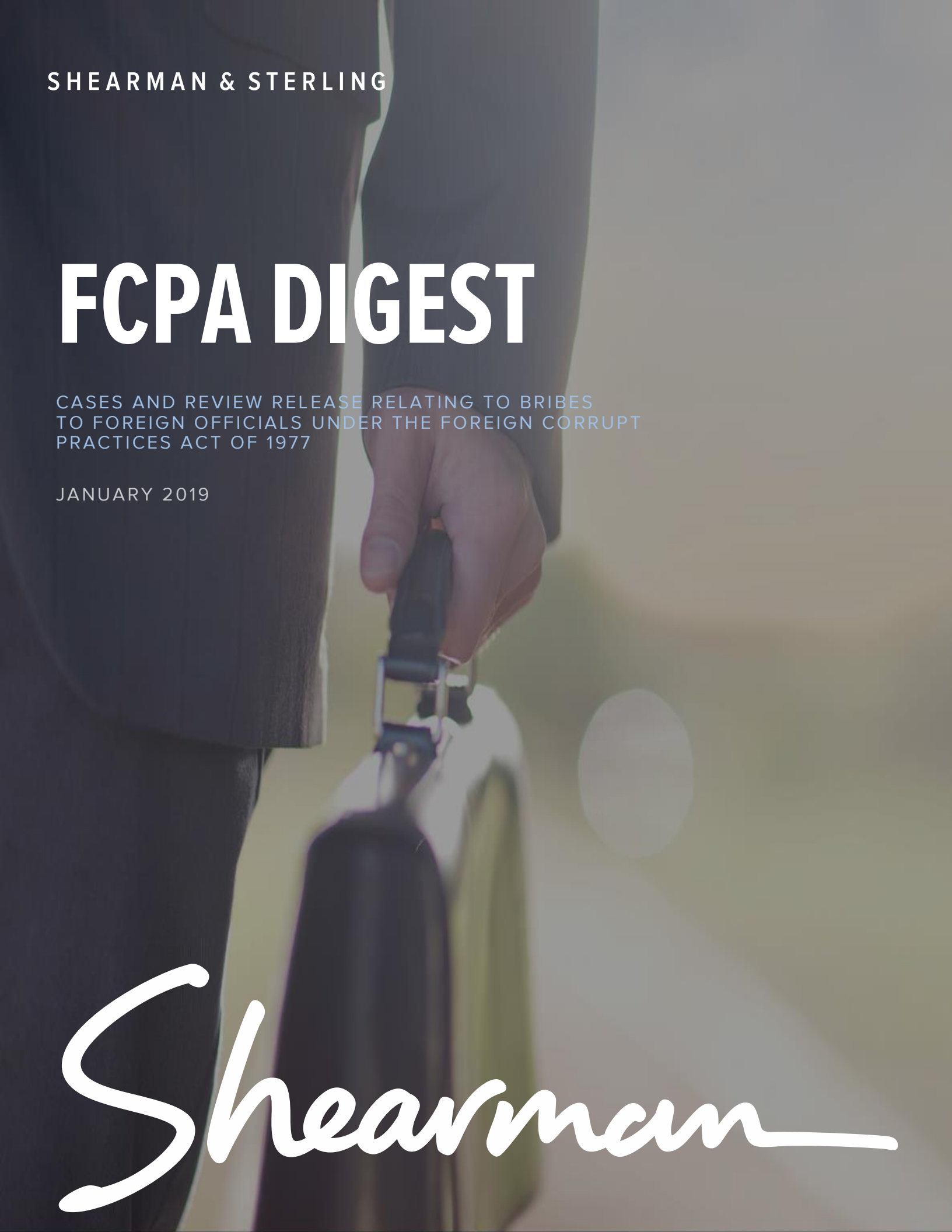
SHEARMAN & STERLING

FCPA DIGEST

CASES AND REVIEW RELEASE RELATING TO BRIBES TO FOREIGN OFFICIALS UNDER THE FOREIGN CORRUPT PRACTICES ACT OF 1977

JANUARY 2019



EDITORIAL BOARD

This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired. For more information on the topics covered in this issue, please contact Philip Urofsky, Danforth Newcomb, or members of the Board of Advisors.

CONTENTS

A. RECENT TRENDS IN FCPA ENFORCEMENT

CONTENTS

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

Although FCPA enforcement across the 2018 calendar year seemed to ebb and flow, in retrospect the enforcement agencies brought a typical number of enforcement actions, which in the aggregate resulted in the second-highest penalty total in one year. That being said, the vast majority of FCPA enforcement actions brought in 2018 were small, and the SEC was significantly more active than the DOJ. Indeed, other than a very active summer, the DOJ only brought one corporate enforcement action during the rest of the calendar year. Still, several of the DOJ's handful of enforcement actions were notable, including the largest penalty imposed as part of an FCPA enforcement action.

As we explain in this year-end *Trends & Patterns*, among the highlights from 2018 were:

- Seventeen corporate enforcement actions, with total sanctions of approximately $2.9 billion, make 2018 a fairly typical year in terms of level of FCPA enforcement activity. Although only four more enforcement actions were brought in 2018 than in 2017, the total assessed sanctions were nearly $900 million higher than in 2017, making the penalties assessed in 2018 the second-highest of any year;
- As in recent years, three outlier enforcement actions (*Petrobras*, *Société Générale*, and *PAC*) greatly distort the picture, raising the average corporate sanction for 2018 to $171.1 million, whereas the true average, with outliers excluded, is significantly less than this figure ($18.3 million). This type of difference between the true average and average excluding outliers is typical: in 2017 the true average was $151.2 million while the average excluding outliers was $83.3 million, and in 2016 the true average was $223.4 million while the average excluding outliers was $13.2 million;
- The median sanction of $9.2 million is down from recent years ($29.2 million in 2017, $14.4 million in 2016, and $13.4 million in 2015);
- The Second Circuit's decision in *Hoskins* has the potential to alter the scope of FCPA prosecutions and alter the investigation process by limiting the number of defendants that are within the jurisdictional grasp of the enforcement authorities;
- The DOJ entered into its first coordinated resolution with French authorities in a foreign bribery case, possibly heralding the emergence of France as an important global anti-corruption authority;
- The DOJ continued its recent trend of updating various enforcement policies, announcing: (i) a new policy addressing situations where enforcement actions involve "piling on" of fines and penalties in matters involving multiple enforcement authorities; (ii) an updated policy on corporate monitors; and (iii) updates to the policy on cooperation credit originally set forth in the Yates Memo. In addition, the effect of the FCPA Corporate Prosecution Policy, announced late in the previous year, was also apparent in 2018's DOJ matters.

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

ENFORCEMENT ACTIONS & STRATEGIES

STATISTICS
GEOGRAPHY & INDUSTRIES
TYPES OF SETTLEMENTS
ELEMENTS OF SETTLEMENTS
CASE DEVELOPMENTS

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

STATISTICS

In 2018, the DOJ and SEC resolved seventeen corporate enforcement actions. Consistent with the trends and patterns over the past years, the DOJ apparently deferred to the SEC to bring civil enforcement cases in the less egregious matters, which has resulted in the SEC bringing eight enforcement actions without parallel DOJ actions and typically with lower penalty amounts. Although the DOJ increased its activity dramatically in the middle of the year, bringing four major enforcement actions in the span of approximately two months, it proceeded to only bring one significant enforcement action—*Petrobras*—during the second half of the year.

Of the FCPA enforcement actions against individuals, 2018 has seen twenty-one individuals charged by the DOJ (or had charges unsealed), while the SEC brought cases against only four individuals.

We discuss the 2018 corporate enforcement actions, followed by the individual enforcement actions, in greater detail below.

CORPORATE ENFORCEMENT ACTIONS

The largest case resolved in 2018 was the long-running and high-profile investigation of Brazilian state-owned oil company Petrobras. As far as we can tell, this is the first FCPA enforcement action brought against a foreign state-owned and controlled entity. This unusual posture is highlighted by the fact that a number of recent enforcement actions, such as *Odebrecht/Braskem* and this year's enforcement action against *Vantage Drilling*, have involved bribery payments to government officials at Petrobras.

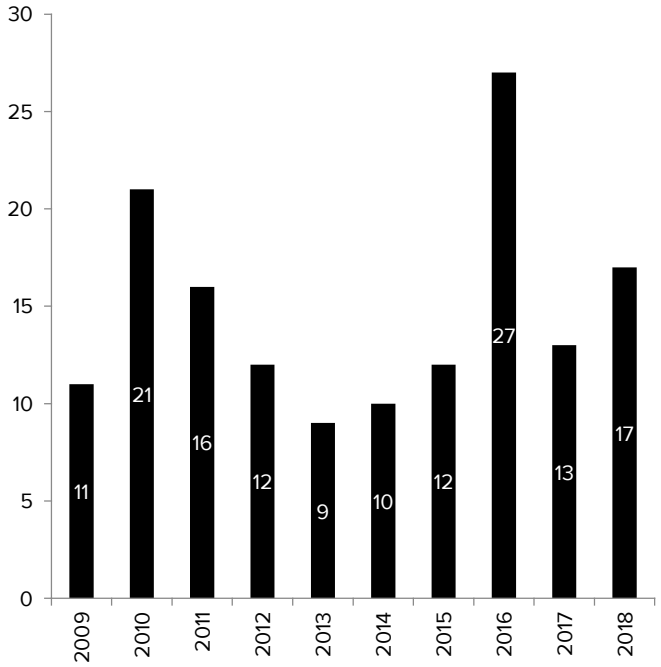
The *Petrobras* case involves one of the largest of the many bribery cases to have engulfed Brazil in recent years. According to the company's admissions, members of the Petrobras Executive Board helped facilitate millions of dollars in corrupt payments to politicians and political parties in Brazil, and members of Petrobras's Board of Directors were also involved in facilitating bribes that a major Petrobras contractor was paying to Brazilian politicians. Examples provided in the statement of facts accompanying the company's settlement agreement demonstrate just how far Petrobras's reach extended into the Brazilian government. For example, a Petrobras executive reportedly directed the payment of illicit funds to stop a parliamentary inquiry into Petrobras contracts, and the executive is also said to have directed millions of dollars in payments received from Petrobras contractors to be corruptly paid to the campaign of a Brazilian politician who was supervising the building location of one of Petrobras's refineries.

On September 27, 2018, the DOJ announced that it had entered into a non-prosecution agreement with Petrobras, which was part of a global settlement between the company and U.S. and Brazilian authorities. Petrobras agreed to pay a total criminal fine of $853.2 million, after the government agreed to a 25% discount off the recommended minimum sentence under the U.S. Sentencing Guidelines to recognize the company's cooperation and remediation. However, only a small portion of this penalty will reach the coffers of the U.S. Treasury. Instead, 10% (approximately $85.3 million) of the criminal penalty was allocated to the DOJ, 10% was allocated to the SEC, and the remaining 80% (approximately $682.6 million) is to be paid to the Ministerio Publico Federal in Brazil.

The same day, the SEC announced a settled enforcement action against Petrobras. The company agreed to pay approximately $933 million in disgorgement and prejudgment interest The Commission's order, however, stated that this obligation shall be reduced and deemed satisfied by the amount of any settlement payment agreed to by Petrobras in the securities litigation that was filed against the company in 2014. Because the company agreed earlier in 2018 to settle that case for $3 billion, which was approved by the court handling the case, it will not be required to pay any of its SEC settlement amount to the U.S. Treasury.

The Petrobras investigation also spawned the SEC's enforcement action against Vantage Drilling. In November 2018, the SEC announced a settled enforcement action against Vantage Drilling, a Houston-based offshore drilling company. According to the SEC's order, Vantage's predecessor entity, Vantage Drilling Company, lacked sufficient internal accounting controls, given the increased risks associated with the oil and gas industry

Total Aggregate Corporate Cases: 2009-2018

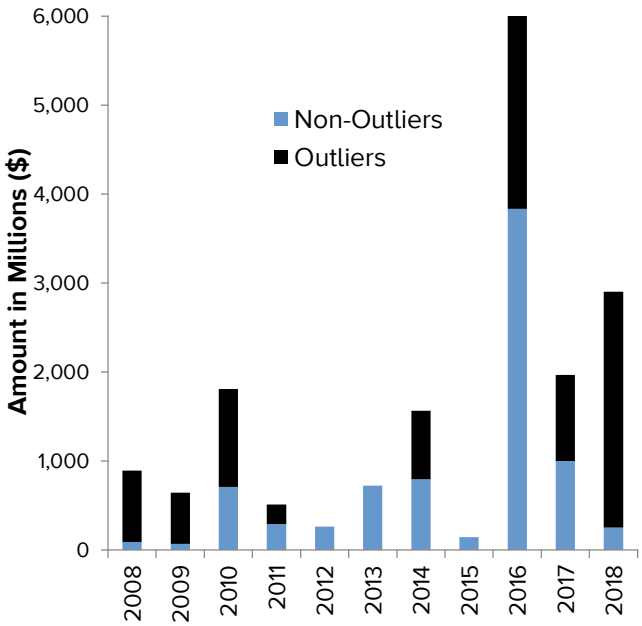


A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

in Brazil. As a result, Vantage Drilling made substantial payments to a former director, and these payments were subsequently allegedly used to make improper payments to Petrobras. Vantage Drilling agreed to pay $5 million in disgorgement to settle the enforcement action.

In the *Société Générale* matter, the DOJ alleged that between 2004 and 2009, Société Générale paid bribes through a Libyan "broker" related to fourteen investments made by Libyan state-owned financial institutions. According to the DOJ, Société Générale sold over a dozen investments and one restructuring to the Libyan state institutions worth a total of approximately $3.66 billion, from which it earned profits of approximately $523 million. In June 2018, the DOJ announced that the bank had entered into a deferred prosecution agreement to resolve both the FCPA conduct described above and unrelated allegations involving LIBOR. As part of the DPA, Société Générale agreed to pay a criminal penalty of $585 million to resolve the FCPA charges. In related proceedings, Société Générale reached a settlement with the Parquet National Financier (PNF) in Paris relating to the alleged Libya corruption scheme, and the DOJ agreed to credit Société Générale for the $292.8 million payment it would make to the PNF. This is the first coordinated resolution with French authorities in a foreign bribery case and represents the latest example of the DOJ entering into coordinated global settlements whereby a large portion of the criminal penalty is paid to another country's government.

Total Criminal and Civil Fines Imposed on Corporations: 2008-2018



In a related enforcement action, the DOJ and SEC both brought enforcement actions against Legg Mason Inc., a Maryland-based investment management firm, to resolve allegations of the company's participation in the same Libyan bribery scheme. Specifically, according to Legg Mason's admissions, a Legg Mason subsidiary partnered with Société Générale to seek business from Libyan state-owned financial institutions. As described above, Société Générale paid commissions to a Libyan broker, which benefitted Legg Mason through its relevant subsidiary, which managed funds invested by the Libyan state institutions. The company's NPA included approximately $32.6 million in criminal penalties and approximately $31.6 million in disgorgement, the latter of which will be credited against any disgorgement paid to other law enforcement authorities in the first year of the agreement. The SEC subsequently required the company to disgorge approximately $34.5 million, including prejudgment interest, bringing the total penalty to approximately $67.1 million.

In *PAC*, the DOJ alleged that Panasonic Avionics Corporation ("PAC"), a subsidiary of multinational electronics company Panasonic Corporation, improperly recorded payments to an executive of a state-owned airline in an unspecified Middle East country in violation of the books-and-records provision of the FCPA. Specifically, the DOJ alleged that during the course of negotiating a valuable contract with the relevant airline, PAC executives agreed to retain the relevant government official as a consultant, for which he received $875,000 for "little work," although the subsidiary recorded the payments as legitimate consulting expenses. More broadly, the DOJ also alleged that Panasonic Avionics disguised payments to sales agents in Asia who had not passed its compliance due diligence by channeling them through another sales agent. To resolve the charges, Panasonic Avionics agreed to pay $137.4 million pursuant to a deferred prosecution agreement with the DOJ, while Panasonic Corporation agreed to pay $143.2 million in disgorgement and pre-judgment interest to the SEC.

In *Dun & Bradstreet*, the SEC alleged that two Dun & Bradstreet partners in China made payments to third-party agents, including payments to government officials, to illegally obtain customer data. Without admitting or denying the alleged conduct, Dun & Bradstreet agreed to pay approximately $9.2 million to settle the SEC charges. The same day that the SEC enforcement action was announced, the DOJ issued a letter stating that it declined prosecution consistent with the FCPA Corporate Enforcement Policy. The DOJ's letter specifically listed the company's prompt voluntary self-disclosure, full cooperation, remediation and compliance enhancements, and disgorgement to the SEC. This declination represents the first under the DOJ's Corporate Enforcement Policy, and makes clear that the disgorgement requirement contained in the Policy can be satisfied by such a payment to the SEC, not just to the DOJ.

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

The facts of the *Dun & Bradstreet* enforcement are also somewhat unusual: FCPA enforcement actions typically arise out of situations where companies pay bribes to foreign government officials to obtain contracts or favorable regulatory decisions. Here, however, the relevant Chinese joint venture and subsidiary allegedly paid money to government officials and others to obtain data and information about individuals and entities. This unusual factual backdrop highlights the broad range of interactions with government officials that can spawn FCPA enforcement actions and highlights some of the unique risks that service industry companies can face when engaging in business in foreign countries.

In *UTC*, the SEC alleged that various subsidiaries of United Technologies Corporation ("UTC") made illicit payments to government officials in a number of countries. For example, UTC subsidiary Otis Elevator Company allegedly made improper payments to Azerbaijani officials to obtain sales of elevator equipment for public housing in Baku and in China. UTC also allegedly, through a joint venture, made payments without proper documentation to a Chinese sales agent in an attempt to obtain confidential information from a Chinese official that would help the company sell engines to a Chinese state-owned airline. Finally, the SEC's order also alleged that United Technologies improperly provided trips and gifts to foreign officials in China, Kuwait, South Korea, Pakistan, Thailand, and Indonesia through its Pratt & Whitney division and Otis subsidiary. In September 2018, UTC agreed to pay approximately $13.9 million to settle the charges.

In *Stryker*, the SEC alleged that Stryker Corporation, a global manufacturer and distributor of medical devices and products, failed to maintain internal controls that were sufficient to detect the risk of improper payments in sales of the company's products in India, China, and Kuwait, and that the company's subsidiary in India failed to maintain complete and accurate books and records. In September 2018, Stryker agreed to pay a civil penalty of $7.8 million to settle the SEC charges, making it the most recent member of the short, but growing, list of FCPA corporate recidivists—in October 2013, the company agreed to settle charges by the SEC that the company had violated the internal controls and books-and-records provisions of the FCPA based on unrelated conduct.

In *Sanofi*, the SEC alleged that French pharmaceutical company Sanofi engaged in schemes in a number of countries to induce increased purchases of the company's products. Without admitting or denying the allegations, in September 2018, the company consented to the issuance of a cease-and-desist order for violations of the books-and-records and internal controls provisions of the FCPA. Pursuant to the order, Sanofi agreed to pay approximately $20.2 million in disgorgement and prejudgment interest, as well as a $5 million civil penalty.

In *Polycom*, the SEC alleged that employees of Polycom's China subsidiary provided significant discounts to distributors and resellers, with the knowledge and intention that these intermediaries would make payments with the discounts to Chinese officials at government agencies and government-owned enterprises to obtain orders of Polycom products. Without admitting or denying the allegations, the company agreed to settle the SEC charges in December 2018, and on the same day the DOJ issued a declination with disgorgement pursuant to the FCPA Corporate Enforcement Policy. As part of the resolution, Polycom agreed to disgorge approximately $31 million, with this amount roughly split between the SEC, the U.S. Treasury, and the United States Postal Inspection Service Consumer Fraud Fund. As part of its settlement with the SEC, Polycom also agreed to pay a civil money penalty of $3.8 million. This enforcement action represents the latest example of the government alleging that discounts offered by a technology company served as a conduit for illicit payments, and with the ongoing investigation of Microsoft's sales practices in Hungary, this seems likely to continue to be an area of risk for technology companies.

The remaining enforcement actions were smaller:

- In *TLI*, the DOJ alleged that Maryland-based Transport Logistics International, Inc., which provides services for the transportation of nuclear materials, participated in a scheme that involved the bribery of an official at a subsidiary of Russia's State Atomic Energy Corporation. The company entered into a DPA with the DOJ to resolve the criminal charges and agreed to pay $2 million.
- In *Elbit Imaging*, the SEC alleged that Elbit Imaging Ltd. and its indirect subsidiary Plaza Centers NV, a real estate developer in Europe, paid approximately $27 million to consultants and sales agents for services related to a real estate development project in Bucharest, Romania. According to the cease-and-desist order, the company made the payments despite the lack of any evidence that the consultants and sales agents actually provided the services they were retained to provide. Furthermore, Elbit and Plaza described the payments in their books and records as legitimate business expenses, even though they may have ultimately been used to make illicit payments to Romanian government officials in connection with a real estate development project in Bucharest. In March 2018, without admitting or denying the facts stated in the cease-and-desist order, Elbit agreed to pay a civil fine of $500,000 to resolve violations of the FCPA's books-and-records and internal controls provisions.
- The enforcement action against Kinross Gold is the latest example of liability that can arise from mergers and acquisitions. According to the SEC, in 2010, while conducting due diligence prior to acquiring two African companies, Kinross Gold Corporation determined that the previous owner lacked an anti-corruption compliance program and associated internal accounting controls. Nevertheless, it proceeded with the transaction without addressing the deficiencies in a timely manner. Subsequent internal audit reports over several years

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

found that internal controls continued to be inadequate, but Kinross management took no action. As a result, according to the SEC's order, between the acquisition of the subsidiaries in 2010 and at least 2014, Kinross made payments to certain third parties, frequently in connection with government dealings, without reasonable assurances that transactions were conducted in accordance with their represented purpose or were not improper. As part of a cease-and-desist order, the company agreed to pay a civil penalty of $950,000, and to report to the SEC for a term of one year on the status of the implementation of the company's improved anti-corruption compliance procedures and internal controls.

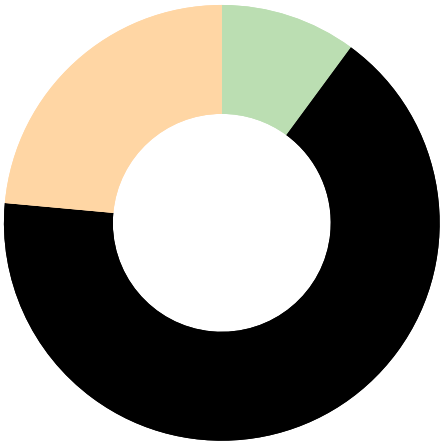
- In *Beam Suntory*, the SEC alleged that an Indian subsidiary of the global beverage company used third-party sales promoters and distributors to make illicit payments to government officials from 2006 through 2012. According to the SEC's order, the relevant Indian subsidiary utilized false invoices to reimburse the third parties, thereby creating false entries in the subsidiary's books and records, which were subsequently incorporated into Beam's books and records. In July 2018, without admitting or denying the facts stated in the cease-and-desist order, Beam agreed to pay total penalties of approximately $8.2 million to resolve the SEC's allegations.
- In *Eletrobras*, the SEC alleged that former officers at a nuclear power generation subsidiary of Centrais Elétricas Brasileiras S.A. ("Eletrobras") engaged in a bid-rigging and bribery scheme related to construction of a nuclear power plant from approximately 2009 until 2015. According to the SEC, the former officials received approximately $9 million in illicit payments from various construction companies involved in the alleged scheme. Without admitting or denying the alleged conduct, Eletrobras agreed to pay $2.5 million to settle the SEC charges.

UPSHOT

2018 saw some of the largest FCPA enforcement actions in history: *Petrobras* yielded arguably the largest FCPA penalty of all time (although much less will actually be paid into the U.S. Treasury), and *Société Générale* similarly yielded one of the top ten largest FCPA criminal penalties. Although *PAC* similarly involved large penalties, the majority of the remaining 2018 FCPA enforcement actions resulted in small corporate penalties. In fact, the *Petrobras*, *Société Générale*, and *PAC* enforcement actions accounted for approximately 91.2% of the total 2018 corporate enforcement penalties.

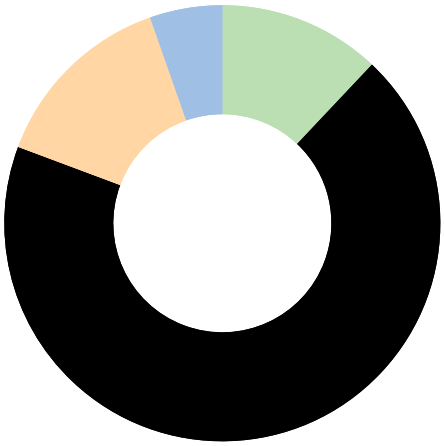
Setting aside these three enforcement actions, the corporate sanctions imposed in 2018 were relatively modest—ranging from $93,900 to $76.8 million. As a result, while the pure average corporate penalty from 2018 was $171.1 million, when we exclude the *Petrobras*, *Société Générale*, and *Panasonic* outliers,

U.S. and Foreign Government Recoveries 2018



France – $292.8 Million
United States – $1.92 Billion
Brazil - $682.6 Million

U.S. and Foreign Government Recoveries 2017



Brazil - $236.7 Million
United States – $1.35 Billion
The Netherlands - $274 Million
Singapore - $105.5 Million

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

the average corporate penalty is approximately $18.3 million.[1] This number is significantly lower than the average excluding outliers of $83.4 million from 2017, but generally in line with the $13.2 million average excluding outliers from 2016.

Regardless, we continue to view the median as a more accurate measure of the "average" corporate enforcement penalty. That figure for the 2018 corporate enforcement actions was $9.2 million, which is slightly lower but generally in line with that measure from recent years. As we have noted in previous editions of this publication, it is a general trend that FCPA enforcement actions typically range between $10 million and $30 million (excluding the median from 2014, which is an outlier given the low number of enforcement actions in that year).

Finally, as has been the case for the past several years, a substantial portion of the $2.9 billion in sanctions will not be paid to the U.S. Treasury. Continuing the recent trend of increased international coordination, a significant portion of the 2018 penalties will be paid to foreign governments. As part of Société Générale's settlement with the DOJ, the Department agreed to credit the company for the $292.8 million payment it would make to the Parquet National Financier (PNF) pursuant to a separate settlement agreement with that regulator. Additionally, the DOJ agreed to credit the approximately $682.6 million that Petrobras paid to Brazil as part of its settlement agreement with that country's Ministerio Publico Federal. Finally, in a more unusual situation, although Petrobras agreed to pay the SEC a total of $933 million in disgorgement and prejudgment interest, the Commission's order stated that this obligation shall be reduced and deemed satisfied by the amount of any settlement payment agreed to by Petrobras in the securities litigation that was filed against the company in 2014. Because the company agreed to settle that case for $3 billion, which was approved by the court handling the case, it will not be required to pay any of its SEC settlement amount to the U.S. Treasury.

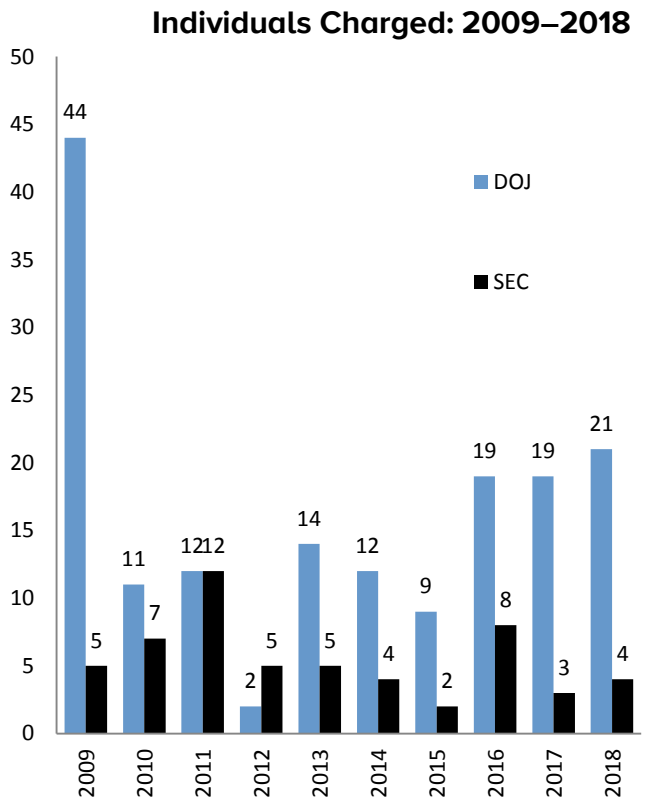
INDIVIDUAL ENFORCEMENT ACTIONS

On the individual side of the 2018 FCPA enforcement year, the DOJ and SEC have cumulatively brought charges against a similar level of individuals as in recent years. Of the twenty-five different defendants, the DOJ brought charges against twenty-one as part of eight separate enforcement actions: (i) *Cohen*; (ii) *Lambert*; (iii) *Perez*, *Cardenas*, *Rincon*, *Isturiz*, *Reiter*, *Gonzalez-Testino*, and *Guedez*; (iv) *Parker* and *Koolman*; (v) *Dominguez*, *Lopez*, *Ripalda*, and *Larrea*; (vi) *Martirossian* and *Leshkov*; (vii) *Leissner*, *Low*, and *Ng*; and (viii) *Inniss*. The SEC separately brought charges against four individual defendants in three cases: (i) *Bahn*; (ii) *Contesse*; and (iii) *Margis* and *Uonaga*. As discussed below, these cases include a mix of executives, corporate managers, and middlemen/fixers.

The charges against individuals brought by the DOJ arose from both enforcement actions from recent years and from new bribery schemes for which no corporate defendant has yet been charged. In the former category, the DOJ brought charges against individuals involved in the recent enforcement actions against Och-Ziff (Michael Cohen), Rolls-Royce (Martirossian and Leshkov), and the PDVSA corruption scheme (Perez, Cardenas, Rincon, Isturiz, Reiter, Gonzalez-Testino, and Guedez). In the latter category, several enforcement actions related to corporate enforcement actions newly brought in 2018 or related to a new bribery scheme for which no companies nor individuals had previously been charged: SETAR (Parker and Koolman), PetroEcuador (Dominguez, Lopez, Ripalda, and Larrea), ICBL (Inniss), and the 1MDB investigation (Tim Leissner, Jho Low, and Roger Ng).

EXECUTIVES

On January 3, 2018, the DOJ unsealed criminal charges against Michael Leslie Cohen, a former executive at Och-Ziff, which had originally been filed in October 2017. The ten count indictment in the Eastern District of New York included counts for conspiracy to commit investment adviser fraud, investment adviser fraud, conspiracy to commit wire fraud, wire fraud, conspiracy to



[1] For purposes of our statistics, the "average excluding outliers" refers to the pure average sanction excluding any outliers as calculated using the Tukey Fences model, which utilizes interquartile ranges.

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

obstruct justice, obstruction of justice, and making false statements. As we discussed in our January 2018 *Trends & Patterns*, these charges come on the heels of civil charges filed by the SEC against Cohen in January 2017.

In *Lambert*, the DOJ obtained an eleven count indictment in the District of Maryland against Mark Lambert, who was a co-owner and executive of TLI (discussed above). The charges against Lambert mark the latest enforcement related to this alleged bribery scheme: in June 2015, Daren Condrey—co-owner and co-president of TLI with Lambert—pleaded guilty to conspiracy to violate the FCPA and to commit wire fraud. Then, in August 2015, the foreign official involved in the bribery scheme, Vadiim Mikerin, pleaded guilty to conspiracy to commit money laundering as part of the bribery scheme. Finally, as discussed above, the company involved in the bribery scheme (TLI) entered into a DPA in January 2018 to resolve a charge of conspiracy to violate the anti-bribery provisions of the FCPA. Lambert has pleaded not guilty to the charges, and as of the date of publication the charges against Lambert are moving forward, with a jury trial scheduled for April 2019.

In *Contesse*, the former CEO of Chilean chemical and mining company Sociedad Química y Minera de Chile, S.A. ("SQM") agreed in September 2018 to pay $125,000 to resolve allegations that he violated the FCPA. According to the SEC's order, Contesse caused SQM to make approximately $15 million in improper payments to Chilean political figures and connected entities and individuals. As discussed in last year's *Trends & Patterns*, SQM agreed in 2017 to pay approximately $30.5 million to settle FCPA allegations with the DOJ and SEC.

Finally, in December 2018, the SEC charged two former senior executives of Panasonic Avionics Corporation with violations of the books-and-records and internal controls provisions of the FCPA. Paul Margis, then-CEO and president of PAC, allegedly used a third party to pay over $1.76 million to several consultants, including a government official who was offered a valuable consulting position to help Panasonic Avionics obtain and retain business from a state-owned airline. Takeshi Uonaga, then-CFO of PAC, allegedly caused Panasonic Corporation to improperly record $82 million in revenue based on a backdated contract and made false representations to PAC's auditor regarding financial statements, internal accounting controls, and books and records. To settle the charges, Margis and Uonaga agreed to pay penalties of $75,000 and $50,000, respectively.

CORPORATE MANAGERS

Charges brought against three individuals in 2018 relate to the ongoing investigation into 1MDB, the Malaysian sovereign wealth fund, taking place in a number of countries, including the United States, the U.K., Singapore, and Malaysia. According to a lawsuit filed by the DOJ in June 2015, at least $3.5 billion was stolen from 1MDB in recent years. In November 2018, the DOJ announced that former Goldman Sachs banker Tim Leissner had pleaded guilty to conspiring to violate the FCPA and launder money in conduct relating to the 1MDB scandal. According to the DOJ, Leissner made illegal payments to Malaysian and Abu Dhabi government officials to obtain business for Goldman Sachs. According to the criminal information filed by the DOJ, bond offerings and related transactions ultimately earned Goldman Sachs approximately $600 million in fees. Leissner has not yet been sentenced, but was ordered to forfeit $43.7 million as part of his plea deal.

The same day that Leissner's guilty plea was announced, the DOJ announced that former Goldman Sachs managing director Ng Chong Hwa, also known as Roger Ng, had also been charged with conspiring to violate the FCPA and launder money. Interestingly, although the U.S. has not charged Goldman Sachs itself, the Malaysian authorities did bring such charges in December 2018, alleging largely the same facts as in the U.S. cases against the individuals.

In *Castillo*, a manager at a Houston-based logistics and freight forwarding company pleaded guilty in September 2018 to one count of conspiracy to violate the FCPA. The charges were one of the many brought as part of the ongoing investigation into the PDVSA bribery scandal.

In *Parker*, the owner, controlling member of, or participant in the operation of five unnamed Florida phone companies was charged with engaging in a conspiracy to make payments to a product manager at Servicio di Telecomunicacion di Aruba N.V. ("Setar"), a state-owned telecommunications provider in Aruba, to obtain contracts with the company. In April 2018, the DOJ announced that Parker had pleaded guilty in December 2017 to one count of conspiracy to violate the anti-bribery provisions of the FCPA and to commit wire fraud. That same month, Parker was sentenced to thirty-five months in prison to be followed by three years of supervised release. Parker was further ordered to pay restitution of $701,750.

MIDDLEMEN/FIXERS

Among the twenty-five individual defendants charged in connection with an FCPA enforcement action, several served as middlemen who funneled bribes from one individual/entity to a foreign official.

In *Low*, Malaysian financier Low Taek Jho, also known as "Jho Low," was charged with conspiring to violate the FCPA and launder money as part of the 1MDB scheme discussed above. According to the DOJ, Low's close relationships with high-ranking government officials in both Malaysia and Abu Dhabi were an important component of the alleged scheme. Low remains at large as a fugitive.

Similar to the PDVSA case, the DOJ has also pursued individual charges related to an alleged scheme to bribe officials at Empresa Publica de Hidrocarburos del Ecuador ("PetroEcuador"), the state-owned oil company of Ecuador. According to the

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

allegations in the indictments, from 2013 through 2015, the alleged conspirators made corrupt payments to PetroEcuador to obtain and retain contracts for GalileoEnergy S.A., an Ecuadorian company that provided services in the oil and gas industry. The bribes were allegedly made through a Panamanian shell company and an unnamed intermediary company organized in the British Virgin Islands. According to the indictment, the scheme resulted in bribes of over $3 million being paid to secure contracts worth over $27 million.

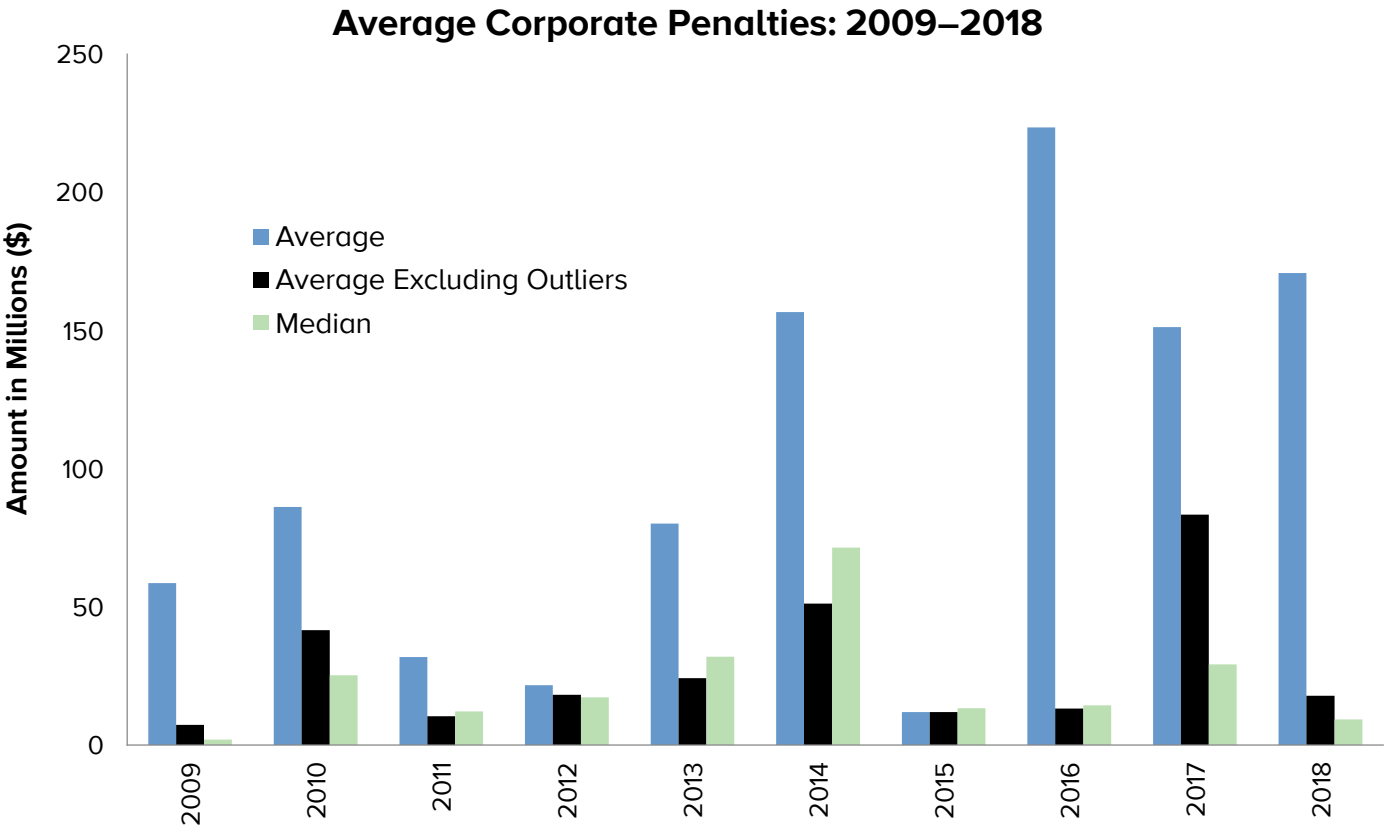
Four individuals have now been charged as part of this alleged scheme, two of which were middlemen. In April 2018, the DOJ obtained an indictment against Frank Roberto Chatburn Ripalda and Jose Larrea, charging Ripalda with conspiracy to violate the anti-bribery provisions of the FCPA, conspiracy to commit money laundering, violating the anti-bribery provisions of the FCPA, and money laundering, while charging Larrea with conspiracy to commit money laundering.

The remaining cases brought against middlemen originated from FCPA enforcement actions from recent years.

In May 2018, the DOJ brought charges against two additional individuals—Azat Martirossian and Vitaly Leshkov—allegedly involved in the far-reaching Rolls-Royce bribery scheme. According to the indictment, Petros Contoguris—who was charged in 2017—and an international engineering consulting firm (referred to as the "Technical Advisor" in the *Rolls-Royce* papers) instituted a scheme with Rolls-Royce executives and employees, in which Rolls-Royce paid kickbacks to the Technical Advisor employees and bribes to at least one foreign official in Kazakhstan, and then improperly document these payments as commissions to Contoguris's company, Gravitas, in exchange for helping Rolls-Royce obtain contracts with a company building a gas pipeline from Kazakhstan to China. Martirossian, a citizen of Armenia, and Vitaly Leshkov, a citizen of Russia, were both employees of the Technical Advisor, and were both charged with one count of conspiracy to launder money and ten counts of money laundering.

The cases of *Gonzalez-Testino* and *Guedez* arose from the sprawling corruption scandal involving PDVSA with U.S. businessmen Abraham Jose Shiera Bastidas and Roberto Enrique Rincon Fernandez at the center. In total, the DOJ has now charged eighteen individuals—fourteen of whom have pleaded guilty—for alleged involvement in the bribery scheme.

Finally, in *Bahn*, the SEC announced in September 2018 that Joo Hyun Bahn, also known as Dennis Bahn, had agreed to disgorge $225,000 to settle civil FCPA violations. As we reported in our January 2018 *Trends & Patterns*, Bahn was charged in December 2017 with conspiracy to violate the FCPA and substantive violation of the FCPA, and agreed to plead guilty to one count of each in January 2018.



A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

FOREIGN OFFICIALS

Under the Fifth Circuit's decision in *United States v. Castle*, foreign officials cannot be prosecuted for conspiracy to violate the FCPA.[2] As a result, foreign officials are typically charged with crimes that often go part and parcel with corruption schemes. 2018 saw a number of foreign officials charged with money laundering offenses related to their receipt of corrupt payments.

In February 2018, the DOJ brought charges against an additional five individuals allegedly involved in the PDVSA enforcement actions. With the unsealing of these most recent charges, the DOJ has to-date charged eighteen individuals, five of whom were former officials of PDVSA and its subsidiaries or former officials of other Venezuelan government agencies or instrumentalities, and together were known as the "management team." This group allegedly wielded significant influence within PDVSA and allegedly conspired with each other and others to solicit several PDVSA vendors, including U.S.-based vendors, for bribes and kickbacks in exchange for providing assistance to those vendors in connection with their PDVSA business. The indictment further alleges that the co-conspirators then laundered the proceeds of the bribery scheme through various international financial transactions, including to, from, or through bank accounts in the United States, and, in some instances, laundered the bribe proceeds using real estate transactions and other U.S. investments. Specifically, charges were brought against the following individuals:

- Luis Carlos De Leon Perez, a dual citizen of the U.S. and Venezuela who, according to the indictment, was previously employed by instrumentalities of the Venezuelan government, was charged with one count of conspiracy to commit money laundering, four counts of money laundering, and one count of conspiracy to violate the FCPA.
- Nervis Gerardo Villalobos Cardenas, a Venezuelan citizen who according to the indictment was previously employed by instrumentalities of the Venezuelan government, was charged with one count of conspiracy to commit money laundering, one count of money laundering, and one count of conspiracy to violate the FCPA.
- Cesar David Rincon Godoy, a Venezuelan citizen who was allegedly employed by PDVSA and its subsidiaries, was charged with two counts of conspiracy to commit money laundering and four counts of money laundering. According to the indictment, Cesar Rincon is alleged to be a "foreign official" as that term is defined in the FCPA. In April 2018, Cesar Rincon pleaded guilty to one count of conspiracy to commit money laundering, and on the same day the district court ordered a forfeiture of approximately $7 million. Sentencing is scheduled for December 2018.
- Alejandro Isturiz Chiesa, a Venezuelan citizen who was allegedly employed by a PDVSA subsidiary and is alleged to be a "foreign official," was charged with one count of conspiracy to commit money laundering and five counts of money laundering.
- Rafael Ernesto Reiter Munoz, a Venezuelan citizen who was employed by PDVSA and is alleged to be a "foreign official," was charged with one count of conspiracy to commit money laundering and four counts of money laundering.

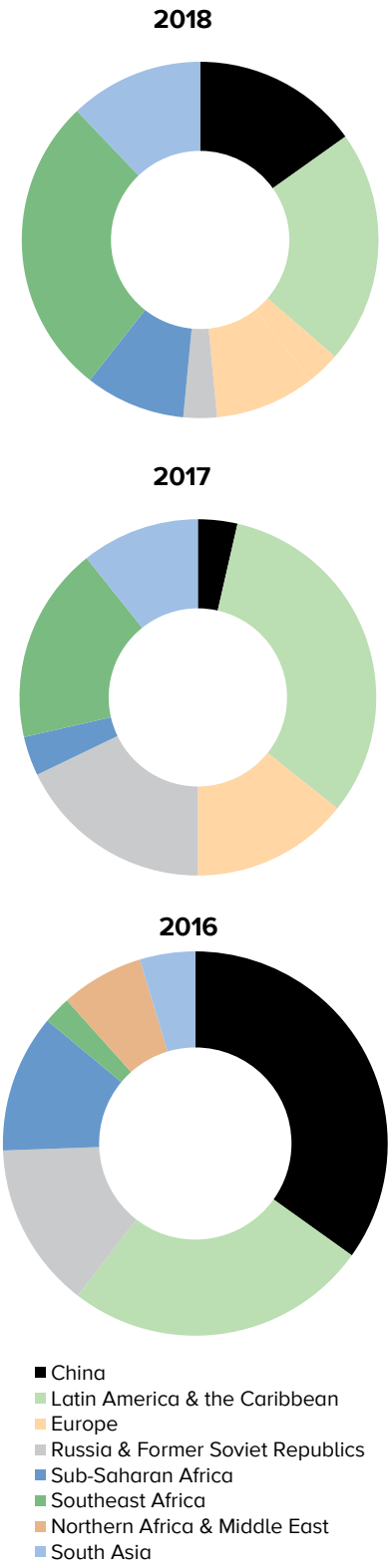
The DOJ also unsealed charges against two employees of PetroEcuador for their involvement in the alleged bribery scheme relating to that entity:

- In October 2017, Marcelo Reyes Lopez was charged with conspiracy to commit money laundering based on violations of the FCPA. In April 2018, Lopez agreed to plead guilty to the one-count indictment.
- In February 2018, Arturo Escobar Dominguez was charged with conspiracy to commit money laundering based on violations of the FCPA. In March 2018, Dominguez agreed to plead guilty to the one-count indictment.

In *Koolman*, the DOJ announced that an agent of Setar alleged to have been involved in the bribery scheme had pleaded guilty to one count of conspiracy to commit money laundering. Egbert Yvan Ferdinand Koolman, a Dutch citizen residing in Miami, was a product manager with Setar during the relevant time period. According to admissions made as part of his plea agreement, between 2005 and 2016, Koolman operated a money laundering conspiracy from his position as Setar's product manager. This money laundering conspiracy was intended to promote a wire fraud scheme and an improper payment scheme that violated the FCPA. Specifically, Koolman was promised and received bribes from individuals and companies in the United States and abroad in exchange for using his position at Setar to award valuable mobile phone and accessory contracts. Koolman pleaded guilty to the charges in April 2018, and in June 2018 was sentenced to 36 months in prison and was ordered to pay approximately $1.3 million in restitution.

[2] 925 F. 2d 831 (5th Cir. 1991).

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT



Finally, in March 2018, a foreign official allegedly involved in the conduct underpinning the *ICBL* enforcement action was charged with one count of conspiracy to launder money and two counts of money laundering. According to the indictment, Donville Inniss allegedly received the bribes from ICBL and used his influence to direct the contracts to ICBL. Inniss allegedly hid the bribes by directing them to the account of a U.S.-based dental company owned by a friend. As of December 2018, Inniss's trial is scheduled to commence in June 2019.

UPSHOT

The total number of individuals charged in FCPA enforcement actions in 2018 went slightly up from 2017 (twenty-five from twenty-two) and is generally in line with trends seen in recent years. With a few outliers (2009, 2012, 2015, and 2016), the DOJ and SEC have brought charges against fifteen to twenty-five individuals in connection with an FCPA enforcement action on an annual basis since 2007. That said, there are still a few points worth highlighting.

First, although a number of the individuals charged in 2018 were executives, the year's enforcement actions lacked the large number of C-suite executives that we saw in 2016. Furthermore, most of the C-suite executives who were charged in 2018 were charged by the SEC, rather than the DOJ, and paid relatively paltry fines (all under $125,000). When the enforcement agencies talk about holding high-level executives to account for corporate misconduct, we are not sure this is the type of stick that the enforcement agencies are hoping for.

Second, a number of the charges against individuals stem from larger cases filed prior to 2018. Specifically, the seven individuals charged for involvement in the PDVSA scheme add to the growing list of individuals charged as part of that scheme, the Cohen case arises out of the Och-Ziff corporate enforcement action from 2016, the *Martirossian* and *Leshkov* cases arise out of the Rolls-Royce corporate enforcement action from 2017, the *Contesse* enforcement action arises from the SQM corporate enforcement action from 2017, and the penalty levied against Dennis Bahn by the SEC follows on the criminal charges filed against him in 2017 by the DOJ. As a result, only twelve of the twenty-five FCPA enforcement actions against individuals in 2018 arose from truly new matters.

GEOGRAPHY & INDUSTRIES

In our January 2018 *Trends & Patterns*, we discussed the striking focus of 2017's FCPA enforcement actions on one geographic region: Latin America. This followed on a heavy focus in the 2016 FCPA enforcement actions on China. The FCPA enforcement actions from 2018, on the other hand, were generally spread across regions that have consistently been the focus of enforcement activity in recent years.

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

Of the total twenty-five enforcement actions,[3] nine involved alleged acts of bribery in Northern Africa or the Middle East (*Kinross Gold*, *PAC*, *Société Générale*, *Legg Mason*, *Sanofi*, *UTC*, *Stryker*, *Cohen*, and *Bahn*). Although the region has been a consistent source of FCPA enforcement actions, the 2018 total represents a significant jump in enforcement activity in the region by the U.S. enforcement agencies.

After North Africa and the Middle East, the 2018 FCPA enforcement actions were fairly evenly distributed across regions that have generally the focus of such actions. Eight of the 2018 FCPA enforcement actions involved officials from Latin America or the Caribbean (*Petrobras*, *Vantage Drilling*, *Eletrobras*, *ICBL*, PetroEcuador individuals, PDVSA individuals, *Parker/Koolman*, and *Contesse*); six enforcement actions involved officials from China (*Dun & Bradstreet*, *Credit Suisse*, *Sanofi*, *UTC*, *Stryker*, and *Polycom*); four have involved alleged bribery schemes in South Asia (*Beam Suntory*, *Sanofi*, *UTC*, and *Stryker*); three have involved improper conduct in Russia and the former Soviet republics (*TLI/Lambert*, *UTC*, and *Martirossian/Leshkov*) or Southeast Asia (*Sanofi*, *UTC*, and the 1MDB individuals); and one involved payments to government officials in Sub-Sarahan Africa (*Cohen*), East Asia (*UTC*), or Europe (*Elbit Imaging*).

With regard to industries, the 2018 FCPA corporate enforcement actions arise from a diverse set of industries. As with past years, a number of enforcement actions involved the oil & gas industry (*Petrobras* and *Vantage Drilling*) and healthcare & life sciences industry (*Sanofi* and *Stryker*). Unusually, the largest source of FCPA enforcement actions in 2018 was the financial services industry. The remaining enforcement actions involved a variety of other industries, each of which has seen FCPA enforcement activity in recent years: aerospace (*PAC* and *UTC*), mining (*Kinross*), transportation (*TLI*), real estate (*Elbit Imaging*), and food & beverage (*Beam Suntory*).

TYPES OF SETTLEMENTS

In 2018, the enforcement agencies continued prior practices of resolving matters using a variety of settlement structures, with the choice of structure apparently related—but not always in a clear or consistent manner—to the seriousness of the conduct or the timing and degree of disclosure and cooperation. We discuss the SEC's and DOJ's settlement devices below.

SEC

As was the case in 2017, the SEC in 2018 relied exclusively on administrative proceedings to resolve all eleven of its corporate FCPA enforcement actions. As in recent years, none of these were contested enforcement actions.

DOJ

The DOJ in 2018 used a range of settlement devices in each of its eight enforcement actions. Further, 2018 saw the DOJ utilize declinations with disgorgement with a twist, with disgorgement paid to the SEC qualifying as the disgorgement required under the DOJ's FCPA Corporate Enforcement Policy—an approach suggested in the original Pilot Program and consistent with this year's "no piling on" policy. The list below sets out the various settlement devices the DOJ used thus far in its 2018 FCPA enforcement actions against corporate entities:

- Plea Agreements – *SGA Société Générale Acceptance N.V.* (Société Générale's subsidiary)
- Deferred Prosecution Agreements – *Société Générale*, *Panasonic*, *TLI*
- Non-Prosecution Agreements – *Credit Suisse*, *Legg Mason, Petrobras*
- Public Declinations with Disgorgement – *Dun & Bradstreet*, *ICBL*, *Polycom*

ELEMENTS OF SETTLEMENTS

WITHIN GUIDELINES SANCTIONS

In all six corporate enforcement actions brought by the DOJ in 2018 that have involved penalties based on the U.S. Sentencing Guidelines, the settling company received a sentencing discount. Nonetheless, it is notable that two of the 2018 enforcement actions—*Société Générale* and *Panasonic*—involved sentencing discounts of 20%, which is slightly less than the "up to 25%" discount provided for in the Pilot Program and now the FCPA Corporate Prosecutions Policy for companies that cooperate but had not made a voluntary disclosure. In the settlement documents for both of these enforcement actions, the DOJ made clear its view that each company did not completely cooperate. Similarly, another company that settled through a NPA received a discount of 15%, with the DOJ contending that the company only provided cooperation in a reactive, rather than proactive, manner, and, further, denying it full remediation credit purportedly because it failed to sufficiently discipline employees who were involved in the misconduct.

[3] For the purpose of this geographic analysis, we treat corporate enforcement actions and charges against individuals that arise out of the same bribery scheme(s) as one enforcement action. Similarly, we treat groups of related cases against individuals that are not, as of yet, connected to a corporate enforcement action as a single matter for this purpose. Finally, to the extent that charges are brought in multiple years against different corporations or individuals relating to the same bribery scheme, the relevant countries are included in the count for each year where any corporation or individual is charged.

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

SELF-DISCLOSURE, COOPERATION, AND REMEDIATION

The DOJ did not award full credit for voluntary disclosure in any of its 2018 enforcement matters, but it did grant at least partial cooperation credit in all of them. As in recent years, the DOJ has highlighted the fact that the companies disciplined and terminated the individuals responsible for the misconduct, and it has been trending towards emphasizing terminations as part of its remedial requirements. It is therefore noteworthy that, as noted above, a company which failed to self-disclose, failed to fully cooperate, and failed to fully remediate nonetheless received a 15% sentencing discount. As we have discussed in past editions of this publication and below in the Compliance Guidance section, the DOJ has enacted a number of policy changes over the past few years that are designed to incentivize self-disclosure of potential violations and subsequent cooperation and remediation. While these carrots might seem enticing, companies are unlikely to consistently take the bait when they simultaneously see that companies do not seem to be penalized for failing to self-disclose, fully cooperate, and fully remediate.

MONITORS

As we have previously reported, in recent years the DOJ has increased the frequency with which it imposed a corporate monitor as part of FCPA settlements. However, in a departure from that trend, only one of the eight enforcement actions brought by the DOJ in 2018 required a monitor. In what may be the beginning of a new trend, in one case, involving a foreign financial institution, the DOJ noted that it was not imposing a monitor in part because of the continued and ongoing monitoring that will be conducted by French authorities. This represents the latest facet of international cooperation by U.S. enforcement authorities, and is an implicit recognition by the DOJ that it views the French anti-bribery agency as a credible anti-corruption authority.

Furthermore, as discussed in more detail below, the DOJ's announcement in October 2018 of an updated corporate monitor policy may signal at least a mild shift away from the use of monitors by the DOJ, at least in cases involving historical conduct where companies have made meaningful efforts to remediate and invest in corporate compliance programs.

FINANCIAL HARDSHIP

The DOJ's enforcement action against TLI provides another recent example of consideration of whether a criminal fine would substantially jeopardize the continued viability of the company. The DPA entered into by TLI prescribed a minimum fine of $28.5 million, and the DOJ and TLI agreed that the appropriate penalty was approximately $21.4 million, which represents a 25% discount off the bottom of the Sentencing Guidelines fine range. Nonetheless, based on representations made by the company, the DOJ ultimately agreed that a criminal fine of only $2 million was appropriate based on TLI's ability to pay.

Similarly, the SEC appears to have taken into account the financial health of Vantage Drilling in determining the proper financial penalty to impose against the company. Specifically, the SEC's order notes that "in determining the disgorgement amount and not to impose a penalty, the Commission has considered Vantage's current financial condition and its ability to maintain necessary cash reserves to fund its operations and meet its liabilities."

RECIDIVISM

In 2017, we saw Biomet and Orthofix added to the small group of recidivist FCPA violators. In 2018, Stryker became the latest company to be added to this list. Unlike the Orthofix and Biomet enforcement actions, Stryker's second FCPA settlement did not result from a breach of an earlier DPA. Perhaps unsurprisingly, Stryker was required by the SEC to retain an independent compliance consultant for a period of eighteen months to review and evaluate the company's internal controls and anti-corruption policies.

DISGORGEMENT

Much like the DOJ's *Biomet* enforcement action from 2017, the DOJ required Legg Mason to disgorge the $31.6 in million profits it allegedly obtained from the bribery scheme it entered into with Société Générale. As we noted in our January 2018 *Trends & Patterns*, it is unusual for the DOJ to require companies to disgorge profits, as this remedy is typically left to the SEC, with the DOJ instead typically obtaining a similar remedial penalty through forfeiture.

CASE DEVELOPMENTS

BILFINGER

In our January 2018 *Trends & Patterns*, we reported that in April 2017, Bilfinger announced that it had extended its 2013 DPA with the DOJ. In December 2018, the company's DPA expired after the monitor certified its compliance program.

REICHERT

In March 2018, former Siemens AG executive Eberhardt Reichert pleaded guilty to one count of conspiring to violate the FCPA's anti-bribery, internal controls, and books-and-records provisions and to commit wire fraud. As we discussed in prior years' *Trends & Patterns*, Reichert was one of eight former Siemens employees charged by the DOJ more than six years ago for their roles in the company's extensive bribery scheme in Latin America. Only one other individual Siemens defendant—Andres Truppel, who pleaded guilty in September 2015—has made an appearance in U.S. court, with the others remaining abroad (and thus, at least according to the U.S. government, fugitives). In September 2017, Reichert was arrested in Croatia and agreed to be extradited to

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

the United States to face trial, becoming the second Siemens defendant to appear in U.S. courts. As of the date of publication, a sentencing hearing has not yet been scheduled.

BAHN

In January 2018, Joo Hyun Bahn aka Dennis Bahn pleaded guilty to one count of conspiracy to violate the FCPA and one count of violating the FCPA. As we have previously reported, Bahn was involved in a bribery scheme that involved paying a Qatari official to finance the sale of a high-rise building complex in Vietnam. In September 2018, Bahn was sentenced to six months in prison. At about the same time, Bahn agreed to disgorge $225,000 to the SEC to settle civil FCPA violations based on the same facts.

WANG

In April 2018, Julia Vivi Wang pleaded guilty to charges of conspiracy to violate the anti-bribery provisions of the FCPA, violations of the anti-bribery provisions of the FCPA, and filing false income tax returns. Wang is scheduled to be sentenced in March 2019.

NG

In May 2018, Ng Lap Seng was sentenced to 48 months in prison. In addition, Ng was ordered to pay a $1 million fine, $302,977 in restitution to the United Nations, and a forfeiture money judgment of $1.5 million. Ng had previously been convicted in July 2017 of one count of conspiracy to violate the FCPA and two substantive counts of violating the FCPA—in addition to conspiracy to commit money laundering, money laundering, conspiracy to defraud the United States, bribery, and obstruction of justice.

Ng has appealed his conviction, and in June 2018, the Second Circuit denied Ng's motion for bail pending appeal, ruling that he had failed to show that he was not a flight risk.

MACE

In September 2018, Anthony Mace, the former chief executive of Dutch oil-services firm SBM Offshore, was sentenced to thirty-six months in prison and fined $150,000. He had pleaded guilty in November 2017 to one count of conspiracy to violate the FCPA involving bribes to officials in Brazil, Angola, and Equatorial Guinea.

ZUBIATE

In September 2018, Robert Zubiate, a former SBM Offshore sales executive, was sentenced to 30 months in prison and fined $50,000. He had previously pleaded guilty in November 2017 to one count of conspiracy to violate the FCPA involving bribes to officials in Brazil, Angola, and Equatorial Guinea.

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

PERENNIAL STATUTORY ISSUES

JURISDICTIONS
PARENT-SUBSIDIARY LIABILITY
FOREIGN OFFICIALS
SUCCESSOR LIABILITY
OBTAIN OR RETAIN BUSINESS

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

For the most part, the 2018 corporate enforcement actions have not presented very many substantive statutory-related issues within the FCPA-specific context. However, there have been a few landmark cases this year that, while not directly related to the FCPA, will likely influence FCPA enforcement. As discussed in further detail below, we have seen significant convergence between FCPA enforcement and other disciplines, providing even stronger evidence that these non-FCPA cases may be generally applicable to FCPA enforcement issues.

JURISDICTION

As we noted in previous editions of *Trends & Patterns*, the DOJ and SEC have historically interpreted the FCPA's jurisdictional requirements extremely broadly, claiming that slight touches on U.S. territory such as a transaction between two foreign banks that cleared through U.S. banks or, even more tenuously, an email between two foreign persons outside the U.S. that transited through a U.S. server, were sufficient. Two appellate decisions issued in 2018 have the potential to result in a narrowing—if only slightly—of the jurisdictional scope of the FCPA.

Hoskins: On August 27, 2018, the Second Circuit issued an opinion in the *United States v. Hoskins* appeal. The panel largely upheld a decision by the United States District Court for the District of Connecticut, which concluded that the government could not evade the statute's requirement that a foreign person had to act "while in the United States" by charging a retired British executive of a French multinational company with conspiring with persons in the United States to violate the FCPA. The Court noted, however, that the government could still proceed on an alternative theory that the foreign person acted as an agent of those U.S. persons.

In its indictment, the government pursued alternative theories of liability in both the conspiracy and substantive FCPA counts. Thus, it charged Hoskins both under 15 U.S.C. § 78dd-2, which prohibits American companies and persons *and their agents* from using interstate commerce in connection with payment of bribes, and 15 U.S.C. § 78dd-3, which prohibits foreign persons or businesses from taking acts to further certain corrupt schemes, including the payment of bribes, *while present in the U.S.* The District Court rejected the government's approach with respect to § 78dd-3, holding that the government could not evade the requirement that foreign persons must have acted "while in the United States" by charging that Hoskins had conspired with persons in the United States. The court, however, held that the government could proceed and attempt to prove that Hoskins had conspired and substantively violated 15 U.S.C. § 78dd-2 by acting as an agent of an American company.

On interlocutory appeal, the Second Circuit held that, despite the general rule that a defendant can be liable for conspiracy or as an accomplice for crimes he did not or could not physically commit, a clear affirmative decision by Congress can exclude certain classes of persons from liability under particular statutes. The Court further concluded that the text, structure, and legislative history of the FCPA demonstrate a clear affirmative decision to exclude foreign nationals who are not residing in the U.S., are acting outside of American territory, lack an agency relationship with a U.S. person, and are not directors, stockholders, employees, or officers of American companies. Thus, "the FCPA does not impose liability on a foreign national who is not an agent, employee, officer, director, or shareholder of an American issuer or domestic concern—*unless* that person commits a crime within the territory of the United States, [and] . . . [t]he government may not expand the extraterritorial reach of the FCPA by recourse to the conspiracy and complicity statutes."[4] Consequently, the retired British executive, as a foreign national residing in France working for a French company, could not violate the FCPA unless he came into the United States or acted abroad as an agent of an American company. The Second Circuit thus left undisturbed the District Court's decision that the executive could be charged as a member of the conspiracy under 15 U.S.C. § 78dd-2 through an agency theory.

Intriguingly, the Court came to a different conclusion with respect to whether Hoskins could be convicted of conspiring *with foreign persons* who committed acts in the United States. Thus, if the government can prove that Hoskins was acting as an agent of an American person, a jury could reasonably conclude that, "as an agent, [he] committed the first object by conspiring with employees and other agents of [the American company] and committed the second object by conspiring with foreign nationals who conducted relevant acts while in the United States."[5] Judge Lynch, though he joined the panel in full, wrote separately to emphasize the narrow scope of the clear Congressional intent exception to the general principle that conspirators can be liable even when they could not be liable as principals.

This case adds some much-needed clarity to the extraterritorial reach of the FCPA in cases against individuals. Given the paucity of reported decisions in the FCPA area, this decision will be especially helpful precedent for foreign individuals facing FCPA-related investigations.

Jesner v. Arab Bank: An opinion issued by the Supreme Court in 2018, although not relating to the FCPA, could nonetheless have implications with respect to the government's view that the FCPA's territorial jurisdiction over foreign persons (the "while in the United States" prong of § 78dd-3) may be satisfied by somewhat "acts" such as the clearing of U.S. dollar transactions through U.S. banks. In *Jesner v. Arab Bank*,[6] the Court's opinion included *dicta* that pushed back on this expansive jurisdictional scope.

---

[4] *United States v. Hoskins*, 902 F.3d 69, 96-97 (2d Cir. 2018).

[5] *Id.* at 98.

[6] *Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386 (2018).

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

Jesner involved a suit under the Alien Tort Statute ("ATS") against Arab Bank, a Jordanian bank with a branch in New York, which the plaintiffs claimed provided financing to Hamas and other terrorist groups resulting in terrorist attacks on plaintiffs and their families. The main U.S.-based conduct alleged by the plaintiffs was Arab Bank's use of the Clearing House Interbank Payments System ("CHIPS") for transactions that allegedly benefitted terrorists. CHIPS utilizes U.S. dollars, both directly and to facilitate exchanges between other foreign currencies, and operates in the United States and abroad. The Court noted that "it could be argued" that a corporation whose only connection to the United States is the use of CHIPS has "insufficient connections to the United States to subject it to jurisdiction under the ATS."[7] However, it declined to answer the question of whether these contacts were sufficient, reaching its decision in *Jesner* on other, unrelated grounds specific to the ATS.

We might be trying to read into the smoke here, but in an area bereft of judicial guidance, we have to take what we can get. The Supreme Court's treatment of the question of the sufficiency of U.S. dollar clearing operations to sustain jurisdiction on a foreign corporation was too brief and inconclusive to provide a firm precedential basis for this argument, and, of course, there may be relevant distinctions between evaluating minimum contacts sufficient for civil *in personam* jurisdiction and the factual question of whether a defendant in a criminal case acted "while in the United States." However, the mere hint that this type of activity is not sufficient to warrant jurisdiction may provide support to future challenges or may dissuade the U.S. authorities from relying on it too heavily. This could, in time, have a significant effect on the DOJ's and SEC's ability to bring bribery charges against foreign corporations and individuals, as the main or only jurisdictional hook in several recent cases, including *VimpleCom*, *Teva*, and *Telia*, has been the use of U.S. dollars. *Jesner* provides some support for the notion that such connections might just be "insufficient."

PARENT-SUBSIDIARY LIABILITY

The SEC's habit of charging parent issuers with violations of the anti-bribery provisions of the FCPA for the acts of a subsidiary without establishing that the parent authorized, directed, or controlled the subsidiary's corrupt conduct continues to be a problem. Instead of applying traditional concepts of corporate liability, the SEC often applies a theory of strict liability, taking the position that a subsidiary was *ipso facto* an agent of its parent. Therefore, applying the test for liability applicable to an employee's or agent's actions, any illegal act committed within the scope of the employee's or agent's duties and at least in part for the benefit of the corporation results in corporate criminal liability. The latest example of this practice seems to be the *UTC* enforcement action.

UTC involved allegations of corrupt payments in a number of countries—Azerbaijan, China, Kuwait, South Korea, Pakistan, Thailand, and Indonesia. The SEC's order was clear, however, that only the alleged payment of bribes to government officials in Azerbaijan by UTC subsidiary Otis Russia violated the anti-bribery provisions of the FCPA. According to the SEC, the remainder of the conduct alleged in the SEC's order violated only the internal controls and books-and-records provisions of the FCPA.

Notably absent from the allegations contained in the SEC's order, however, is any indication that United Technologies authorized, directed, or controlled the conduct at Otis Russia. Instead, it seems that the best link the SEC could draw between UTC and Otis Russia was that "UTC failed to detect the conduct and first learned of it in April 2017"—nearly five years after the alleged conduct had commenced. If this is truly the only basis for holding UTC liable for the conduct at Otis Russia, then it is the latest example of disregard for established limits on corporate criminal liability.

FOREIGN OFFICIALS

Continuing a trend we highlighted in last year's *Trends & Patterns*, 2018 brought yet another case in which a corporation was held liable under the FCPA's accounting provisions without alleging that the company had bribed a foreign official. In *Elbit Imaging*, the SEC charged the company with violations of the FCPA's books-and-records and internal controls provisions in connection with sales through third-party consultants and sales agents that lacked proper documentation. The SEC's order alleges that Elbit Imaging and its subsidiary engaged these agents and consultants to assist in projects involving government officials, but it tellingly never explicitly connects the sums paid to the consultants or sales agents to payments to a foreign official. Further, it does not even attempt to *infer* that any payment to a government official was made in exchange for obtaining or retaining business.

With no *quid pro quo* and no payment to a government official, we are essentially looking at a case of falsification of documentation and failure to implement reasonable internal controls. These accounting failures in turn resulted in a situation in which "some or all of the funds *may* have been used to make corrupt payments to Romanian government officials or were embezzled" (emphasis added)—but the SEC can't really say. This case thus demonstrates the additional risk to issuers under the FCPA—mere suspicion of bad conduct, coupled with internal controls failures related to payments to third parties, is sufficient to establish a violation of the FCPA's accounting provisions, even where there is insufficient (or no) evidence of bribery.

SUCCESSOR LIABILITY

As discussed above, *Kinross Gold* provides another warning of the risks of successor liability in M&A transactions. In this case, Kinross was allegedly aware of inadequate internal controls at its

[7] *Id.* at 1398.

two newly acquired subsidiaries even before it closed the acquisition and was on warning through internal audits that these issues continued post-closing. During this time, the subsidiaries continued to make improper payments to local vendors without confirming that the vendors provided the services, including after Kinross finally attempted to implement policies and adequate procedures at these companies. Kinross purportedly knew that the companies it had acquired "lacked an anti-corruption compliance program and associated internal accounting controls" and required "extensive remediation" but it failed to make the necessary remediation and the improper behavior continued and Kinross was held responsible.

Kinross serves as a cautionary tale for acquiring companies, but realistically it's a pretty clear case. Based on the SEC's order, the compliance risks appear to have been clearly known by Kinross, but the company did virtually nothing for at least three or four years after the acquisition to address the problems. We should let that serve as a fairly obvious lesson—if there are known risks in an acquisition, waiting four years to address them is far too long.

OBTAIN OR RETAIN BUSINESS

The statutory language of the FCPA prohibits making payments to foreign officials *to assist in obtaining or retaining business*. In the majority of cases, the "obtain or retain business" requirement involves payments designed to win government contracts or other business directly with the government. Several enforcement actions in 2018, however, involved schemes where companies sought to obtain confidential information or documents from a foreign government, rather than the more traditional scheme designed to directly win business.

In *UTC*, the SEC alleged that a foreign affiliate/joint venture in China made payments in that country despite the high probability that at least a portion of the funds would be used to make unlawful payments to a Chinese official "to obtain confidential information to sell engines to a Chinese state-owned airline." This type of customer information can be utilized to obtain an advantage in contract bidding or negotiations, and therefore would seem to satisfy the requirement that a payment be made to "obtain or retain business."

Similarly, in *PAC*, the SEC alleged that the company retained a consultant who ultimately made payments to foreign officials to obtain confidential non-public business information about a state-owned airline customer, including information about the airline's negotiations with PAC's competitors.

Finally, as discussed above, in *Dun & Bradstreet*, the relevant Chinese joint venture and subsidiary allegedly paid money to government officials and others to obtain data and information about individuals and entities. This unusual factual backdrop highlights the broad range of interactions with government officials that can spawn FCPA enforcement actions and highlights some of the unique risks that service industry companies can face when engaging in business in foreign countries.

COMPLIANCE GUIDANCE

FCPA CORPORATE ENFORCEMENT POLICY

POLICY ON COORDINATION OF CORPORATE RESOLUTIONS

DOJ REVISES YATES MEMORANDUM POLICY TO PROVIDE FLEXIBILITY IN AWARDING COOPERATION CREDIT

DOJ UPDATES POLICY ON CORPORATE MONITORS

CONVERGENCE AND DIVERGENCE OF FCPA ENFORCEMENT ACROSS BORDERS AND DISCIPLINES

DOJ'S CHINA INITIATIVE

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

FCPA CORPORATE ENFORCEMENT POLICY

In November 2017, the DOJ announced the incorporation of the FCPA Pilot Program into the U.S. Attorneys' Manual, which guides the DOJ's enforcement policies and practices. As discussed in last year's *Trends & Patterns*, the model presented by the DOJ provides a pathway for companies to secure a less onerous penalty in the face of FCPA violations—the so-called "declination with disgorgement"—through voluntary self-disclosure, cooperation, and remediation.

Dun & Bradstreet represents the first DOJ "declination" issued after the Policy's official formalization and remains the quintessential example of how the Policy operates. In April 2018, the DOJ declined to prosecute Dun & Bradstreet despite its conclusion that the company's subsidiary in China had paid bribes. The DOJ justified its decision not to bring more serious forms of enforcement actions by referring to Dun & Bradstreet's "prompt voluntary self-disclosure; the thorough investigation undertaken by the Company; its full cooperation in this matter, including identifying all individuals involved in or responsible for the misconduct, providing the Department all facts relating to that misconduct, making current and former employees available for interviews, and translating foreign language documents to English; the steps that the Company has taken to enhance its compliance program and its internal accounting controls; [and] the Company's full remediation, including terminating the employment of 11 individuals involved in the China misconduct." In other words, Dun & Bradstreet strictly adhered to the requirements as laid out by the FCPA Corporate Enforcement Policy, word-for-word. Dun & Bradstreet, however, did not escape the last requirement of the Policy, as the letter from DOJ to Dun & Bradstreet indicates that it "will be disgorging to the SEC the full amount of disgorgement." The enforcement action against IBSL, also resulting in a declination with disgorgement, followed a nearly identical pattern.

In addition to the declination-with-disgorgement enforcement actions expressly contemplated under the Corporate Enforcement Policy, 2018 has involved several other subtle variations of declinations, likely a result of the Corporate Enforcement Policy and other DOJ enforcement initiatives. In some cases, these have been true declinations in which the DOJ drops the investigation without disgorgement, accusations of wrongdoing, or further admonishment. There have been at least thirteen true declinations in 2018 as of the time of this publication—two SEC-only (Cobalt International Energy, Teradata Corporation); five DOJ-only (Juniper Networks, Inc., Sanofi, Kinross Gold Corporation, Eletrobras, UTC); and six DOJ and SEC declinations (Exterran Corporation, Core Laboratories N.V., Sinovac Biotech Ltd., Ensco plc, Transocean Ltd., Archrock, Inc.).

Other cases, discussed in detail below, have involved declinations with no disgorgement to the DOJ, but only because the company has received credit for penalties paid pursuant to a foreign enforcement action.

POLICY ON COORDINATION OF CORPORATE RESOLUTIONS

Following hot in the footsteps of the FCPA Corporate Enforcement Policy, in May 2018, the DOJ released the "Policy on Coordination of Corporate Resolution Penalties," which will be similarly incorporated into the U.S. Attorneys' Manual. Deputy Attorney General Rod J. Rosenstein, in announcing the Policy, stated that its purpose was to instruct DOJ attorneys "to appropriately coordinate with one another and with other enforcement agencies in imposing multiple penalties on a company for the same conduct."[8] According to Mr. Rosenstein, the DOJ's Policy against "piling on" enforcement actions recognizes that companies may be subject to numerous regulatory authorities—both in the U.S. and abroad—which may result in disproportionate penalties.

The Policy has four core features:

> (1) "[re]affirm[ing] that the federal government's criminal enforcement authority should not be used against a company for purposes unrelated to the investigation and prosecution of a possible crime," *e.g.*, Department attorneys "should not employ the threat of criminal prosecution solely to persuade a company to pay a larger settlement in a civil case";
>
> (2) "direct[ing] Department components to coordinate with one another, and achieve an overall equitable result . . . includ[ing] crediting and apportionment of financial penalties, fines, and forfeitures";
>
> (3) "encourag[ing] Department attorneys, when possible, to coordinate with other federal, state, local, and foreign enforcement authorities seeking to resolve a case with a company for the same misconduct"; and
>
> (4) "set[ting] forth some factors that Department attorneys may evaluate in determining whether multiple penalties serve the interests of justice in a particular case . . . includ[ing] the egregiousness of the wrongdoing; statutory mandates regarding penalties; the risk of delay in finalizing a resolution; and the adequacy and timeliness of a company's disclosures and cooperation with the Department."

Mr. Rosenstein emphasized that the goal of this Policy is to "achieve an overall equitable result," but he also cautioned that DOJ would continue to expect full cooperation from companies,

---

[8] DOJ Press Release, Deputy Attorney General Rod J. Rosenstein Delivers Remarks to the New York City Bar White Collar Crime Institute (May 9, 2018), https://www.justice.gov/opa/speech/deputy-attorney-general-rod-rosenstein-delivers-remarks-new-york-city-bar-white-collar.

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

even if other authorities are involved in an investigation, and it may still impose multiple penalties where they "really are essential to achieve justice and protect the public."

As with the FCPA Corporate Enforcement Policy, this Policy does not appear to represent any dramatic change in DOJ practices but instead largely reflects the policies and approaches already taken by the DOJ, especially the Fraud Section. However, the formalization and addition to the DOJ's Attorneys' Manual may lead to more frequent and consistent applications of the Policy. In particular, it is possible we will see the DOJ engaging in earlier and more pro-active coordination with non-U.S. enforcement authorities, which have become more involved in recent years, as exemplified, for example, in the global investigation and $2.6 billion USD resolution concerning the Brazilian conglomerate Odebrecht. Companies undergoing similarly wide-spread investigations may endeavor to use this Policy as leverage to reduce or streamline the investigations or penalties, but companies should not expect to get off with significantly lighter penalties. Ultimately, as stated by Mr. Rosenstein, "the Department will act without hesitation to fully vindicate the interests of the United States."

A few cases from 2018 show how the Policy could play out in practice and also suggest that the SEC may rely on the Policy's principles in its own enforcement actions. In a seemingly extreme example, in September 2018, the SEC appeared to embrace the essence of the DOJ's Policy when it issued a formal declination to ING Group one day after the bank settled charges brought against it by the Netherlands Public Prosecution Service for EUR 775 million (approximately $900 million). Given the severity and duration of the conduct alleged in the Dutch settlement, the SEC likely could have brought charges against ING notwithstanding the Dutch settlement.

In another interesting development, in one case this year, the DOJ's Policy on Coordination of Corporate Resolutions combined with the Corporate Enforcement Policy to result in yet another slightly less onerous penalty—the declination with disgorgement credited to foreign authorities. In August 2018, Guralp Systems Limited received a formal declination letter from the DOJ "notwithstanding evidence of violations of the FCPA arising from GSL's payments" to a South Korean official.[9] The enumerated reasons for doing so were two-fold and clearly encompassed both the Corporate Enforcement Policy—*i.e.*, "GSL's voluntary disclosure . . . , significant remedial efforts undertaken by GSL, [and] GSL's substantial cooperation"—and the Policy on Coordination of Corporate Resolutions—*i.e.*, noting that DOJ reached its conclusion based on the fact that GSL is a U.K. company and "is the subject of an ongoing parallel investigation by the U.K.'s Serious Fraud Office for violations of law relating to the same conduct and has committed to accepting responsibility for that conduct with the SFO." To some extent, this approach might be a reflection of comity and accomodation between the two enforcement agencies, since the U.K.'s version of double jeopardy would prevent the SFO from proceeding if the company was charged in the U.S. (assuming a Corporate Enforcement Policy declination would so qualify). Nevertheless, applying only the Corporate Enforcement Policy, GSL likely would have had to agree to disgorgement, since the DOJ publicly accused it of violative conduct. However, the pending enforcement action (and accompanying penalty) in the U.K. most likely rescued it from that aspect of punishment.

GSL and other companies facing these types of declinations with disgorgement credited to a foreign authority obviously benefit from obtaining potentially lower penalty amounts, but they still fall short of true declinations since reputational penalties apply and monetary penalties, albeit reduced, remain inevitable.

DOJ REVISES YATES MEMORANDUM POLICY TO PROVIDE FLEXIBILITY IN AWARDING COOPERATION CREDIT

On November 29, 2018, Deputy Attorney General Rod J. Rosenstein announced that the Department of Justice planned to modify policies in the DOJ Attorneys' Manual relating to individual accountability and corporate investigations.[10] The announcement conveyed two broad themes—first, DOJ remains focused on punishing individuals, and second, that DOJ would make yet another adjustment to its policies to increase corporate cooperation, in this case, as it relates to identifying culpable individuals.

First, Mr. Rosenstein emphasized DOJ's continued emphasis on prosecuting individuals responsible for FCPA violations, noting that "[t]he most effective deterrent to corporate criminal misconduct is identifying and punishing the people who committed the crimes." To this end, DOJ would revise its policy to significantly limit the number of corporate resolutions that include provisions that effectively protect individuals from facing criminal liability.

Second, Mr. Rosenstein clarified an aspect of current DOJ policy relating to cooperation credit that has recurrently confused and frustrated prosecutors and defenders alike. Specifically, DOJ's current policy, which was released in a memorandum in 2015 issued by then-Deputy Attorney General Sally Yates, on its face,

[9] *In re Guralp Systems Ltd.*, Letter to Matthew Reinhard from Daniel S. Kahn, Deputy Chief, Fraud Section, DOJ (Aug. 20, 2018).

[10] Deputy Attorney General Rod J. Rosentein Delivers Remarks at the American Conference Institute's 35th International Conference on the Foreign Corrupt Practices Act (Nov. 29, 2018), https://www.justice.gov/opa/speech/deputy-attorney-general-rod-j-rosenstein-delivers-remarks-american-conference-institute-0.

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

required corporations to identify "*all* relevant facts about the individuals involved in corporate misconduct" to qualify for "*any* cooperation credit" (emphasis added).[11] In practice, of course, DOJ prosecutors exercised their discretion in a less rigid manner, awarding partial cooperation credit even where corporate handovers of individual wrongdoers have been less-than-fulsome. Nevertheless, Mr. Rosenstein acknowledged that this all-or-nothing language can have the unintended effect of incentivizing prosecutors and corporations to expend inordinate amounts of time and resources to ensure this criterion is met. To promote efficiency, Mr. Rosenstein noted that the policy would be revised to "focus on the individuals who play significant roles in setting a company on a course of criminal conduct," rather than "every person involved in the alleged misconduct in any way." It would also more clearly allow partial cooperation credit, instead of the full-credit or no credit approach.

The revised policy, as described by Mr. Rosenstein, will also grant some measure of discretion to civil attorneys to avoid unnecessary investigation into individual accountability when no criminal conduct is at-issue. Rather than forcing corporations through a pointless bureaucratic exercise to point the finger at individuals even where the DOJ has no reason to believe there was any prosecutable criminal conduct, under the revised policy, the DOJ may accept a settlement granting cooperation credit to the corporation, even without extensive investigation into individuals, and move on.

That being said, the policy shift may not impact the scope of internal investigations conducted by companies in response to government investigations, as there are still ample incentives for the company to understand the full breadth and scope of alleged misconduct. Indeed, a full understanding of the scope and facts underpinning potential misconduct will likely be necessary to effectively determine which individuals were "substantially" involved and which individuals were not. However, the revised policy may provide some measure of relief to companies that have conducted a thorough investigation, but may not be able to provide *all* information on individuals with *any* involvement in the misconduct—*e.g.* because at some point the involvement becomes too attenuated to be relevant or because data protection laws confine the information the company can provide to U.S. authorities. This policy likely will not have a substantial effect on the size and scope of FCPA investigations, which are often among the most sprawling and expensive of white collar investigations, but it may serve to smooth some of the barbs around the edges.

[11] Memorandum from Sally Q. Yates, Deputy Attorney General re: Individual Accountability for Corporate Wrongdoing (Sept. 9, 2015), https://www.justice.gov/archives/dag/file/769036/download.

DOJ UPDATES POLICY ON CORPORATE MONITORS

On October 11, 2018, the DOJ released an updated policy regarding the selection of corporate monitors.[12] The policy—entitled "Selection of Monitors in Criminal Division Matters"—is designed to guide the DOJ's decision-making on whether to require a monitor as part of corporate criminal resolutions. In announcing the policy, Assistant Attorney General Brian A. Benczkowski explained that while the DOJ continues to adhere to the view that "every case will at some stage require a deep look into the sufficiency and proper functioning of the subject company's compliance program," the policy nonetheless recognizes that "the imposition of a monitor will not be necessary in many corporate criminal resolutions, and the scope of any monitorship should be appropriately tailored to address the specific issues and concerns that created the need for the monitor."[13] Thus, the revised policy appears to signal at least a mild shift away from the use of monitors by the DOJ, at least in cases involving historical conduct where companies have made meaningful efforts to remediate and invest in corporate compliance programs.

The policy builds on the principles set out in a DOJ memorandum from March 2008 known as the "Morford Memo," which set forth the two broad considerations to guide prosecutors in assessing whether to require a monitor as part of corporate criminal resolutions: "(1) the potential benefits that employing a monitor may have for the corporation and the public, and (2) the cost of a monitor and its impact on the operations of a corporation." Elaborating on this cost-benefit analysis, the policy advises that a corporate monitor should be imposed only where there is "a demonstrated need for, and clear benefit to be derived from," a monitor when compared to the costs and burdens to the corporation. Factors that the DOJ will now consider when determining the "potential benefits" of requiring a monitor include:

> (a) whether the underlying misconduct involved the manipulation of corporate books and records or the exploitation of an inadequate compliance program or internal control systems;

[12] Memorandum from Brian A. Benczkowski, Assist. Attorney General re: Selection of Monitors in Criminal Division Matters (Oct. 11, 2018), https://www.justice.gov/opa/speech/file/1100531/download.

[13] Assistant Attorney General Brian A. Benczkowski Delivers Remarks at NYU School of Law Program on Corporate Compliance and Enforcement Conference on Achieving Effective Compliance (Oct. 12, 2018), https://www.justice.gov/opa/speech/assistant-attorney-general-brian-benczkowski-delivers-remarks-nyu-school-law-program.

(b) whether the misconduct at issue was pervasive across the business organization or approved or facilitated by senior management;

(c) whether the corporation has made significant investments in, and improvements to, its corporate compliance program and internal control systems; and

(d) whether remedial improvements to the compliance program and internal controls have been tested to demonstrate that they would prevent or detect similar misconduct in the future.

Building off this list of factors, the policy states that a monitor "will likely not be necessary" if a corporation's compliance program is "demonstrated to be effective and appropriately resourced at the time of resolution." Thus, in cases where a corporation has remediated any compliance failures by the time of resolution, the corporation should now have a particularly strong argument that no monitor would be appropriate—an argument that defense firms routinely make but which, in the past, has often fallen on somewhat deaf ears. The new policy also mandates that, where a monitorship is imposed, its scope should be "appropriately tailored to address the specific issues and concerns that created the need for the monitor." To comply with this requirement, Criminal Division settlement agreements must now include an explanation of the scope of the monitorship, along with a description of the process for replacing a monitor, if necessary. Furthermore, Mr. Benczkowski emphasized that prosecutors have an ongoing obligation to ensure that monitors are acting properly and effectively by "operating within the appropriate scope of their mandate."

In the same speech, Mr. Benczkowski also announced that the Criminal Division will eliminate the position of compliance counsel. In eliminating the position, Mr. Benczkowski cited a number of institutional limitations of relying on a single person as the repository of compliance expertise. For instance, "[e]ven when fully briefed on a matter, a single compliance professional who has not been involved in a case throughout an investigation is not likely to have the same depth of factual knowledge as the attorneys who make up the case team. Nor can any one person be a true compliance expert in every industry [that the DOJ] encounter[s]." Nonetheless, Mr. Benczkowski made clear that assessing the compliance function will continue to be a key consideration in every corporate enforcement matter. Accordingly, rather than hiring a new compliance counsel, the Criminal Division will develop a hiring and training program designed to create "a workforce better steeped in compliance issues across the board."

CONVERGENCE AND DIVERGENCE OF FCPA ENFORCEMENT ACROSS BORDERS AND DISCIPLINES

Until recently, the U.S. was virtually the only country with an effective enforcement regime with respect to transnational bribery. In the absence of significant judicial interpretation of the FCPA's terms, the DOJ was able to develop an unwritten code of sentence reductions, settlements of varying levels of severity, and wide but unchallenged interpretations of the statutory limits. It was one-of-a-kind, and not everyone was a fan.

However, as FCPA compliance has become an accepted reality of doing business with companies with U.S. ties, other countries and disciplines have started adopting their own approaches and practices. In some cases, they follow the model of the DOJ, while others choose different paths.

The clearest trend has been the adoption and enforcement of anti-corruption laws across the globe, including in countries where kickbacks and bribes are a deeply engrained part of business. Moreover, in addition to adopting anti-corruption laws, we have also seen other countries embracing U.S. enforcement techniques. In 2018, both Canada and France introduced deferred prosecution agreements, a hallmark of U.S. corporate criminal enforcement, particularly in the FCPA context. The first French DPA cited the company's lack of self-disclosure and cooperation as factors in assessing a higher fine—concepts that had previously been entirely unfamiliar in French law but which strongly echo U.S. enforcement mechanisms. Canada's DPA also seeks to encourage companies to voluntarily disclose violations, which has never been part of its enforcement landscape before. More time will tell if Canadian and French companies take to DPAs as a means of avoiding convictions and higher fines, as the companies in these jurisdictions may or may not become comfortable with the risk of stepping forward and cooperating with authorities.

Further, in July 2018, India passed amendments to its anti-bribery laws that brought them into closer alignment with the U.S. model. That is, like the FCPA, India's law criminalizes the act of making or offering to make a bribe, whereas it previously only criminalized the acceptance of the bribe and only permitted punishment of the bribe-maker in the *quid pro quo* as an accomplice. Much like the U.S., India's newly amended law focuses on corporate management and has a specific provision making corporate executives liable for any bribery committed by the corporation if they consented or were otherwise involved in the misconduct. This step towards greater alignment between India's anti-bribery laws and the FCPA may increase the ability of the two countries to cooperate on investigations and enforcement actions.

Alternatively, some countries are opting to depart from the U.S. model of enforcement, thus raising the possibility of diametrically opposed incentives and consequences in different jurisdictions, which may be problematic for multi-national companies subject to multiple authorities. The U.K.-U.S. enforcement dynamic could become particularly tough to negotiate based on different approaches taken by the DOJ and SEC versus the SFO. In recent years, the SFO has repeatedly expressed its interest in taking over investigations once a company has self-reported. The SFO's self-reporting guidance emphasizes "the SFO's primary

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

role as an investigator and prosecutor of serious and/or complex fraud, including corruption"[14]—in marked contrast to U.S. authorities which often prefer for companies to shoulder the burden of the investigation after they self-report and consider it an important factor in support of the cooperation credit. Companies under investigation by authorities in the U.S. and the U.K. thus face an impossible choice—continue their own investigation while stepping on the toes of the SFO or back down to the chagrin of the U.S. authorities expecting continued investigative efforts and cooperation from the company. The damned-if-you-do and damned-if-you-don't situation may be considered in a company's decision to self-report or not or may weigh on the side of delaying a self-report until the internal investigation has progressed further.

The U.S. and the U.K. authorities have worked together in several successful enforcement actions in recent years, and in the last *Trends & Patterns*, we wrote about the unprecedented level of global cooperation in anti-bribery investigation. But we have to wonder if the two biggest players will start to clash more frequently as the U.K. grows stronger in its own approach to investigation and enforcement.

While cross-border anti-bribery enforcement across the globe has seen a mix of convergence and divergence, cross-discipline enforcement in the U.S. has experienced uncommon alignment in 2018. The FCPA used to exist in a separate bubble within domestic white collar and fraud, but in 2018 we have seen unexpected levels of migration towards traditionally FCPA-exclusive enforcement policies and practices. The incorporation of the FCPA Corporate Enforcement Policy and the Policy on Coordination of Corporate Resolutions into the U.S. Attorneys' Manual, which applies to all DOJ attorneys, indicates that other types of investigations may start to look a lot like FCPA actions. DOJ's settlement with Barclays marked the first implementation of the FCPA Corporate Enforcement Policy after its official incorporation to the Attorneys' Manual, and it involved alleged currency trading front-running—*i.e.*, nothing to do with the FCPA. DOJ officials have referred to the Barclays case as a blueprint for companies seeking to avoid criminal charges and the declination letter explicitly laid out all four elements of self-reporting, cooperation, de-confliction, and remediation from the FCPA Corporate Enforcement Policy. The Barclays settlement thus clearly represented that DOJ, at least DOJ's Fraud Section, plans on applying the tenets of the FCPA Corporate Enforcement Policy to other types of cases. We have not seen it outside the fraud section's purview yet, and there are some limitations in the potential application to areas such as antitrust enforcement that already have defined leniency programs. Otherwise, the potential scope of the FCPA Corporate Enforcement Policy and the Coordination of Corporate Resolutions Policy beyond the realm of the FCPA appears to be pretty wide.

DOJ'S CHINA INITIATIVE

On November 1, 2018, Attorney General Jeff Sessions announced a new DOJ-wide initiative, termed the China Initiative, focusing on identifying and prosecuting "Chinese economic espionage" in the U.S.[15] According to the DOJ's press release, the China Initiative will be led by a combination of DOJ officials, United States Attorneys, and FBI officials. As announced by Mr. Sessions, the China Initiative will focus mostly on trade and intellectual property, but one of the goals is to "[i]dentify Foreign Corrupt Practices Act (FCPA) cases involving Chinese companies that compete with American businesses."

Those familiar with FCPA enforcement activity over the past few years will know that doing business in China has always presented a significant FCPA risk and, indeed, in past years, a substantial portion of FCPA enforcement actions have related, at least in part, to corrupt payments to Chinese officials. The vast majority of these cases, however, have been brought against subsidiaries, affiliates, or joint ventures of non-Chinese based companies, rather than domestic Chinese companies. Indeed, we are not familiar with any publicly settled FCPA enforcement action involving conduct by a China-based company outside of China.

In the past, the U.S. authorities have not been shy about bringing cases against foreign companies, sometimes with only the slimmest of jurisdictional hooks. In some cases, it appeared that the government was reaching to bring such cases, even at the risk of distorting the statute's language, to drive home a point to its OECD partners that if they were not willing or capable of prosecuting their own companies for foreign corruption the U.S. would fill the gap. This is a message that has, at least in some instances, appeared to have been received, and we have indeed seen more enforcement activity from some OECD signatories.

The China Initiative, however, seems a bit different. For many years, the media has reported that Chinese companies, including state-owned entities, engaged in corruption and collusion and other unfair competitive conduct, sometimes as part of the Chinese government's Belt and Road Initiative. Bringing cases against such Chinese companies would fall within the previous practice of the U.S. acting when the company's home country won't. (In this respect, it may be relevant that the OECD is reportedly attempting to persuade China to sign on to the OECD Convention.) However, in the context of the Trump

[14] *Bribery Act Guidance*, Serious Fraud Office, https://www.sfo.gov.uk/publications/guidance-policy-and-protocols/bribery-act-guidance/.

[15] *Attorney General Jeff Session's [sic] China Initiative Fact Sheet*, DOJ Press Release (Nov. 1, 2018), https://www.justice.gov/opa/speech/file/1107256/download.

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

Administration's policies toward China and its legitimate concerns relating to China's commitment to fair competition in and outside of China, the DOJ's China Initiative almost seems to be weaponizing the FCPA, making it, for the first time, a tool of the United States' foreign and international trade policies. If so, this would raise troubling questions concerning political intervention in FCPA enforcement, akin to the President's intervention in the ZTE sanctions matter (and, based on the President's recent tweets, also potentially the Huawei matter)

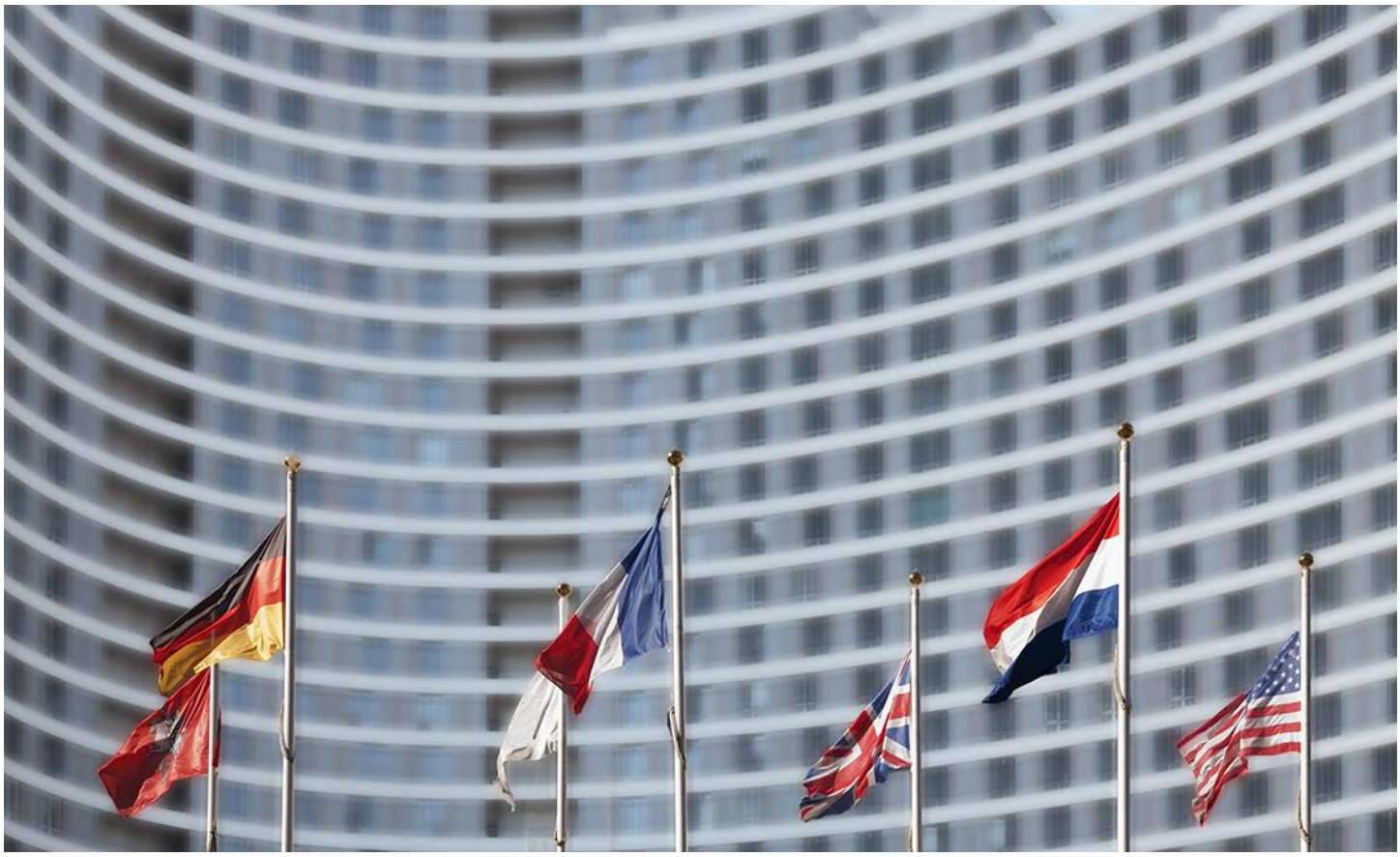
A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

UNUSUAL DEVELOPMENTS

POST-KOKESH DEVELOPMENTS: LIMITS ON SEC'S PURSUIT OF DISGORGEMENT

COMPLIANCE MONITORS

SHELL AND ENI – CASE DEVELOPMENTS



A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

POST-KOKESH DEVELOPMENTS: LIMITS ON SEC'S PURSUIT OF DISGORGEMENT

In *Kokesh v. SEC*,[16] the Supreme Court held that SEC disgorgement sanctions for violating federal securities laws were subject to the five-year statute of limitations that applied for any "action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture." In doing so, it rejected the SEC's argument that the statute of limitations applied only in cases where it sought to impose a fine but not to equitable remedies such as injunctions or disgorgement of illicit gains. Instead, the Court found that disgorgement was indeed a "penalty" within the meaning of the statute, which the SEC must seek within five years of the relevant conduct taking place. Unsurprisingly, the decision has unleashed a series of challenges and conflicting lower-court interpretations.

In perhaps the most impactful of the post-*Kokesh* developments, in July 2018, in *SEC v. Cohen & Baros*,[17] the U.S. District Court for the Eastern District of New York dismissed as time-barred the SEC's FCPA charges against two former executives of a hedge-fund management firm. These charges arose out of alleged multiple schemes to make improper payments to various officials in Libya, the Democratic Republic of the Congo, South Africa, and the Republic of Congo. Of these schemes, none took place within five years of the SEC's filing of a complaint. While a tolling agreement existed to extend the statute of limitations relating to the alleged scheme in Libya, the tolling agreement had expired and did not cover the conduct specific to that investigation. Further, the court found that the Libya scheme was factually distinct and held that the remaining schemes, which had conduct that would have been covered by the tolling agreement, fell outside the limitations period and also dismissed those aspects of the SEC's complaint.

The court's decision was most notable because it held that the five-year statute of limitations period applied, in this case, not only to the disgorgement remedy that was the subject of *Kokesh* but also to the injunctive relief sought by the SEC. Here the court found that the SEC's "obey-the-law" injunction was a penalty on its face because it sought to "redress a wrong to the public," which *Kokesh* cited as a hallmark of a penalty. However, the court explicitly refused to draw a bright line in determining whether all injunctive relief was a penalty and thus subject to the statute of limitations, but it is hard to see how its reasoning could result in a different conclusion in another case.

The Eastern District of New York's decision in holding that injunctive relief *could* constitute a penalty subject to the five-year limitation period, *but is not inherently so*, is consistent with several other rulings by other courts at both the trial and appellate levels. This approach, however, necessarily means that some of those courts have concluded that the injunction in a particular case was *not* a penalty and thus not subject to the limitations period. For example, in *SEC v. Collyard*,[18] the Eighth Circuit, after considering the nature of the injunction and how it affected the defendant, concluded the injunction was not a penalty. On the other side of the coin, however, the Eleventh Circuit, in *SEC v. Graham*,[19] has taken a completely different path, holding that injunctions are never penalties because they relate to future conduct, instead of past conduct like penalties.

Notably, the SEC publicly declined to appeal the EDNY's decision in *Cohen & Baros,* perhaps to avoid an adverse and influential decision by the Second Circuit. In the meantime, however, with a relatively clear split amongst the circuits—a factor that may ultimately bring this issue back to the Supreme Court—a mishmash of these approaches and interpretations will thus continue to impact future litigation by the SEC in unpredictable ways.

COMPLIANCE MONITORS

In last year's mid-year update to the *Trends & Patterns*, we reported on several challenges to attorney-client privilege in the context of internal investigations and regarding representations made through counsel to the federal government. The heart of these challenges lies in distinguishing the communications with attorneys as purely factual in nature.

This year, another challenge has surfaced from yet another angle—in this case, from the independent compliance monitor appointed as part of Volkswagen's settlement with the DOJ for alleged fraud in manipulating emissions tests. In one of his compliance reports, the independent monitor accused Volkswagen executives of not cooperating with the monitorship by improperly redacting and withholding documents on the basis of attorney-client privilege and work product protection. The monitor asserted that he "disagreed with some of the VW Defendants' assertions" of privilege and expounded on the need for greater transparency to meet the cooperation provisions of the settlement.[20]

Any reluctance on Volkswagen's part to provide potentially privileged documents to an independent compliance monitor may be valid, given multiple challenges to the confidentiality of the monitor's reports. However, the two most prominent cases—

[16] 137 S. Ct. 635 (2017).

[17] No. 1:17-CV-00430 (E.D.N.Y. 2018).

[18] 861 F.3d 760, 764 (8th Cir. 2017).

[19] 823 F.3d 1357, 1361 (11th Cir. 2016).

[20] Larry D. Thompson, LLC, First Annual Report by the Independent Compliance Auditor for the VW Defendants (Aug. 17, 2018), https://www.vwcourtsettlement.com/wp-content/uploads/2018/08/ICAR-Aug2018-English.pdf.

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

discussed below—were resolved in favor of protecting the confidentiality and preventing public access in the context of these reports.

First, in *United States v. HSBC Bank*[21] in 2017, the Second Circuit dismissed a motion to compel the unsealing of a corporate monitor's report filed with the district court pursuant to a deferred prosecution agreement. It clarified that—contrary to the district court's assertions—the DOJ is not automatically required to file the reports and other documents pertaining to the compliance with DPAs in district court and that the district court has no "freestanding supervisory power to monitor the implementation of the DPA." Therefore, compliance monitor reports and other such documents are not required to be filed with the court, except in the rare situation in which they are necessary for the court to deny the government's dismissal motion when the DPA ends. Accordingly, avoiding required submissions of the monitor reports to district court provides some level of assurance that the reports and compliance information will not become public.

Second, in *100Reporters LLC v. DOJ*, the District Court for the District of Columbia partially granted the DOJ's motion to dismiss a Freedom of Information Act request seeking to obtain access to corporate compliance monitor reports and related documentation and correspondence.[22] In March 2017, the court recognized that the compliance monitor's reports were largely exempt from FOIA disclosure as confidential commercial information (Exemption 4).[23] However, the court found that the DOJ could not assert these Exemptions to all of the information in the documents in their entirety, finding the DOJ's claim that none of the material therein is segregable to be implausible. It thus granted 100Reporters' request for DOJ to submit "certain representative documents for *in camera* review" so that the court could determine if the DOJ has produced all segregable factual information. The court also held that, because compliance monitors fall within the "consultant corollary" definition, communications between monitors and the agencies to which they report could be exempt under Exemption 5, which covers certain inter-agency or intra-agency communications, including the deliberative process privilege. The DOJ also asserted Exemption 5 to withhold the monitor's annual reports, work plans, and presentations to the DOJ and SEC, as well as related correspondence. However, the court held that DOJ failed to meet its burden to support the application of the Exemption, as its reasoning was too vague and requested additional information.

In the June 2018 order, the court again recognized the DOJ's claims that documents related to the corporate monitor's reports were exempt from disclosure under FOIA as confidential commercial information and deliberative process, but it drew some limitations to the scope of these exemptions.[24] First, it held that the DOJ must segregate purely factual material in the monitor's reports, work plans, and related materials, as it was not confidential commercial information. Second, it also held that the deliberative process privilege applied to the monitor's drafts, feedback, presentations, and other preliminary materials related to the Work Plans" are deliberative, but the final Work Plans must be disclosed (subject, of course, to the application of other applicable exemptions). The court also held that the monitor's annual reports and related correspondence were mostly subject to this exemption and expressly cited the chilling effect disclosure could have on deliberations between the monitor and the DOJ and SEC "relating to whether Siemens was complying with the plea agreement." Certain parts of the report, such as the "General Principles and Good Practices" section, which merely summarizes industry best practices and FCPA guidance, cannot be withheld, even though the rest of the report is exempt. The court thus required the DOJ to use a much finer toothed comb to parse out exempt and non-exempt information, but the core information contained in the compliance monitor's reports and related communications continue to be protected as confidential by courts.

SHELL AND ENI – CASE DEVELOPMENTS

A recent development in the Italian bribery case against Royal Dutch Shell and Eni S.p.A. has exposed the two companies to a potentially massive increase in compensation claims and, at the same time, effected a shift in international discourse on bribery. The case arises out of claims that Shell and Eni paid approximately USD 1 billion in bribes to Nigerian officials to win a lucrative oil concession. In November 2018, the court in Milan ruled that the government of Nigeria could join the suit as a victim, since the concession as awarded generated significantly less revenue than expected at market rates.[25] Nigeria's admittance to the suit as a victim could open the door for Nigeria to file compensation claims against RDS and Eni, in addition to the criminal sanctions they potentially face.

It is inarguable that the government of Nigeria certainly would have lost money if the deal was, in fact, subject to such massive levels of bribery, self-dealing, and corruption. However, casting governments as victims of their own leaders' corruption challenges the prevailing international approach which generally aims to condemn and, if possible, punish the officials and their

[21] 863 F.3d 125 (2d Cir. 2017).

[22] 316 F. Supp. 3d 124 (D.D.C. 2018).

[23] *100Reporters LLC v. DOJ*, 248 F. Supp. 3d 115 (D.D.C. 2017).

[24] 316 F. Supp. 3d at 135.

[25] *Nigeria 'lost billions' on oil deal with Shell and Eni*, Financial Times (Nov. 26, 2018), https://www.ft.com/content/f0713292-f16b-11e8-ae55-df4bf40f9d0d.

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

governments for enabling or ignoring corruption in their ranks. On the one hand, this approach appeals from a fairness perspective in that corrupt governments can't have their cake (or corrupt handouts) and eat it too (in the form of compensation claims against the companies paying the bribes). On the other hand, perhaps companies will be less inclined to offer bribes to government officials if they know the very same governments may one day be able to point the finger back at them and demand even more money, this time as victims rather than co-conspirators.

In the U.S., foreign sovereigns seeking to enter the mix in bribery- and corruption-related enforcement actions based on conduct occurring in their territorial jurisdiction have met varied results.

In 2012, a state-owned telecommunications company from Costa Rica, the Instituto Costarricense de Electricidad ("ICE"), sought to intervene in the settlement of FCPA charges between the DOJ and Alcatel-Lucent under the Crime Victims' Rights Act. The district court denied ICE's request, in part because ICE was not a victim under the CVRA since there was pervasive illegal activity at all levels of ICE. The district court subsequently accepted the DPA with Alcatel-Lucent, which contained no restitution award for ICE. On appeal, the Eleventh Circuit also held that ICE was not a victim under the CVRA since it "actually functioned as the offenders' coconspirator" and again cited the pervasiveness of the misconduct, including on ICE's board and management.[26]

However, several countries have petitioned for and been granted restitution in criminal corruption cases. In 2010, the court awarded restitution to Haiti in connection with the FCPA enforcement action against Juan Diaz for a bribery scheme involving Telecommunications D'Haiti, in which the court referred to the government of Haiti as a victim.[27] Similarly, after the investigation and enforcement actions surrounding the UN Oil-for-Food Programme, the defendants, including several American companies, paid the penalties to the Development Fund for Iraq, in recognition of the harm caused to the country by the extensive bribery scheme that redirected critical aid and resources.[28] Finally, in 2007, the U.S., Switzerland, and Kazakhstan agreed to direct $84 million in funds forfeited by Mercator as part of its FCPA settlement to a non-profit organization in Kazakhstan.[29] It is critical to note, however, that the latter two initiatives to compensate the local victims of bribery and corruption were conducted through non-governmental organizations, rather than through the foreign governments themselves. Therefore, the U.S., like Italy in the case of *Eni*, recognizes the harm caused by bribery in the locations of the bribery, but it is rarely willing to accept the governments themselves as the victims, especially where the governmental entity seeking restitution or recognition of legal rights is rife with the very corruption which engendered the prosecution in the first place. With the continued progress of cross-border cooperation and legal convergence and divergence, the approach in the U.S. and abroad to restitution for the location of foreign bribery will certainly continue to develop and shift in the future.

---

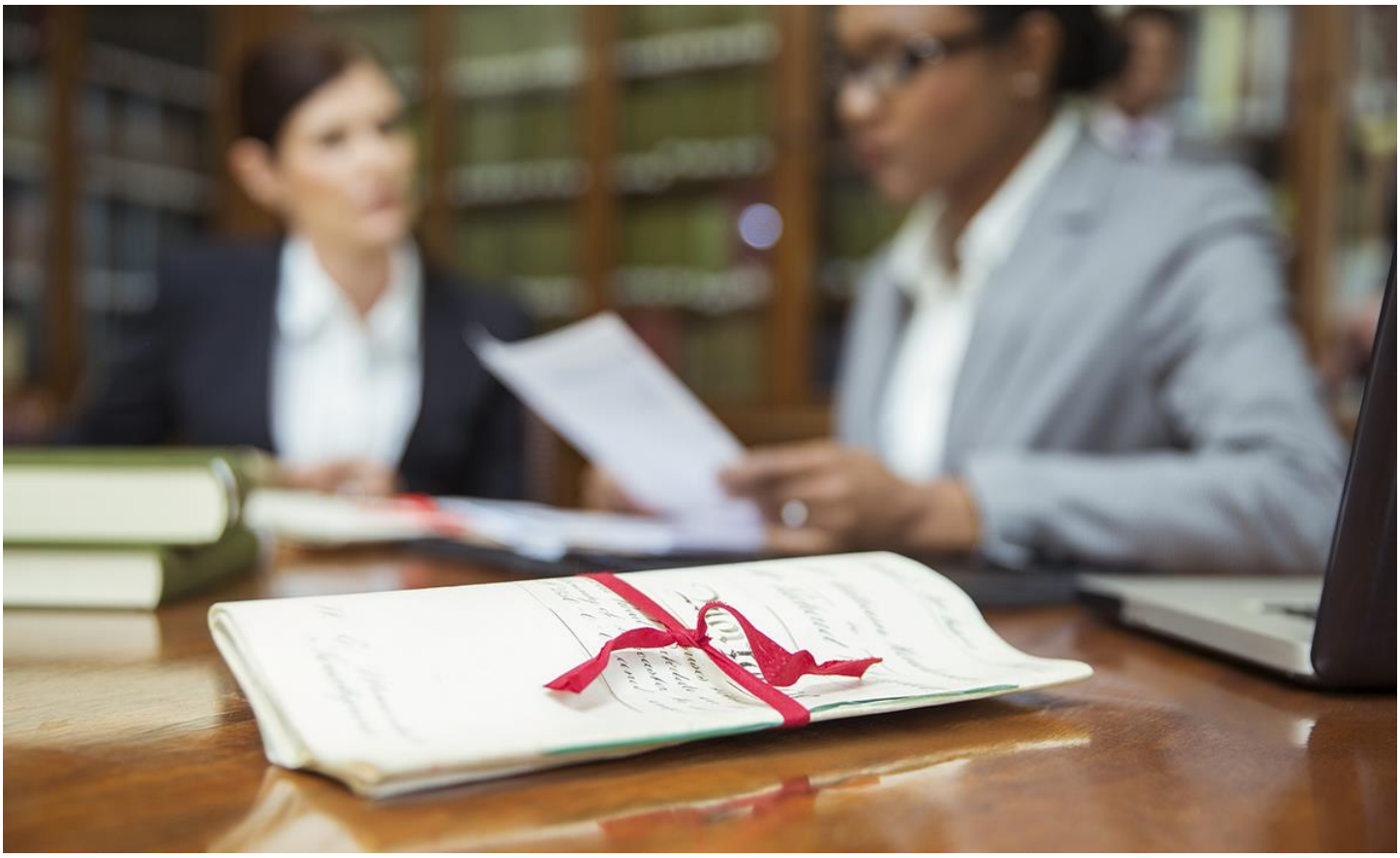
[26] *United States v. Alcatel-Lucent France, SA*, 688 F.3d 1301, 1302-04 (11th Cir. 2012).

[27] Jacinta Anyango Oduor, et al., LEFT OUT OF THE BARGAIN: SETTLEMENTS IN FOREIGN BRIBERY CASES AND IMPLICATIONS FOR ASSET RECOVERY 92 (2014), https://star.worldbank.org/sites/star/files/9781464800863.pdf.

[28] *Id.* at 92-93.

[29] *Id.* at 95-96.

PRIVATE LITIGATION



A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

SCOPE AND NATURE OF DISCLOSURE IN EMBRAER

Embraer S.A., the Brazilian aircraft manufacturer which is also an issuer in the U.S., first disclosed in November 2011 that it was under investigation by the DOJ and the SEC. Over the ensuing five years, the company periodically repeated its disclosure until in July 2016 it disclosed that its negotiations with the DOJ and the SEC had progressed to a point that it was recognizing a $200 million loss contingency. Three months later it entered into a DPA with the DOJ and a consent order with the SEC and agreed to pay $190 million in fines and disgorged profits with respect to violations of the FCPA's anti-bribery and books-and-records provisions.

As often happens, the announcement of the settlement was shortly followed by a class action complaint against Embraer and several of its officers alleging securities fraud under Sections 10(b) and 20(a) of Securities Exchange Act of 1934 and Rule 10b-5 based on the company allegedly having made false or misleading statements about or failing to disclose violations of the FCPA. On March 30, 2018, the U.S. District Court for the Southern District of New York dismissed the complaint with prejudice, finding that Embraer did not have a duty to disclose uncharged, unadjudicated wrongdoing and that the company's disclosures about the government investigation adequately addressed the risks that could result from a finding of unlawful conduct.[30] The court noted that the company repeatedly disclosed that it was under investigation for alleged FCPA violations and that it may be required to pay substantial fines or incur other sanctions. The court ruled that under Second Circuit law these statements satisfied the Company's disclosure obligations.

Interestingly, the court also rejected the plaintiff's argument that Embraer's financial statements were false and misleading because it failed to disclose that some of its revenue was derived from an illicit bribery scheme. This is, of course, the very theory of the government's prosecution under the FCPA's books and records provisions. Here, however, in the disclosure context, the court ruled that a company that accurately reports historical financial data, even if it did not disclose that some portion of its underlying books and records were not accurate because they did not reflect that the sales or income was related to corrupt conduct, is not in violation of the securities fraud laws and regulations.

SETTLEMENT IN PETROBRAS SECURITIES CLASS ACTION

In January 2018, Petrobras announced that it has agreed to pay $2.95 billion to resolve a securities class action pending in the Southern District of New York regarding the company's significant corruption scandal in Brazil. The class action claimed that investors were harmed by alleged corruption when contractors overcharged Petrobras and kicked back some of the overcharges through bribes to Petrobras officials. Judge Rakoff subsequently granted preliminary approval of the proposed settlement in February 2018, and granted final approval in June 2018, under which Petrobras did not admit to any wrongdoing or misconduct and continued to advocate its position that the company itself was a victim of the acts revealed in Operation Lavo Jato in Brazil.[31] (This position, of course, is somewhat inconsistent with its admissions in its subsequent settlement of FCPA and corruption charges with the U.S. and Brazilian authorities discussed above.)

ATTEMPTED RECOVERY AGAINST FOREIGN OFFICIALS INVOLVED IN BRIBERY SCHEMES

In an interesting case filed in 2018, Harvest Natural Resources ("Harvest"), a Houston-based energy corporation that formally dissolved in May 2017, and HNR Energia B.V., a foreign subsidiary of Harvest, filed suit against two former presidents of PDVSA and other individuals who worked for these two presidents, alleging civil violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), as well as federal and state antitrust statutes.[32] According to allegations contained in the complaint, the Venezuelan government twice refused to allow Harvest to sell energy assets co-owned with PDVSA because Harvest refused to pay bribes requested by the defendants. The complaint alleges that these denials forced the company to sell the same assets at a loss of $470 million.

---

[30] *Employees Retirement System of the City of Providence, et al. v. Embraer S.A., et al.*, No. 16-CV-06277 (S.D.N.Y. 2018).

[31] *In re Petrobras Securities Lit.*, No. 14-CV-9662 (S.D.N.Y. 2018).

[32] *Harvest Natural Resources, Inc. et al., v. Garcia et al.*, No. 18-CV-00483, ECF No. 1 (S.D. Tex. Feb. 16, 2018).

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

ENFORCEMENT IN THE UNITED KINGDOM

SFO – NEW INVESTIGATIONS, CHARGES, AND CONVICTIONS

CPS – FIRST CONVICTION FOR FAILURE TO PREVENT BRIBERY

SFO – LEGAL PROFESSIONAL PRIVILEGE DEVELOPMENTS

SFO – CHALLENGES TO THE TERRITORIAL SCOPE OF THE POWER TO COMPEL THE PRODUCTION OF DOCUMENTS

SFO – DEVELOPMENTS AND UPDATES

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

SFO – NEW INVESTIGATIONS, CHARGES, AND CONVICTIONS

In 2018, the U.K.'s Serious Fraud Office ("SFO") opened two new corruption bribery and investigations, brought charges in relation to three major ongoing investigations, and secured six new convictions against individuals, with £4.4 million collected by way of civil recovery.

NEW INVESTIGATIONS

In January 2018, the SFO announced that it had opened an investigation into Chemring Group PLC, the ammunitions and military equipment manufacturer, and its subsidiary, Chemring Technology Solutions Limited, which specializes in bomb disposal equipment, following the subsidiary self-reporting. The SFO has confirmed that this is a criminal investigation into bribery, corruption, and money laundering. The investigation is ongoing and is expected to conclude at some point during 2019.

In April 2018, the SFO confirmed that it had opened a criminal investigation into Ultra Electronic Holdings PLC, which manufactures military electronics, as well as its subsidiaries, employees, and associated persons following a self-report by the company. The investigation is into suspected corruption in the conduct of the company's business in Algeria. The investigation is still ongoing.

These two new investigations follow other investigations by the SFO into British companies operating in the defense sector including Rolls-Royce and BAE Systems.

CHARGES

In February 2018, the SFO announced that it had charged a European bank with unlawful financial assistance contrary to section 151 of the Companies Act 1985.

In May 2018, however, the Crown Court dismissed all charges brought against the bank regarding matters arising in the context of its capital raisings in 2008. The SFO applied to the High Court to reinstate the charges but the High Court ruled against the SFO's application. The charges against the bank's former chief executive and other senior managers remain in place. A trial is expected to commence on January 9, 2019.

Also in May 2018, the SFO brought further charges against two individuals, Basil Al Jarrah and Ziad Akle, in the investigation of Unaoil. Both individuals have been charged with conspiracy to provide corrupt payments in relation to securing the award of a contract worth $733 million to Leighton Contractors Singapore PTE Ltd to build two oil pipelines in southern Iraq. The SFO publicly thanked the Australian Federal Police for the assistance it provided in connection with its investigation, demonstrating the increasing reliance on the cooperation of foreign authorities in international investigations.

In June 2018, the SFO also announced that it had commenced criminal proceedings against Unaoil Ltd and Unaoil Monaco SAM as part of its ongoing corruption prosecution. Both entities have been summonsed with two offences of conspiracy to give corrupt payments. These offences relate to securing the award of a contract to Leighton Contractors Singapore PTE Ltd, as described above, as well as securing the award of contracts in Iraq to Unaoil's client SBM Offshore. This follows the SFO's previous decision in November 2017 to prosecute four executives with conspiring to make corrupt payments to secure Iraqi contracts, as reported in our January 2018 edition of *Trends & Patterns*. The SFO initiated its investigation into Unaoil in March 2016 and received special blockbuster funding from the Treasury for this purpose. Recently, in late December 2018, the SFO announced that it had further charged Stephen Whiteley with conspiracy to make corrupt payments. The SFO allege that he assisted Unaoil Ltd to be engaged as a subcontractor in relation to the oil pipeline projects in Iraq.

In September 2018, the SFO brought charges against former Guralp Systems employees in a South Korean bribery and corruption case. Natalie Pearce was charged by requisition with conspiracy to make corrupt payments. These charges follow those already made against Dr. Cansun Guralp and Andrew Bell who appeared before Westminster Magistrates' Court in August 2018. The SFO alleges that the three individuals conspired together to corruptly make payments to a public official and employee of the Korean Institute of Geoscience and Mineral Resources.

CONVICTIONS AND CIVIL RECOVERY

On March 22, 2018, the Court granted a civil recovery order for the SFO to the value of £4.4 million in relation to a corruption case where Griffiths Energy bribed Chadian diplomats in the United States and Canada. Griffiths Energy used a sham company known as "Chad Oil" to bribe Chadian diplomats with discounted share deals and "consultancy fees" to secure exclusive contracts. The company later self-reported these payments as bribes and pleaded guilty to corruption charges brought by the Canadian authorities.

Following the takeover of Griffiths Energy by a U.K. corporate and share sale via a U.K. broker, the corrupt proceeds entered the U.K.'s jurisdiction and the SFO began civil recovery proceedings, culminating in the civil recovery order. The recovered funds will be held on trust by the SFO and transferred to the Department for International Development who will identify key projects in which to invest to benefit Chad. This recovery order follows two previous SFO cases in which funds recovered from bribery and corruption were returned and reinvested in the relevant country. The Deferred Prosecution Agreement ("DPA") with Standard Bank in 2015 involved a payment of $7 million to the Government of Tanzania, while the SFO's confiscation order following the conviction of senior executives at Smith & Ouzman

for foreign bribery in 2016 paid for seven new ambulances in Kenya.

On October 3, 2018, the Serious Fraud Office issued a claim for civil recovery in the High Court under Part 5 of the Proceeds of Crime Act 2002 ("POCA"). The claim concerned a number of assets, including three U.K. properties, which the SFO alleges were obtained using the proceeds of corrupt deals in Uzbekistan involving Gulnara Karimova and Rustam Madumarov. Karimova is suspected of accepting at least $300 million in bribes from Sweden's Telia Company AB and Amsterdam-based VimpelCom. No date has yet been set for a hearing.

In November 2018, the SFO announced that four further individuals had been convicted in relation to the investigation into FH Bertling for bribery of freight contracts. Stephen Emler, FH Bertling's former CFO, and Giuseppe Morreale, a senior executive, pleaded guilty for their role in FH Bertling paying over £350,000 in bribes and facilitation payments. FH Berling executives made corrupt payments to ensure their bid for the ConocoPhillips "Jasmine" shipping contract was successful and separately to obtain assurance that inflated prices it charged for additional services were waived by ConocoPhillips staff. Christopher Lane, former head of logistics at ConocoPhillips, pleaded guilty to conspiracy for his role in the overcharging and Colin Bagwell, the former managing director and CCO at FH Bertling, was convicted by the jury for conspiracy with Mr. Lane.

Finally, in December 2018, Nicholas Reynolds, a U.K. national and former global sales director for Alstom Power Ltd, was found guilty of conspiracy to corrupt in relation to more than €5 million in bribes paid to officials in a Lithuanian power station and senior Lithuanian politicians in order to win two contracts for the company. He was sentenced to four years and six months imprisonment. In relation to the same investigation, former Business Development Manager at Alstom Power Ltd John Venskus had pleaded guilty on October 2, 2017, and former Regional Sales Director at Alstom Power Sweden AB Göran Wikström pleaded guilty on June 22, 2018, to the same charge. They were sentenced to three years and six months imprisonment and two years and seven months imprisonment respectively.

CPS – FIRST CONVICTION FOR FAILURE TO PREVENT BRIBERY

In February 2018, Skansen Interiors Ltd became the first company to be convicted of the corporate offence of failing to prevent bribery under section 7 of the Bribery Act 2010, following a contested trial in which the company unsuccessfully argued that it had adequate procedures in place to prevent bribery (the statutory defense). Although the case is unreported, the submissions of the prosecution provide an insight into what will likely need to be shown to successfully raise a defense of adequate procedures. In addition, the case has attracted criticism for the Crown Prosecution Service's ("CPS") approach in choosing to prosecute rather than pursue a DPA, and the corresponding impact this will have on whether companies choose to self-report in similar circumstances.

DO YOU HAVE ADEQUATE PROCEDURES IN PLACE?

Skansen was an office interior design company based in London. In 2013 it won two office refurbishment contracts worth £6 million. However, when a new CEO was appointed in January 2014 he became suspicious of certain payments that had been made by the managing director to the project manager of the company that provided the contracts. The new CEO initiated an internal investigation and put in place specific anti-bribery and corruption policies, which had been previously lacking. Following the internal investigation, the company blocked an additional payment and summarily dismissed the managing director and commercial director. The CEO then submitted a suspicious activity report to the National Crime Agency ("NCA") and also reported the matter to the City of London Police, following which the company fully cooperated with the police investigation, including handing over confidential company documents and legally privileged material pertaining to the internal investigation. In spite of this, the government charged the company with having violated section 7 of the Bribery Act by failing to prevent bribery, while the former managing director and project manager were charged with individual bribery offences. Both of the individuals pleaded guilty but the company did not.

At trial, the jury was unconvinced that the controls the company had in place at the time of the payments (*i.e.*, before the new CEO implemented remedial controls) were sufficient to establish that there were adequate procedures to afford a defense. In particular, the prosecution drew attention to several matters, including: the lack of contemporaneous records of the company's attempts to introduce a compliance culture; the absence of any new policies being introduced when the Bribery Act came into force in July 2011; the lack of any evidence of the company having ensured that its staff had actually read the anti-bribery policy or undertaken any training on the subject; and the failure to designate any specific individual in the company with a compliance role or responsibility for ensuring that the anti-bribery policies were implemented and complied with.

In the light of this finding, we advise that companies seeking to prove they have adequate procedures in place to prevent bribery should bear in mind several key factors: (i) ensuring that compliance implementation is recorded, including creating and maintaining records of compliance-related initiatives, activities and decisions, which may be especially important in smaller companies where only face-to-face discussions take place; (ii) actively communicating anti-bribery policies to staff, including providing training on such policies, which should be updated in line with changes in the law; and (iii) appointing a dedicated compliance officer or someone at a senior level who has responsibility for ensuring that anti-bribery controls are

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

implemented and followed (the latter may be more appropriate for smaller companies).

TO SELF-REPORT OR NOT TO SELF-REPORT?

Another major issue in the case was the fact that the CPS decided to prosecute Skansen rather than pursue a DPA. According to the CEO of Skansen, the CPS were originally planning to offer the company a DPA in view of the company having self-reported, cooperated with the authorities, dismissed those involved, and made remedial changes. However, once the company became dormant in 2014, the CPS apparently decided that a DPA would be a nullity as a dormant company with no assets would not be able to comply with any terms imposed by the DPA.

It is peculiar that the CPS maintained this stance even though the company's parent offered to take on the DPA, an arrangement which, in contrast, was accepted by the SFO and entered into by the company known as XYZ in 2016. Under the terms of the XYZ DPA, XYZ's parent company agreed to pay the majority of the fine. With Skansen, however, the CPS pursued the section 7 offence on the basis that it would send a message to the industry about the importance of establishing anti-bribery procedures. This message, however, may well have been lost given that the court concluded it could not impose any meaningful punishment on a dormant company without any assets and therefore ordered an absolute discharge.

Rather than sending the message that the CPS intended, there is a substantial risk that the prosecution will instead have a chilling effect on companies considering whether to self-report in similar circumstances. This is especially so where the company in question does not have sufficient controls in place at the time of the alleged wrongdoing to establish an adequate procedures defense. The very act of reporting puts the company at the mercy of the CPS or SFO, which have the power to exercise discretion to seek a DPA or bring charges, a decision that, given the Skansen matter, has become even more unpredictable.

Indeed, the U.K. authorities are, frankly sending very mixed messages concerning their exercise of discretion in these matters. The SFO has advised that companies should self-report and cooperate to increase their chances of receiving a DPA, and most understood that there was no chance of obtaining a DPA in the absence of voluntary disclosure. Notably however, Rolls-Royce did not self-report and yet still entered into a DPA with the SFO, purportedly due to its exceptional cooperation with the authorities.

The CPS' prosecution of Skansen now muddies the waters even further, with no DPA being offered even after the company both self-reported and provided extensive cooperation. Moreover, this appetite for prosecuting alleged failure to prevent offences does not seem to be an isolated incident. On June 20, 2018, Judge David Tomlinson informed Rapid Engineering Supplies that it faced a criminal trial in March 2019 for alleged failure to prevent offences. At this stage there are few details known other than that Rapid Engineering Supplies has been charged with failing to put in place adequate procedures to prevent bribery between December 2011 and March 2013, under section 7 of the Bribery Act. It is now unclear what approach the U.K. authorities will take even where a company self-reports and cooperates. It will be interesting to see how the Rapid Engineering Supplies case progresses and whether a DPA is offered, which may hopefully provide greater clarity to companies on the expected consequences of self-reporting.

THE LANDSCAPE POST-SKANSEN

There has been little by way of clarification as to what approach will be taken from the U.K. authorities themselves following the *Skansen* case. In May 2018, the House of Lords appointed a Select Committee to consider and report on the Bribery Act 2010, which included consideration of the "adequate procedures" defence relevant to the *Skansen* case, as discussed below. As part of gathering evidence for the Committee to consider, the Law Society of England and Wales, the City of London Law Society, and the Fraud Lawyers Association selected various partners of law firms working in bribery and corruption to provide their views on the Bribery Act. As part of their submissions of July 31, 2018, they commented that "DPAs are likely to be more easily applied to larger businesses. Smaller enterprises, such as Skansen, are less likely to have the resources or longer-term enterprise value to be able to cooperate with authorities and/or to change their leadership to the same extent."

In November 2018, the Bribery Act 2010 Committee made some interesting comments regarding the Section 7 defence of "adequate procedures" at issue in the *Skansen* matter. Neil Swift, partner at Peters & Peters and a witness called by the Committee, expressed confusion as to what the precise difference is between "adequate" used in Section 7 of the Bribery Act 2010 and "reasonable" used in the Criminal Finances Act. It is confusing for companies to have to develop procedures which are "adequate" on the one hand and "reasonable" on the other. Mr. Swift expressed a preference for the term "reasonable" given that it would be unjust to criminalize a company if it acted reasonably in devising procedures.

Lord Grabiner, a member of the Committee, suggested that "reasonableness" as a test from the defence perspective is much more attractive, because it is highly facts-sensitive and would enable the defence to explain in great detail what mechanisms were in place and then leave it to the jury to decide whether they were reasonable. Following extensive debate regarding the use of the term "adequate" compared to "reasonable", Max Hill QC, the new head of the CPS appointed on November 1, 2018, stated that the CPS are content with where the law currently sits. In saying so he highlighted that the *Skansen* case proceeded to trial and a conviction was returned, with no difficulty as to what the test was at the jury or judicial level.

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

NCA – UNEXPLAINED WEALTH ORDERS

The new Unexplained Wealth Order ("UWO") regime came into force in the U.K. on January 31, 2018. A UWO is an order made by the High Court which compels a person holding property worth more than £50,000 to provide information as to how they came to obtain the property. It is an investigative tool designed to help law enforcement tackle assets paid for through the suspected proceeds of corruption. A UWO can be made against a politically exposed person ("PEP") from outside the European Economic Area ("EEA"), or a person reasonably suspected of involvement in serious crime (anywhere in the world) or of someone being connected to such a person. Only enforcement agencies, such as the NCA can apply for a UWO. They then must show that there is reasonable cause to suspect that the individual's known sources of lawfully obtained income were insufficient to allow them to acquire the property.

FIRST UWO AND DISMISSAL OF FIRST CHALLENGE TO THE UWO

In February 2018, the NCA secured the first ever UWOs in relation to two high value properties in the South East of England worth a total of £22 million. It was believed that these properties ultimately belonged to a PEP who had been the chairman of a leading bank in a non-EEA country of which the government of the relevant foreign country had a controlling stake. In 2016 the individual was convicted of fraud offences with regard to his time at the bank and received a prison sentence. The wife of the individual, known as "Mrs. A" in proceedings due to reporting restrictions, was subject to the UWOs compelling her to reveal the source of her wealth. Under the UWO regime, failure to comply with any UWO requirement creates a rebuttable presumption that the relevant property is recoverable through civil forfeiture proceedings. Providing false information in response is a criminal offense. In this case the NCA obtained interim freezing orders which meant that the relevant properties could not be sold or transferred.

In July 2018, Mrs. A brought a High Court challenge to the UWO. Among various grounds she argued that she was not a PEP as this was reliant on her husband being a PEP, which was in turn reliant on her husband working for a state-owned enterprise. She also challenged whether there was reasonable suspicion that her known sources of lawfully obtained wealth were insufficient to allow her to obtain the property. The challenge was dismissed by the High Court in October 2018. On these two specific grounds, the High Court held that the evidence of the relevant government having a majority shareholding in the bank meant that it constituted a state-owned enterprise, while the evidence that the husband was a state employee between 1993 to 2015 meant it was very unlikely that his lawful income would have been sufficient to purchase the property when it was bought for £11.5 million. The dismissal of this challenge will likely spur on the NCA with its pursuit of UWOs, as per the comments from Donald Toon, NCA Director for Economic Crime when the challenge was dismissed: "We are determined to use the powers available to us to their fullest extent where we have concerns that we cannot determine legitimate sources of wealth."

SFO – LEGAL PROFESSIONAL PRIVILEGE DEVELOPMENTS

In our January 2018 *Trends & Patterns* we discussed the decision of the High Court in *Serious Fraud Office v Eurasian Natural Resources Corporation*[33] and the impact it had for companies claiming litigation privilege over documents created as part of internal investigations. In that case the SFO successfully challenged an assertion of litigation privilege over certain documents, including notes of interviews with employees created as part of an internal investigation into alleged corruption. In addition, the SFO also challenged an assertion of legal advice privilege over the documents, on the basis that the narrow interpretation of this type of privilege meant that only documents or communications between a lawyer and an employee who was specifically authorised to seek or receive legal advice (*e.g.* the general counsel of a company) could be protected.

This SFO's position in this case demonstrated its increasing appetite at the time to challenge claims to legal professional privilege where a company creates documents in the context of an investigation. Since then, the Court of Appeal has partially rolled back the High Court's controversial decision, restoring the protection of litigation privilege to at least some of the materials created during the course of an internal investigation.

THE HIGH COURT'S DECISION: A NARROW VIEW OF "LITIGATION" LIMITS THE SCOPE OF THE PRIVILEGE

In the first decision, the High Court held that several classes of documents, which ENRC had created in the course of an internal investigation, did not attract litigation privilege and so were not protected from disclosure. Under English law, litigation privilege will only arise where documents are created: (i) when either litigation is in progress or is reasonably contemplated, *i.e.*, where litigation is a real prospect, and (ii) for the dominant purpose of that litigation. Breaking new ground, the Court held that prosecution—*i.e.*, litigation—"only becomes a real prospect once it is discovered that there is some truth in the accusations, or at the very least that there is some material to support the allegations of corrupt practices." Consequently, the Court held that documents created during the course of an internal investigation will only attract litigation privilege once there is a real prospect of a prosecution—*i.e.*, when "the prosecutor is satisfied that there is a sufficient evidential basis for prosecution and the public interest test is also met."

The Court also rejected ENRC's contention that the SFO's criminal investigation into its conduct should be treated as adversarial litigation for the purposes of attracting litigation

[33] [2017] EWHC 1017 (QB).

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

privilege. Instead, the Court considered that an SFO investigation is "a preliminary step taken, and generally completed, before any decision to prosecute is taken . . . . Such an investigation is not adversarial litigation."

The High Court's decision created an untenable dilemma for companies: it could not investigate potential wrongdoing, which itself might be viewed as demonstrating that it did not have adequate procedures, but if, to the contrary, it did conduct an internal investigation into alleged wrongdoing, it could potentially aggravate matters by creating materials that could be disclosable in future civil or criminal proceedings.

In October 2017, ENRC was granted leave to appeal the High Court's decision, which was heard in the Court of Appeal on 3 July 2018. The Law Society intervened in the appeal, arguing that the legal profession urgently needs authoritative and correct guidance on this issue.

THE COURT OF APPEAL'S DECISION: LITIGATION PRIVILEGE RESTORED

In September 2018, the Court of Appeal partially overturned the controversial High Court decision,[34] concluding that the High Court had erred both in law and in its interpretation of the facts of the case. The Court of Appeal concluded that criminal proceedings were reasonably contemplated from the time at which ENRC engaged lawyers to conduct an internal investigation, which was before the SFO commenced its own investigation. It held that the same threshold for "reasonable contemplation" should apply to both civil and criminal proceedings. The Court of Appeal also held that the documents had been created for the dominant purpose of resisting or avoiding such proceedings. Litigation privilege therefore applied to them. The judgment did, however, make clear that the decision turned on the specific facts of the case. As such, we would caution against blanket assumptions that litigation privilege will apply to all materials created in the context of internal investigations.

The High Court decision was only partially overturned by the Court of Appeal as the latter held it was unable to change the current narrow interpretation of legal advice privilege. This interpretation, as previously established by the Court of Appeal in the *Three Rivers* decision in 2003[35], provides a narrow definition of the "client" as it applies to legal advice privilege—the English law privilege doctrine which protects confidential communications between a lawyer and a client for the purpose of seeking or receiving legal advice. Where the client is a company, legal advice privilege will not extend to every employee of that company. Instead, it will only cover those employees specifically authorised to seek or receive legal advice. Interestingly, the Court of Appeal in the recent ENRC decision noted that English law in this respect was out of step with the international common law on this issue. It even went so far as to say that it would have been in favour of changing the law in this area. However, given the previous binding decision of the Court of Appeal in the *Three Rivers* case, the Court stated that this is a matter that will have to be considered by the Supreme Court in an appropriate future case.

LITIGATION PRIVILEGE FINDINGS FOLLOWING *SFO V ENRC*

The ENRC decision brought a welcome and clear statement that litigation privilege may, in appropriate circumstances, apply to documents created in the course of an investigation. However, issues remain concerning *when* those circumstances exist. Although not in the context of an internal investigation, the recent decision on November 30, 2018 of the *West Ham v E20*[36] case offers some insight as to how the court should evaluate claims of privilege and what a company may do to strengthen its claim to litigation privilege.

The claim concerned a dispute between the soccer club West Ham United and the owners of their stadium, E20. West Ham wished for the match-day capacity of the stadium to be increased and contended that it had a contractual right that E20 must act in good faith in deciding whether to make an application for permission for the increased capacity. E20 disputed this obligation but argued in the alternative that it had, in any event, acted in good faith as it had decided not to increase the stadium's capacity due to legitimate safety concerns. E20 had asserted litigation privilege over documents evidencing its decision-making process, stating that those documents were created with the dominant purpose of discussing a commercial settlement of the dispute between the parties at a time when litigation was in reasonable contemplation. West Ham requested that the judge inspect the documents to ascertain whether the assertion of privilege was correct.

At first instance, Norris J refused West Ham's application in connection with the documents. The judge relied on the Court of Appeal decision in *ENRC v Serious Fraud Office* that litigation privilege was not limited to documents concerned with obtaining information or advice for use in the litigation but also included any document prepared for the purpose of settling or avoiding a claim. Relying on the guidance outlined in *West London Pipeline*[37], Norris J held that he could only inspect the documents if he was reasonably certain that the test for privilege had been wrongly applied by E20's solicitors.

[34] [2018] EWCA Civ 2006.

[35] [2003] EWCA Civ 474.

[36] [2018] EWCA Civ 2652.

[37] [2008] 2 CLC 258.

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

However, the Court of Appeal unanimously allowed West Ham's appeal of the first instance decision. The Court held that its earlier decision in *ENRC* did not expand the scope of litigation privilege to encompass documents which neither seek advice nor information for the purpose of conducting litigation. It held that *ENRC* only clarified that settling litigation formed part of conducting litigation. The requirement that the documents must be concerned with obtaining information or advice remains. It rejected E20's argument that "conducting litigation" encompassed documents which merely comprised discussions as to a commercial settlement of that litigation. It also rejected its suggestion that internal communications within a company which are made for the dominant purpose of conducting litigation are, without more, necessarily subject to privilege, and overruled the much earlier decision of *Mayor and Corporation of Bristol v Cox*[38].

The Court also examined the circumstances in which a judge should inspect a document to test a challenged assertion of privilege. It considered that the formulation set out in the leading textbooks, taken from *West London Pipeline*, was too narrow. The power to inspect is not limited to cases in which, without sight of the documents in question, the court is "reasonably certain" that the test for litigation privilege has been misapplied. Instead, the court has a broader discretion to inspect, though the power should be exercised cautiously. In exercising its discretion, the court should take into account the nature of the privilege claimed, the number of documents involved and their potential relevance to the issues.

In the light of these decisions, it is clear that the ability successfully to claim litigation privilege is heavily dependent on the specific circumstances of each case. To assist in any future claim to litigation privilege with the SFO, we recommend that companies: (i) maintain a record—and, if appropriate, an analysis—of all communications with, and actions taken by, an investigating or enforcement authority such as the SFO (this will be of use if and when subsequently there is a need to determine when adversarial proceedings came into prospect); and (ii) maintain a record or otherwise document the purpose for which particular documents are produced (this will assist in asserting that a document or class of documents were created for the dominant purpose of the litigation).

CRITICISM OF THE SFO FOR NOT CHALLENGING PRIVILEGE

From the other side of the coin, the SFO, which has in the past been criticized for being overly aggressive in demanding documents generated in the course of an internal investigation, has recently come under fire for not having done so, allegedly to the detriment of individuals charged in the same matter.

In *R (on the application of AL) v Serious Fraud Office,*[39] the Administrative Court took the SFO to task for its approach to challenging privilege in the XYZ matter. An XYZ employee, who had been separately charged with conspiracy offences, demanded to see the full interview notes that had been produced by XYZ's lawyers as part of the company's cooperation that ultimately resulted in a DPA. The SFO had previously requested these full interview notes as part of its own investigation, but the company asserted privilege over them and refused to hand them over. Instead the company only provided "oral proffers," whereby one of the company's lawyers read aloud a short summary of the interview notes which an employee of the SFO then transcribed.

After the DPA was entered into, the employee repeatedly asked the SFO to obtain the full interview notes from the company, and indeed the terms of the DPA required the company's full cooperation with the SFO. When, however, the SFO did not challenge the company's continuing assertion of privilege over the notes, the employee brought a judicial review action against the SFO for failing to compel the company to provide the full interview notes. Although the judicial review failed on a procedural point, the Administrative Court strongly criticized the approach that the SFO had taken on this issue. In particular, the Court criticized the SFO's acceptance of "oral proffers" and its failure to challenge the company's assertion of privilege over the notes, especially in the light of the original High Court decision in *SFO v ENRC* limiting the scope of privilege in this context.

In the light of the Administrative Court's comments it is now unlikely that the SFO will be content with "oral proffers" and will instead demand to see a company's full interview notes, actively challenging any resistance from the company regarding disclosure. Indeed, at a recent panel discussion the SFO case controller in the XYZ case commented that from now on the SFO will expect all factual records of an investigation, including interview notes. However, given the Court of Appeal decision in *SFO v ENRC* upholding the assertion of privilege in that case, the SFO may well feel vindicated in their approach with XYZ not to challenge privilege, and will likely only challenge privilege going forward where there is some indication that the privilege has been wrongly claimed.

SFO – CHALLENGES TO THE TERRITORIAL SCOPE OF THE POWER TO COMPEL THE PRODUCTION OF DOCUMENTS

In a separate judicial review action, KBR Inc challenged the territorial scope of the SFO's powers to compel the production of documents, calling into question whether the SFO will be able to rely on these powers to obtain documents held overseas. Under section 2 of the Criminal Justice Act 1987, the SFO can serve a so-called "section 2 notice" on any individual or entity and

[38] (1884) 26 Ch D 678.

[39] [2018] EWHC 856 (Admin).

require them to produce documents or provide information relevant to the subject matter of an SFO investigation. The SFO often uses these notices to compel the production of documents held in foreign countries; however the territorial scope of these powers had not yet been decided by an English Court.

To provide context to the judicial review action, a U.K. subsidiary of KBR Inc has been the subject of an on-going investigation by the SFO in relation to the company's connection with Unaoil. The SFO served a section 2 notice on one of KBR Inc's representatives when she was in the U.K. and sought to compel production of data that was previously held by the U.K. subsidiary but was now held on U.S. servers. The company refused to comply and challenged the SFO's use of section 2 notices to compel the production of data held outside of the U.K.

In its judgment[40], the Administrative Court concluded that section 2(3) did permit the SFO to request foreign companies which have a "sufficient connection" to the U.K. to produce data in the course of investigations. Gross LJ and Ouseley J concluded that to satisfy the "sufficient connection" test there must be a functional connection between the U.K. and the foreign company. This test would not be met by a foreign company simply being a parent company of a subsidiary in the U.K. Similarly, a foreign company could not be said to have sufficient connection to the U.K. simply by the SFO requiring its officers to come within the jurisdiction.

The KBR decision is at odds with the very different approach adopted by the Supreme Court to an attempt to extend beyond the U.K. the ambit of information notices under section 357 of the Proceeds of Crime Act 2002 in *Perry v Serious Organised Crime Agency*.[41] In that case the Supreme Court held that information notices under POCA were limited to those within the jurisdiction. Lord Philips explained that section 357 authorises orders for requests for information with which the recipient is obliged to comply, subject to penal sanction. In his reasoning, Lord Philips stated that subject to limited exceptions, it is contrary to international law for country A to purport to make conduct criminal in country B if committed by persons who are not citizens of country A. Lord Philips held that the same principle should apply given the penal sanctions for information notices under POCA. Accordingly, he held that to confer such authority in respect of persons outside the jurisdiction would be a particularly startling breach of international law, and therefore information notices under POCA should be limited only to those within the jurisdiction.

This Supreme Court decision was considered by the Administrative Court in its judicial review decision. However, the Administrative Court held that the situations could be distinguished based on the fact that: the two cases were addressing different pieces of legislation; the information notices issued in the *Perry* case were against persons entirely unconnected with the U.K.; and the context of section 2(3) meant that it must have had some extraterritorial application whereas POCA did not. In the light of these decisions, the current position under English law is therefore that information notices under POCA cannot extend beyond the U.K. while section 2(3) notices can. However, given the similarity between these two mechanisms for gathering information/documents and the very different conclusions reached in each case, there may be further judicial actions in the future seeking to challenge the extraterritorial application of section 2(3) notices.

SFO – GENERAL DEVELOPMENTS AND UPDATES

More generally, 2018 has proven to be a busy time for the SFO, with key developments including an increase in funding and the appointment of a new director.

INCREASE IN FUNDING

In April 2018, the SFO announced changes to its funding arrangements which included an increase of over 50% to its core budget as well as changes to the "blockbuster" funding used to investigate large cases. The SFO's core budget for the 2018-19 fiscal year has now been increased from £34.3 million to £52.7 million, raising it to a level that has not been seen for a decade. In addition, there is now a different approach to funding for "blockbuster" cases. For the last six years, the SFO would secure extra funding from the Government Treasury where any case was forecast to cost more than five percent of the core budget (at least two investigations were funded in this way). This method was criticized for creating a perceived conflict of interest given that the SFO had to call on the Government to provide funds, as well as more general criticism that it was inefficient and relied on expensive temporary staff hired when funding was secured. According to the new arrangements, the SFO will be able to call on the Government Treasury for blockbuster funding where costs on a single case are expected to be more than £2.5 million in a year. However, it is expected that this will be needed less given the increase in the core budget. These new funding arrangements represent a strong vote of confidence in the SFO and are sure to be welcomed by its new Director, as discussed below.

NEW DIRECTOR OF THE SFO AND AREAS OF FOCUS

On June 4, 2018, the Attorney General's Office announced that Lisa Osofsky had been appointed as the new Director of the SFO. This follows the appointment of Mark Thompson as the interim Director on 10 April 2018 (the previous Chief Operating Officer at the SFO) who worked in his post until Ms. Osofsky joined on August 28, 2018. The career history of Ms. Osofsky marks an interesting departure from the experience of previous Directors. Beginning her career as a U.S. federal prosecutor, Ms. Osofsky

[40] *R. (on the application of KBR Inc) v the Director of the SFO* [2018] EWHC 2368 (Admin).

[41] [2012] UKSC 35.

prosecuted over 100 cases in the U.S. before joining Exiger, a global company providing services in regulatory compliance, risk, and financial crime, where she was a Managing Director, Regional Leader, and Head of Investigations for Europe, the Middle East, and Africa.

Ms. Osofsky has given several speeches since her appointment highlighting her intended approach and areas of focus. In particular, she has emphasized the importance of international cooperation, with law enforcement and regulation counterparts cultivating ways to keep in touch regarding shared areas of strategic significance. There must also be cooperation across different disciplines with prosecutors, investigators, police and accountants working side by side throughout the life of a case, something she has been used to in the U.S. but is relatively new to the U.K. The importance of facilitating technological development, to combat increasingly sophisticated criminals, has also been emphasized. In addition, she has commented that she wants an independent SFO and "didn't take this job to report to the NCA", putting to rest speculation that she may have supported the previously mooted proposal to bring the SFO under the NCA.

She has also made clear that the SFO expects full cooperation from corporates under investigation. At a recent keynote address at the FCPA International Conference in Washington D.C. on November 28, 2018, she made some choice remarks regarding what full cooperation really means and what she expects from corporates: "At its simplest, it's not so hard: Tell me something I don't know. Help the prosecutor find the truth. Don't obstruct, or mislead, or delay. Don't hold things back. Here's what cooperation is not: it is not simply responding to requests that you are obligated to respond to. It is certainly not burying bad news or protecting certain executives. It is not slow-rolling us. It is not playing one prosecutor off another." Beyond corporate cooperation, Ms. Osofsky reiterated that corporate rehabilitation for offenders requires a strong ongoing compliance function and "window dressing will not suffice". As part of this she warned that the SFO "are not in the habit—nor will we ever be—of recommending DPAs for recidivists."

Ms. Osofsky's appointment reflects an interesting addition to what some call the Americanization of enforcement in the U.K, following the entry of the U.K. Bribery Act and the U.K.'s Deferred Prosecution Agreement regime. Ms. Osofsky's experience differs from the previous Director, Sir David Green QC, who practiced as a barrister and served as the CPS's Director of the Central Fraud Group. Accordingly, it will be interesting to see in due course the impact that Ms. Osofsky's background and areas of focus will have on the SFO's approach during her (renewable) term of five years.

A. RECENT TRENDS AND PATTERNS IN FCPA ENFORCEMENT

CONCLUSION

Although the pace of enforcement, particularly in the U.S., was uneven across the 2018 calendar year, it is clear that enforcement of the FCPA and of similar statutes in other countries remains active and is even expanding. Although the majority of the cases brought by the U.S. enforcement agencies in 2018 were relatively small, there have continued to be significant cases, many of which involved cooperation with enforcement authorities who had previously not been active in this area. For many years, the U.S. went it alone, even after the implementation of the OECD Convention, assuming, whether it wanted to or not, the role of a global policeman in the absence of effective enforcement regimes in some of its largest trading partners (and competitors). This, however, resulted in some criticism (including in our previous *Trends & Patterns*) of overreaching by the DOJ and the SEC. Now the question will be whether, with a more active international enforcement community, the DOJ in particular, with its new "no more piling on" policy, will stand down when there is an effective and credible investigation or enforcement action by its peers in other countries.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

207. IN RE POLYCOM, INC. (2018)

NATURE OF THE BUSINESS.

Polycom, Inc., a Delaware corporation headquartered in California, sells communications products and services.

INFLUENCE TO BE OBTAINED.

According to the DOJ, Polycom's subsidiaries in China committed violations of the FCPA's anti-bribery and books-and-records provisions.

ENFORCEMENT.

On December 26, 2018, the DOJ issued a declination letter, explaining that it had declined to prosecute Polycom for these alleged violations under the FCPA Corporate Enforcement Policy. The declination letter from DOJ indicates that Polycom identified the misconduct, which it voluntarily disclosed. It also conducted a "thorough investigation;" fully cooperated, including providing the DOJ with all relevant facts and access to employees, as well as translating documents; and agreed to continue cooperating. Finally, the DOJ explained that Polycom fully remediated, enhancing its compliance program, improving its internal accounting controls, and terminating or disciplining employees and partners involved in the alleged misconduct.

As part of the declination, Polycom agreed to disgorge $30,978,000 in profits – $10.1 million of which will be paid to each of the DOJ and the US Postal Inspection Service Consumer Fraud Fund, and $10.67 million of which will be paid to the SEC.

On the same day, the SEC settled its enforcement action against Polycom for violations of the FCPA's books-and-records and internal controls provisions. In addition to the disgorgement and prejudgment interest, Polycom agreed to pay a $3.8 million civil penalty.

See SEC Digest Number D-189.

KEY FACTS

Citation. *In re Polycom, Inc.*, Letter to Caz Hashemi from Sandra Moser, Acting Chief Fraud Section, DOJ (Dec. 26, 2018).

Date Filed. December 26, 2018.

Country. China.

Date of Conduct. Not stated.

Amount of the Value. Not stated.

Amount of Business Related to the Payment. Not stated.

Intermediary. Subsidiary.

Foreign Official. Unnamed government officials in China.

FCPA Statutory Provision. Not stated.

Other Statutory Provision. None.

Disposition. Declination with Disgorgement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. $10,152,537.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In the Matter of Polycom, Inc.*

Total Combined Sanction. $36,611,410.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

206. IN RE PETRÓLEO BRASILEIRO S.A. – PETROBRAS (2018)

NATURE OF THE BUSINESS

Petróleo Brasileiro S.A. – Petrobras ("Petrobras") is a Brazilian government-controlled oil and gas company. Petrobras' stock is registered with the Securities and Exchange Commission under Section 12(b) of the Exchange Act and trades on the New York Stock Exchange as American Depositary Shares ("ADSs"). Petrobras is headquartered in Rio de Janeiro, Brazil.

INFLUENCE TO BE OBTAINED

According to the DOJ, Petrobras senior executives and managers participated in a far-reaching bribery scheme and assisted major Petrobras contractors in securing contracts with the company by rigging bids in their favor at the expense of more qualified contractors. Additionally, the executives inflated contract costs (often as fabricated consultant charges) to allow more money to flow to the contractors. In reward for their cooperation, the executives and managers received kickbacks from the contractors that ranged from one to three percent of the contract's value. The executives kept a portion for themselves, and shared a portion with Brazilian politicians and political parties as bribes as a way to ensure the company and its projects continued to be viewed favorably.

The DOJ also alleged that Petrobras failed to keep accurate books and records. As the bribery scheme continued, Petrobras began trading ADSs on the New York Stock Exchange in 2010. The company was required to file annual reports and financial statements with the SEC. The DOJ alleged that the executives were aware the filings made omitted information about the bribery scheme and the executives still falsely certified that the filings were accurate.

The DOJ further alleged that Petrobras failed to implement internal controls over the company's financial, accounting, and contracting processes. Specifically, Petrobras' policies were inadequate to guard against manipulation of the bidding process and improper political influence.

ENFORCEMENT

On September 26, 2018, the DOJ entered into a non-prosecution agreement with Petrobras, pursuant to which it agreed to pay a monetary penalty of $853,200,000 (ten percent of which is to be paid to the US Treasury, ten percent to the SEC, and $682,560,000 to the Ministerio Publico Federal in Brazil). Petrobras received a twenty-five percent discount off the recommended minimum sentence under the U.S. Sentencing Guidelines for the company's full cooperation and remediation.

On September 27, 2018, the SEC issued a cease-and-desist order to Petrobras in which it agreed to pay $933,473,797 in disgorgement and prejudgment interest.

See SEC Digest Number D-185.
See Ongoing Investigation Number F-51,
See Parallel Litigation Numbers H-A19, H-C32.

KEY FACTS

Citation. *In re Petróleo Brasileiro S.A.* – Petrobras (2018).

Date Filed. September 26, 2018.

Country. Brazil.

Date of Conduct. 2004 – 2012.

Amount of the value. More than $1 billion.

Amount of business related to the payment. Not stated.

Intermediary. Agents; Consultants.

Foreign official. Senior executives at Petrobras, Brazil's government-controlled oil and gas company; unnamed Brazilian politicians and third parties.

FCPA Statutory Provision. Anti-Bribery; Internal Controls; Books-and-Records.

Other Statutory Provision.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Brazil.

Total Sanction. $853,200,000.

Compliance Monitor/Reporting Requirements. Three-year Reporting Requirement.

Related Enforcement Actions. *In the Matter of Petróleo Brasileiro S.A.* – Petrobras, Admin. Proc. File No. 3-18843 (Sep. 27, 2018).

Total Combined Sanction. $1,786,673,797.[42]

[42] Includes $682,560,000 in criminal penalties to be paid to the Ministerio Publico Federal in Brazil.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

205. UNITED STATES V. LOW TAEK JHO, A/K/A "JHO LOW" AND NG CHONG HWA, A/K/A "ROGER NG" (E.D.N.Y. 2018)
UNITED STATES V. TIM LEISSNER (E.D.N.Y. 2018)

NATURE OF THE BUSINESS

Low Taek Jho ("Low"), a Malaysian national, was an advisor on Terengganu Investment Authority ("TIA"), the predecessor entity to 1Malaysia Development Berhad ("1MDB"), Malaysia's state-owned investment development company. Low allegedly served as an intermediary between 1MDB and foreign government officials but did not hold a formal position at 1MDB or in the Malaysian government.

Ng Chong Hwa ("Ng"), a Malaysian national, and Tim Leissner, a German national, were employees and agents of an unidentified U.S. financial institution ("Institution"), and managing directors for its various subsidiaries. Ng and Leissner were responsible for the Institution's business relationship with 1MDB.

INFLUENCE TO BE OBTAINED

According to the DOJ, from 2009 to 2014, funds raised by 1MDB to fund projects were misappropriated, including funds raised through three bond transactions ("Project Magnolia," "Project Maximus," and "Project Catalyze") underwritten by the institution.

The bond transactions raised approximately $6.5 billion for 1MDB and $600 million in fees and revenue for the institution. Of the funds raised, the DOJ alleges that more than $2.7 billion was misappropriated by Low, Ng, Leissner, and others who paid bribes and kickbacks to government officials to obtain and retain business for the benefit of the institution, and retained funds for their personal benefit. Low, Ng, and Leissner laundered the proceeds of the scheme through the U.S. financial system by purchasing, among other things, luxury residential real estate and artwork, and producing Hollywood films.

Ng, Leissner, and others at the institution used Low's relationships with high-ranking government officials in Malaysia and the United Arab Emirates to obtain and retain business. Ng continued to work with Low after attempts to make Low a formal client of the institution failed due to concerns about Low's source of wealth. Ng, Leissner, and others circumvented internal accounting protocols at the institution in connection with 1MDB, and concealed Low's involvement from the institution's compliance function and legal department.

ENFORCEMENT

On August 28, 2018, the DOJ filed a two-count criminal information charging Leissner with conspiracy to commit money laundering and conspiracy to violate the FCPA by paying bribes to foreign government officials and circumventing internal accounting controls. In a November 1, 2018 press release, the DOJ announced that Leissner pleaded guilty to both counts and was ordered to forfeit $43.7 million. Leissner's sentencing is scheduled for January 17, 2019.

On October 3, 2018, the DOJ filed a three-count criminal indictment charging Low and Ng with conspiracy to commit money laundering and conspiracy to violate the FCPA by paying bribes to foreign government officials. Ng was also charged with conspiracy to violate the FCPA by circumventing internal accounting controls. On November 1, 2018, Ng was arrested in Malaysia pursuant to a provisional arrest warrant issued at the request of the United States. Low remains a fugitive.

KEY FACTS

Citation. *United States v. Jho & Hwa*, No. 1:18-cr-00538 (E.D. N.Y. 2018); *United States v. Leissner*, No. 1:18-cr-00439 (E.D.N.Y. 2018).

Date Filed. October 3, 2018 (Low; Ng); August 28, 2018 (Leissner).

Country. Malaysia; United Arab Emirates.

Date of Conduct. 2009 – 2014.

Amount of the Value. Approximately $2.7 billion.

Amount of Business Related to the Payment. Not stated.

Intermediary. **Advisor**.

Foreign Official. Malaysian and Emirati government officials.

FCPA Statutory Provision.

- **Low**. Conspiracy (Anti-Bribery).
- **Ng**. Conspiracy (Anti-Bribery; Internal Controls).
- **Leissner**. Conspiracy (Anti-Bribery; Internal Controls).

Other Statutory Provision.

- **Low**. Conspiracy (Money Laundering).
- **Ng**. Conspiracy (Money Laundering).
- **Leissner**. Conspiracy (Money Laundering).

Disposition.

- **Low**. Fugitive.
- **Ng**. Pending.
- **Leissner**. Plea Agreement.

Defendant Jurisdictional Basis. Agent of Domestic Concern (Ng; Leissner); Conspirator (Low)

Defendant's Citizenship. Malaysia (Low; Ng); Germany (Leissner).

Total Sanction.

- **Low**. Pending.
- **Ng**. Pending.
- **Leissner**. Pending.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

204. IN RE INSURANCE CORPORATION OF BARBADOS LIMITED (2018) UNITED STATES V. DONVILLE INNISS ET AL. (E.D.N.Y. 2018)

NATURE OF THE BUSINESS

The Insurance Corporation of Barbados ("ICBL") was an insurance company incorporated in Barbados. Donville Inniss, a U.S. permanent resident, was a member of the Barbadian Parliament and the Minister of Industry, International Business, Commerce, and Small Business Development of Barbados.

INFLUENCE TO BE OBTAINED

According to the DOJ, between August 2015 and April 2016, ICBL made improper payments to a Barbadian government official to obtain insurance contracts. ICBL earned approximately $93,940 in net profits from the alleged scheme.

The Barbadian government official was identified by the DOJ as Donville Inniss, who allegedly received the bribes from ICBL and used his influence to direct the contracts to ICBL. Inniss allegedly hid the bribes by directing them to the account of a U.S.-based dental company owned by a friend.

ENFORCEMENT

On August 23, 2018, the DOJ issued a declination letter to ICBL, pursuant to which it agreed to disgorge $93,940.19 in profits from the scheme. The DOJ noted that high-level corporate officers were involved in the alleged scheme, but it decided to close its investigation based on ICBL's timely voluntary self-disclosure, comprehensive investigation, cooperation, remedial efforts, and compliance program improvement. This represents the first declination with disgorgement after the formalization of the FCPA Pilot program in the DOJ Attorneys' Manual.

In a related matter, on March 15, 2018, charges were filed against Inniss in the Eastern District of New York for one count of conspiracy to launder money and two counts of money laundering. On August 23, 2018, two additional defendants were added to the matter, but their names have been redacted. The case is currently pending.

KEY FACTS

Citation. *In re Insurance Corporation of Barbados Limited* (2018); *United States v. Inniss et al.*, No. 1:18-cr-00134 (EDNY 2018).

Date Filed. August 23, 2018 (ICBL, Inniss).

Country. Barbados.

Date of Conduct. 2015 – 2016.

Amount of the Value. Approximately $36,000.

Amount of Business Related to the Payment. Net profits of approximately $93,940.

Intermediary. Intermediary.

Foreign official. Donville Inniss, former member of the Parliament of Barbados and Minister of Industry, International Business, Commerce, and Small Business Development.

FCPA Statutory Provision. None stated.

Other Statutory Provision.

- **Inniss**. Conspiracy (Money Laundering); Money Laundering.
- **Unnamed Defendants**. Conspiracy (Money Laundering); Money Laundering.

Disposition. Declination with disgorgement (ICBL); Pending (Inniss).

Defendant Jurisdictional Basis. Domestic Concern (Inniss); Not stated (ICBL).

Defendant's Citizenship. United States (ICBL); Barbados (Inniss).

Total Sanction. $93,940.19 (ICBL); Pending (Inniss).

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $93,940.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

203. IN RE LEGG MASON, INC. (2018)

NATURE OF THE BUSINESS

Legg Mason was a Maryland-based investment firm and its stock traded on the New York Stock Exchange. Permal Group Ltd. is a U.S.-based investment management firm that was a majority- and then wholly-owned subsidiary of Legg Mason.

INFLUENCE TO BE OBTAINED

According to the DOJ, between 2005 and 2012, Permal entered into a corrupt arrangement to make payments to various Libyan government officials, through a Libyan intermediary, to obtain investments from the Central Bank of Libya, the Libyan Arab Foreign Bank, the Economic and Social Development Fund, and the Libyan Investment Authority, all of which are Libyan state-owned enterprises. The DOJ alleged that Permal worked with Société Générale S.A., a French financial institution, to sell structured notes to the Libyan State Agencies worth approximately $950 million. Société Générale acted as the structuring bank and issued the structured notes. Société Générale then agreed to place some portion of the notes it sold to the Libyan State Agencies into funds managed by Permal, on which it collected commissions and fees.

To obtain the business of the Libyan State Agencies, Permal and Société Générale entered into an agreement with an unnamed Libyan Intermediatary, who is a dual citizen of Libya and Italy. Permal and Société Générale paid the Libyan Intermediary through a Panamanian shell company for "purported 'introduction' services." However, Permal and Société Générale were aware that, in fact, the Libyan Intermediary was using these funds to pay bribes to Libyan government officials. In addition to payments, the Libyan Intermediary allegedly used threats and intimidation tactics to "cook" Libyan government officials — that is, to convince them to invest in Société Générale's and Permal's products.

ENFORCEMENT

On June 4, 2018, Legg Mason entered into a non-prosecution agreement with the DOJ, pursuant to which Legg Mason agreed to pay $32,625,000 in monetary penalty and $31,617,891 in disgorgement, for a total sanction of $64,242.891. Legg Mason will receive credit from any disgorgement it pays to other agencies. It did not receive voluntary disclosure credit, but did receive full cooperation and remediation credit, reflected in an aggregate discount of 25% from the sentencing guidelines.

On August 27, 2018, the SEC issued a cease-and-desist order to Legg Mason in which it agreed to pay $34,502,494 in disgorgement and prejudgment interest, which will be credited towards the DOJ's disgorgement amount.

See DOJ Digest Number B-202
See SEC Digest Number D-181.

KEY FACTS

Citation. *In re Legg Mason* (2018).

Date Filed. June 4, 2018.

Country. Libya.

Date of Conduct. 2005 – 2012.

Amount of the Value. Approximately $26.25 million.

Amount of Business Related to the Payment. Net revenue of approximately $31.6 million.

Intermediary. Agent; Shell Company.

Foreign official. Unnamed executives of the Central Bank of Libya, the Libyan Arab Foreign Bank, the Economic and Social Development Fund, and the Libyan Investment Authority.

FCPA Statutory Provision. Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. United States.

Total Sanction. $64,242,891.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In the Matter of Legg Mason, Inc.*, *United States v. Société Générale S.A.*, *United States v. SGA Société Générale Acceptance, N.V.*

Total Combined Sanction. $67,127,494.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

202. UNITED STATES V. SOCIÉTÉ GÉNÉRALE S.A. (E.D.N.Y. 2018)
UNITED STATES V. SGA SOCIÉTÉ GÉNÉRALE ACCEPTANCE, N.V. (E.D.N.Y. 2018)

NATURE OF THE BUSINESS

Société Générale S.A., is a French financial institution that provides financial services globally. Société Générale Corporate and Investment Bank ("SG CIB") is a division of Société Générale that provides investment-banking services. SGA Société Générale Acceptance, N.V. ("SGA") is incorporated in Curaçao and is a subsidiary of Société Générale that issues structured notes.

INFLUENCE TO BE OBTAINED

According to the DOJ, between 2004 and 2009, Société Générale paid bribes through a Libyan "broker" in connection with fourteen investments made by Libyan state-owned financial institutions. The DOJ alleged that Société Générale sold over a dozen investments and one restructuring to the Libyan state institutions worth a total of approximately $3.66 billion, from which it earned profits of approximately $523 million. For certain investments, Société Générale allegedly utilized SGA as the issuing bank while serving as the structuring bank to receive commissions from the sale of structured notes to the Libyan state-owned institutions.

Société Générale allegedly made payments to the Libyan broker worth approximately one to 3.5 percent of the investment value, which it categorized as payments for introduction services. According to the DOJ, the Libyan broker would then provide improper payments and benefits to Libyan government officials in exchange for the investments with Société Générale and its affiliates.

ENFORCEMENT

On June 4 2018, the DOJ announced that Société Générale had entered into a deferred prosecution agreement to resolve both the FCPA conduct and unrelated allegations involving LIBOR. As part of the DPA, Société Générale agreed to pay a criminal penalty of approximately $585 million to resolve the FCPA charges. On the same day, SGA entered into a plea agreement to resolve the one-count charge against it of conspiracy to violate the anti-bribery provisions of the FCPA. Pursuant to the agreement, SGA will pay $500,000 in criminal penalties.

In related proceedings, Société Générale reached a settlement with the Parquet National Financier (PNF) in Paris relating to the alleged Libya corruption scheme, and the DOJ agreed to credit payments made pursuant to this agreement.

See DOJ Digest Number B-203
See SEC Digest Number D-181.

KEY FACTS

Citation. *United States v. Société Générale S.A.*, No18-CR-00253 (E.D.N.Y. 2018); *United States v. SGA Société Générale Acceptance, N.V.*, No. 18-CR-274 (E.D.N.Y. 2018).

Date Filed. June 4, 2018.

Country. Libya.

Date of Conduct. 2004 – 2009.

Amount of the value. Not stated.

Amount of business related to the payment. Approximately $3.66 billion in structured notes, worth approximately $523 million in profits.

Intermediary. Broker; Subsidiary.

Foreign official. Unnamed Libyan government officials.

FCPA Statutory Provision.

- **Société Générale**. Conspiracy (Anti-Bribery).
- **SGA**. Conspiracy (Anti-Bribery).

Other Statutory Provision.

- **Société Générale**. Conspiracy (Misstatements Affecting Commodity Prices).
- **SGA**. None.

Disposition. Deferred Prosecution Agreement (Société Générale); Plea Agreement (SGA).

Defendant Jurisdictional Basis. Territorial Jurisdiction; Conspirator.

Defendant's Citizenship. France (Société Générale); Curaçao (SGA).

Total Sanction. $585,052,888 (Société Générale); $500,000 (SGA).[43]

Compliance Monitor/Reporting Requirements.

[43] Excludes $275 million in criminal monetary penalties associated with the unrelated LIBOR allegations.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

201. IN RE CREDIT SUISSE (HONG KONG) LIMITED (2018)

NATURE OF THE BUSINESS

Credit Suisse (Hong Kong) Limited ("CSHK") is the Hong Kong-based wholly owned subsidiary and agent of Credit Suisse Group AG, a Swiss banking corporation that issues publicly traded securities on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to the DOJ, throughout the relevant period CSHK hired and promoted individuals related to or referred to CSHK by clients and potential clients, including government officials and state-owned enterprises. CSHK would allegedly employ these individuals solely on the basis of their relationships with the clients or potential clients, with the intent of obtaining or retaining business with them. Some individuals were identified as a "must hire" even though they were less qualified than other candidates. After they were hired, the related employees were promoted and offered benefits even though their performance was below standard.

The DOJ alleged that CSHK's hiring practices were linked to attainment of specific deals, including over $46 million in revenue from banking mandates from Chinese SOEs.

ENFORCEMENT

On May 24, 2018, the DOJ entered into a three-year non-prosecution agreement with CSHK, pursuant to which it agreed to pay a monetary penalty of $47,029,916. CSHK received a fifteen percent discount off the sentencing guidelines, as it did not receive voluntary disclosure credit and only received partial credit for its cooperation and remediation.

On July 5, 2018, the SEC issued a cease-and-desist order to CSHK's parent company, Credit Suisse Group AG in which it agreed to pay $29,823,804 in disgorgement and prejudgment interest. The SEC did not impose a civil penalty in recognition of the criminal penalty imposed on CSHK.

See SEC Digest Number D-180.

KEY FACTS

Citation. *In re Credit Suisse* (Hong Kong) Limited (2018).

Date Filed. May 24, 2018.

Country. China.

Date of Conduct. 2007 – 2013.

Amount of the Value. Not stated.

Amount of Business Related to the Payment. $46 million in revenue.

Intermediary. None.

Foreign official. Unnamed executives of state-owned enterprises and government officials in China.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. Hong Kong.

Total Sanction. $47,029,916.

Compliance Monitor/Reporting Requirements. Three-year reporting requirement.

Related Enforcement Actions. *In the Matter of Credit Suisse Group AG*, Admin. Proc. File No. 3-18571 (July 5, 2018).

Total Combined Sanction. $76,853,720.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

200. UNITED STATES V. PANASONIC AVIONICS CORPORATION (D.D.C. 2018)

NATURE OF THE BUSINESS

Panasonic Corporation, a Japanese corporation, is a multinational corporation that manufactures and sells electronics in the consumer, housing, and automotive industries. Until 2013, the company maintained stock that was registered with the SEC under Section 12(b) of the Exchange Act and traded on the New York Stock Exchange. From May 1, 2015 to June 20, 2016, Panasonic's securities were registered with the Commission under Section 12(g) of the Exchange Act.

Panasonic's wholly owned subsidiary, Panasonic Avionics Corporation ("PAC"), is a Delaware corporation that designs, engineers, manufactures, sells, and installs in-flight entertainment systems and global communication services to airlines. PAC's books and records were consolidated with Panasonic's during the relevant time.

INFLUENCE TO BE OBTAINED

According to the DOJ, throughout the relevant period PAC improperly recorded payments to an executive ("Foreign Official") of a state-owned airline in the Middle East ("Middle East Airline"). The DOJ alleged that during the course of negotiating a lucrative contract with the Middle East Airline, PAC executives also were negotiating a consulting position at PAC for the Foreign Official. Once the Foreign Official was installed in the consulting position with PAC, he received $875,000 for "little work," but PAC recorded the payments as legitimate consulting expenses.

The DOJ also alleged that PAC hired a consultant ("Domestic Airline Consultant") who was already working as a consultant for a domestic airline ("Domestic Airline"). The Domestic Airline Consultant then allegedly used his position to pass confidential, non-public business information about the Domestic Airline to PAC. PAC allegedly paid the Domestic Airline Consultant $825,000, which PAC improperly recorded in its books and records as legitimate consulting expenses, even though the services lacked sufficient substantiation.

More broadly, the DOJ also alleged that PAC made payments to sales agents in Asia who did not pass PAC's compliance due diligence through another sales agent as a means of disguising the payments. Further, PAC allegedly used funds allocated to the Office of the President Budget to pay its sales agents, but the fund was to subject to oversight or adequate controls to ensure the funds were used for their intended purposes.

ENFORCEMENT

On April 30, 2018, the DOJ entered into a deferred prosecution agreement with PAC for causing Panasonic to violate the FCPA's books-and-records provision. According to the deferred prosecution agreement, PAC agreed to pay a monetary penalty in the amount of $137,403,812 and hire an independent compliance monitor.

On the same day, the SEC issued a cease-and-desist order against Panasonic, pursuant to which it paid $143,199,019 in disgorgement and pre-judgment interest to settle charges against it for violations of the FCPA's anti-bribery, books-and-records, and internal controls provisions.

See SEC Digest Number D-178.

KEY FACTS

Citation. *United States v. Panasonic Avionics Corp.*, No. 1:18-cr-00118 (D.D.C. 2018).

Date Filed. April 30, 2018.

Country. Not stated.

Date of Conduct. 2007 – 2013.

Amount of the Value. Not stated.

Amount of Business Related to the Payment. Not stated.

Intermediary. Sales agent.

Foreign official. Unnamed executive of state-owned airline in unspecified Middle East country.

FCPA Statutory Provision. Books-and-Records.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. $137,403,812.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *In the Matter of Panasonic Corporation*, Admin. Proc. File No. 3-18459 (Apr. 30, 2018); *In the Matter of Paul. A. Margis*, Admin. Proc. File No. 3-18938 (Dec. 18, 2018); *In the Matter of Takeshi "Tyrone" Uonaga*, Admin. Proc. File No. 3-18939 (Dec. 18, 2018).

Total Combined Sanction. $280,602,831.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

199. UNITED STATES V. FRANK ROBERTO CHATBURN RIPALDA & JOSE LARREA (S.D. FLA. 2018)
UNITED STATES V. ARTURO ESCOBAR DOMINGUEZ (S.D. FLA. 2018)
UNITED STATES V. MARCELO REYES LOPEZ (S.D. FLA. 2017)

NATURE OF THE BUSINESS

Frank Roberto Chatburn Ripalda is a dual U.S. and Ecuadorian citizen. Jose Larrea, a U.S. citizen, was a U.S.-based financial advisor.

Arturo Escobar Dominguez, an Ecuadorian citizen, was a former business management coordinator at Empresa Pública de Hidrocarburos del Ecuador ("PetroEcuador"), Ecuador's state-owned and state-controlled energy company.

Marcelo Reyes Lopez, an Ecuadorian citizen, was a former in-house attorney and general coordinator of contracts for refining management at PetroEcuador.

Galileo was an Ecuadorian company that provided services in the oil and gas industry.

INFLUENCE TO BE OBTAINED

According to the DOJ, Ripalda and his co-conspirators made corrupt payments to PetroEcuador officials to retain and obtain contracts for Galileo. Additionally, the DOJ alleges that Ripalda and Larrea were involved in a money laundering scheme to conceal the corrupt payments.

Ripalda allegedly set up a Panamanian shell company, Denfield Investments, to funnel bribe payments, and helped two PetroEcuador officials set up offshore shell corporations and Swiss bank accounts to conceal payments. Larrea wired more than $1 million from his own U.S.-based bank account to several other U.S.-based bank accounts to conceal payments. Larrea also created false and back-dated documents on behalf of Galileo.

The DOJ alleges that Dominguez and Lopez laundered the proceeds from bribe payments.

ENFORCEMENT

On April 20, 2018, the DOJ charged Ripalda and Larrea with one count of conspiracy to violate the FCPA, one count of violating the FCPA, one count of conspiracy to commit money laundering, and two counts of money laundering.

On September 11, 2018, Larrea pleaded guilty to one count of conspiracy to commit money laundering and agreed to forfeit $53,781. On November 27, 2018, Larrea was sentenced to twenty-seven months in prison and two years of supervised release. Ripalda pleaded not guilty, and his trial is set for February 19, 2019.

On February 20, 2018, the DOJ charged Dominguez with one count of conspiracy to commit money laundering. On March 28, 2018, Dominguez pleaded guilty. On June 6, 2018, Dominguez was sentenced to 48 months in prison and two years of supervised release.

On October 24, 2017, the DOJ charged Lopez with one count of conspiracy to commit money laundering. On April 10, 2018, Lopez pleaded guilty. On July 23, 2018, Lopez was sentenced to 53 months in prison and three years of supervised release, and fined $30,000.

KEY FACTS

Citation. *United States v. Ripalda et al.*, No. 1:18-cr-20312 (S.D. Fla. 2018); *United States v. Dominguez*, No. 1:18-cr-20108 (S.D. Fla. 2018); *United States v. Lopez*, No. 1:17-cr-20747 (S.D. Fla. 2017).

Date Filed. April 20, 2018 (Ripalda; Larrea); February 20, 2018 (Dominguez); October 24, 2017 (Lopez).

Country. Ecuador.

Date of Conduct. 2012 – 2018.

Amount of the Value. $3,270,980.

Amount of Business Related to the Payment. Approximately $27.8 million.

Intermediary. Shell Company.

Foreign Official. Government officials working for PetroEcuador.

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Anti-Bribery (Ripalda).

Other Statutory Provision.

- **Ripalda**. Conspiracy (Money Laundering); Money Laundering.
- **Larrea**. Conspiracy (Money Laundering).
- **Dominguez**. Conspiracy (Money Laundering).
- **Lopez**. Conspiracy (Money Laundering).

Disposition.

- **Ripalda**. Pending.
- **Larrea**. Plea Agreement.
- **Dominguez**. Plea Agreement.
- **Lopez**. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States (Ripalda, Larrea); Ecuador (Ripalda, Dominguez, Lopez).

Total Sanction.

- **Ripalda**. Pending.
- **Larrea**. 27-Months Imprisonment; $53,780.70 Criminal Forfeiture.
- **Dominguez**. 48-Months Imprisonment.
- **Lopez**. 53-Months Imprisonment; $30,000 **Criminal Fine**.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

198. UNITED STATES V. LAWRENCE W. PARKER, JR. (S.D. FLA. 2017)
UNITED STATES V. EGBERT YVAN FERDINAND KOOLMAN (S.D. FLA. 2018)

NATURE OF THE BUSINESS

Lawrence W. Parker, Jr., a U.S. citizen residing in Miami, Florida, was an owner or controller of several phone companies incorporated in Florida.

Egbert Yvan Ferdinand Koolman, a Dutch citizen residing in Miami, Florida, was an official of an instrumentality of the Aruban government, Servicio de Telecommunicacion di Aruba N.V. ("Setar"), where he worked as a product manager.

INFLUENCE TO BE OBTAINED

According to the DOJ, from 2005 to 2016, Koolman used his position at Setar to direct mobile phone and accessory contracts and other business to individuals and companies, including Parker's phone companies, in exchange for improper payments. Allegedly, Koolman received bribes from the U.S. and other countries, which were disguised as commissions.

ENFORCEMENT

On December 20, 2017, the DOJ filed a one-count information against Parker for conspiracy to violate the FCPA. A few days later, Parker pleaded guilty to the charge. In April 2018, Parker was sentenced to 35 months in prison and ordered to pay $701,750 in restitution.

On April 10, 2018, the DOJ filed a single-count information against Koolman for conspiracy to commit money laundering in furtherance of an FCPA violation. On April 13, 2018, Koolman pleaded guilty to the charge. He was sentenced in June 2018 to 36 months in prison, followed by three-years supervised release and payment of approximately $1.3 million in restitution.

KEY FACTS

Citation. *United States v. Parker*, No. 17-cr-20914 (S.D. Fla. 2017); *United States v. Koolman*, No. 1:118-cr-20276 (S.D. Fla. 2018).

Date Filed. December 20, 2017 (Parker); April 10, 2018 (Koolman).

Country. Aruba.

Date of Conduct. 2005 – 2016.

Amount of the Value. Not stated.

Amount of Business Related to the Payment. Not stated.

Intermediary. None.

Foreign Official. Egbert Yvan Ferdinand Koolman, product manager at Setar, an instrumentality of the Aruban government.

FCPA Statutory Provision.

- **Parker**. Conspiracy (Anti-Bribery).
- **Koolman**. None.

Other Statutory Provision. Conspiracy (Travel Act; Money Laundering); Travel Act.

- **Parker**. None.
- **Koolman**. Conspiracy (Money Laundering).

Disposition.

- **Parker**. Plea Agreement.
- **Koolman**. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern; Territorial Jurisdiction.

Defendant's Citizenship. United States (Parker); Netherlands (Koolman).

Total Sanction.

- **Parker**. 35-months imprisonment, $701,750 restitution.
- **Koolman**. 36-months imprisonment, $1,308,500 restitution.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

197. UNITED STATES V. TRANSPORT LOGISTICS INTERNATIONAL, INC. (D. MD. 2018) UNITED STATES V. MARK T. LAMBERT (D. MD. 2018)

NATURE OF THE BUSINESS

Transport Logistics International, Inc. ("TLI") is a Maryland-based provider of logistical support services for the transportation of nuclear materials to customers in the United States and abroad.

Mark Lambert, a United States citizen and Maryland resident, owned TLI from 1998 to September 2016 and was also president of that company from January 2010 to September 2016.

INFLUENCE TO BE OBTAINED

According to the DOJ, from 2004 to at least 2014, TLI conspired to pay approximately $1.7 million to offshore bank accounts to benefit Vadim Mikerin, a Russian official at JSC Techsnabexport ("TENEX"). TENEX is a subsidiary of Russia's State Atomic Energy Corporation and supplies uranium and uranium enrichment services to nuclear power companies around the world, on behalf of the Russian government. The DOJ alleges that Lambert and his co-conspirators at TLI caused fake invoices to be prepared, purportedly from TENEX to the TLI, which described services that were never provided. Subsequently, Lambert and his co-conspirators allegedly wired payments for those services to offshore bank accounts in Latvia, Cyprus, and Switzerland associated with shell companies connected to Mikerin. In total, Lambert and his co-conspirators made approximately $1.18 million in payments to the offshore accounts between 2009 and 2014.

ENFORCEMENT

On January 10, 2018, the DOJ announced that it entered a deferred prosecution agreement with TLI. Under the agreement, TLI agreed to pay a $2,000,000 criminal penalty as a result of alleged violations of the FCPA's anti-bribery provisions.

On the same day, the DOJ unsealed an eleven-count indictment against Lambert, alleging one count of conspiracy to violate the FCPA and to commit wire fraud, seven counts of violating the FCPA, two counts of wire fraud, and one count of international promotion money laundering. The case remains ongoing.

KEY FACTS

Citation. *United States v. Transport Logistics International, Inc.*, No. 8:18-cr-00011 (D. Md. 2018); *United States v. Lambert,* No. 8:18-cr-00012-TDC (D. Md. 2018).

Date Filed. January 10, 2018.

Country. Russia.

Date of Conduct. 2004 – 2014.

Amount of the Value. $1,180,000

Amount of Business Related to the Payment. Not stated.

Intermediary. Shell company.

Foreign Official. Vadim Mikerin, official with a Russian-owned uranium supplier.

FCPA Statutory Provision. Anti-Bribery (TLI); Conspiracy (Anti-Bribery) (Lambert).

Other Statutory Provision.

- **TLI**. None.
- **Lambert**. Wire fraud; money laundering.

Disposition. Deferred Prosecution Agreement (TLI); Pending (Lambert).

Defendant Jurisdictional Basis. Domestic Concern (TLI); Domestic Concern (Lambert).

Defendant's Citizenship. United States (TLI); United States (Lambert).

Total Sanction. $2,000,000 (TLI).

Compliance Monitor/Reporting Requirements. Reporting Requirement.

Related Enforcement Actions. None.

Total Combined Sanction. $2,000,000.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

196. UNITED STATES V. KEPPEL OFFSHORE & MARINE LTD. (E.D.N.Y. 2017)
UNITED STATES V. KEPPEL OFFSHORE & MARINE USA, INC. (E.D.N.Y. 2017)
UNITED STATES V. JEFFREY CHOW (E.D.N.Y. 2017)

NATURE OF THE BUSINESS

Keppel Offshore & Marine Ltd. ("KOM"), a Singapore corporation, operated shipyards in around the world, including in Asia and Europe, and built mobile offshore drilling rigs and repaired, converted, and upgraded shipping vessels. Keppel Offshore & Marine, USA Inc. ("KOM USA"), KOM's wholly owned Delaware-incorporated subsidiary, operated in Houston, Texas. During the relevant period of time, KOM USA was a "domestic concern" under the FCPA. Jeffery Chow, a United States citizen, held various positions in KOM's legal department including General Manager and Director.

INFLUENCE TO BE OBTAINED

According to the DOJ, from 2001 and 2014, KOM and KOM USA executives participated in a scheme to make approximately $55 million in improper payments to officials in Brazil at the state-controlled oil company, Petrobras, and other officials and political parties to obtain or retain business connected to thirteen projects. To disguise the illegal payments, KOM and KOM USA entered into agreements with a consultant and made payments to shell companies owned by the consultant, which he would then allegedly pass on to the Brazilian officials.

ENFORCEMENT

On December 22, 2017, the DOJ entered into a deferred prosecution agreement with KOM for conspiracy to violate the FCPA's anti-bribery provisions. Pursuant to the deferred prosecution agreement, KOM agreed to pay a total criminal monetary penalty in the amount of $422,216,980, of which $105,554,245 will be paid to the United States. Brazil will receive $211,108,490, or 50% of the total criminal penalty, and Singapore will receive the remaining $105,554,245 – marking the first coordinated FCPA enforcement action with Singapore.

On the same day, KOM USA pleaded guilty to one count of conspiracy to violate the FCPA's anti-bribery provisions, and agreed to pay a criminal penalty of $4,725,000, which KOM will pay as part of the total criminal penalty.

On the same day, the DOJ also unsealed charges against Jeffery Chow, KOM's former General Counsel. Chow pleaded guilty to one count of conspiracy to violate the FCPA on August 29, 2017. Sentencing is currently scheduled for May 2, 2018.

KEY FACTS

Citation: *United States v. Keppel Offshore & Marine Ltd.*, No. 17-cr-697 (E.D.N.Y. 2017); *United States v. Keppel Offshore & Marine USA, Inc.*, No. 17-cr-698 (E.D.N.Y. 2017); *United States v. Jeffery Chow*, No 1:17-cr-00466 (E.D.N.Y. 2017).

Date Filed: August 29, 2017; December 22, 2017 (KOM, KOM USA).

Date Unsealed: December 22, 2017 (Chow).

Country: **Brazil**.

Date of Conduct: **2001 – 2014**.

Amount of the value: $55,000,000.

Amount of business related to the payment: Approximately $351,000,000 in profits.

Intermediary: **Consultant**.

Foreign official: Unnamed government officials in Brazil, including at Brazil's state-controlled oil company, Petrobras, and the Workers' Party.

FCPA Statutory Provision: Conspiracy (Anti-Bribery).

Other Statutory Provision: None.

Disposition: Deferred Prosecution Agreement (KOM); Plea Agreement (KOM USA); Plea Agreement (Chow).

Defendant Jurisdictional Basis: Domestic Concern (KOM USA, Chow)).

Defendant's Citizenship: Singapore (KOM); United States (KOM USA, Chow).

Total Sanction: $422,216,980 (Global Total);[44] $105,554,245 (U.S. Authorities).

Compliance Monitor/Reporting Requirements: Three-Year Reporting Requirements.

Related Enforcement Actions: None.

[44] $422,216,908 represents the Global Resolution against KOM. U.S. authorities will receive $105,554,245, Brazilian enforcement authorities will receive $211,108,490, and Singapore will receive the remaining $105,554,245.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

195. UNITED STATES V. COLIN STEVEN (S.D.N.Y. 2017)

NATURE OF THE BUSINESS

Embraer, S.A. is a manufacturer and exporter of mid-sized commercial jets headquartered in Brazil with operations in Fort Lauderdale, Florida. During the relevant period of time, Embraer maintained a class of common shares that were registered with the SEC and were traded in the form of American Depository Receipts listed on the New York Stock Exchange. Colin Steven, a U.K. citizen, was the vice president of sales & marketing in Embraer's Executive Jets Division.

INFLUENCE TO BE OBTAINED

According to the Information filed by the DOJ, from approximately 2009 to 2011, Steven participated in a scheme to bribe a high-level Saudi Arabian government official ("Saudi Arabian Official") to obtain a contract for the sale of $93 million worth of aircraft for Embraer to the state-owned national oil company of Saudi Arabia.

In or about 2006, Stevens met with the Saudi Arabian Official, who indicated that he could give the contract for the aircraft to Embraer and improve the terms in exchange for payment. Stevens allegedly arranged to pay the bribe to a South African company owned by some of his friends and with no experience in the aircraft industry. The South African intermediary then passed most of the money on to the Saudi Arabian Official, as well as paying about $129,000 to Steven personally as a kickback.

ENFORCEMENT

On December 21, 2017, the DOJ filed an Information against Steven, charging him with one count of conspiracy to violate the FCPA's anti-bribery provision, one count of violating the FCPA's anti-bribery provision, two counts of wire fraud, two counts of money laundering; and one count of making false statements to the government pursuant to an investigation. On the same date, Steven pled guilty to all of the counts in the Information. As of December 2017, sentencing has not been scheduled.

In a related action, on October 24, 2016, the DOJ and SEC announced that they had resolved FCPA enforcement actions against Embraer in which it agreed to pay a criminal monetary penalty of $107,285,090 and a civil monetary penalty of $98,248,291.

See DOJ Digest Number B-174.
See SEC Digest Number D-162.

KEY FACTS

Citation: *United States v. Steven*, No. 1:17-cr-00788 (S.D.N.Y. 2017).

Date Filed: December 21, 2017.

Country: Saudi Arabia.

Date of Conduct: 2009 – 2011.

Amount of the Value: Approximately $1.5 million.

Amount of Business Related to the Payment: $93 million contract.

Intermediary: Third-party intermediary.

Foreign Official: Unnamed, high-level Saudi Arabian government official.

FCPA Statutory Provision: Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision. Wire Fraud (18 U.S.C. Section 1343);Money Laundering (18 U.S.C. Section 1956(a)(2)(A)); False Statement to Government (18 U.S.C. Section 1001)).

Disposition: Plea Agreement.

Defendant Jurisdictional Basis: Agent of Issuer.

Defendant's Citizenship: United Kingdom.

Total Sanction: Pending.

Related Enforcement Actions:
United States v. Embraer, S.A., No. 0:16-cr-60294 (S.D. Fla. 2016); *SEC v. Embraer, S.A.*, No. 0:16-cv-062501 (S.D. Fla. 2016).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

194. UNITED STATES V. SBM OFFSHORE N.V. (S.D. TEX. 2017)
UNITED STATES V. SBM OFFSHORE USA, INC. (S.D. TEX. 2017)

NATURE OF THE BUSINESS

SBM Offshore N.V. ("SBM") is a Netherlands-based company specializing in the manufacture and design of offshore oil drilling equipment. SBM Offshore USA, Inc. ("SBM USA") is a wholly owned subsidiary of SBM based in the United States.

INFLUENCE TO BE OBTAINED

According to the DOJ, from approximately 1996 until 2012, SBM and its co-conspirators engaged in a series of bribery schemes involving officials from state or state-affiliated energy or oil companies in Brazil, Angola, Equatorial Guinea, Kazakhstan, and Iraq.

In Brazil, from 1996 to 2012, SBM and SBM USA paid bribes to at least three officials at Petrobras, a Brazilian state energy company. In Angola, from 1997 to 2012, SBM paid bribes to at least nine officials at Sonangol, an Angolan state oil company, and Sonangol USA Co., a wholly owned subsidiary of Sonangol. In Equatorial Guinea, from 2008 to 2012, SBM paid bribes to at least nine officials at Equatorial Guinea's Ministry of Mines, Industry and Energy and at GEPetrol, the country's state oil company. In Kazakhstan, from 2003 to 2009, SBM paid bribes to at least one official at KazMunayGas, the country's state oil company, and to at least one official at an unnamed subsidiary of an Italian energy company acting in an official capacity for or on behalf of KazMunayGas. In Iraq, from 2009 to 2012, SBM paid bribes to at least two officials at South Oil Company, an Iraqi state oil company.

In general, SBM and its co-conspirators engaged in bribery by paying "commissions" to a local sales agent when SBM received certain projects from the state company. A portion of these commissions went to the agent's Swiss or Monaco-based bank account and was then wired to the foreign officials at the state company. In certain cases, SBM also directly made payments to foreign officials or provided foreign officials with other things of value or benefits. In addition, SBM obtained confidential information from certain foreign officials through its sales agents that it used for business advantages.

ENFORCEMENT

On November 29, 2017, the DOJ announced that it had entered into a DPA with SBM for violations of the FCPA's anti-bribery provision. According to the DPA, SBM agreed to pay a total monetary penalty of $238 million. On the same day, the DOJ also announced that SBM USA had accepted a plea agreement for its violation of the FCPA's anti-bribery provision. As part of the plea agreement, SBM USA agreed to pay a $500,000 criminal fine and forfeit $13.2 million. In its DPA, SBM agreed to make these payments on behalf of SBM USA as part of its $238 million penalty.

See DOJ Digest Number D-192.

KEY FACTS

Citation. *United States v. SBM Offshore, N.V.*, No. 17-CR-00686 (S.D. Tex. 2017); *United States v. SBM Offshore USA, Inc.*, No. 17-CR-00685 (S.D. Tex. 2017).

Date Filed. November 29, 2017.

Country. Brazil; Angola; Equatorial Guinea; Kazakhstan; Iraq.

Date of Conduct. 1996 – 2012.

Amount of the Value. At least $180 million.

Amount of Business Related to the Payment. At least $2.8 billion.

Intermediary. Sales Agents.

Foreign Official. Unnamed officials from Brazilian state energy company; Unnamed officials from Angolan state oil companies; Unnamed officials at an Equatorial Guinean government agency and state oil company; Unnamed official at Kazakhstani state oil company; Unnamed official at subsidiary of Italian energy company acting for or on behalf of Kazakhstani state oil company; unnamed Iraqi officials at Iraqi state oil company.

FCPA Statutory Provision.

SBM Offshore N.V. Conspiracy (Anti-Bribery).

SBM Offshore USA, Inc. Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement (SBM Offshore N.V.); Plea Agreement (SBM Offshore USA, Inc.).

Defendant Jurisdictional Basis. Conspiracy (SBM Offshore N.V.), Conspiracy (SBM Offshore USA, Inc).

Defendant's Citizenship. [Netherlands (SBM Offshore N.V.); United States (SBM Offshore USA, Inc.).

Total Sanction. $238,000,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements (SBM Offshore N.V.).

Related Enforcement Actions. *United States v. Mace*; *United States v. Zubiate*.

Related Enforcement Actions. *United States v. Mace*; *United States v. Zubiate*.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

193. UNITED STATES V. CHI PING PATRICK HO, A/K/A "PATRICK C.P. HO," AND CHEIKH GADIO (S.D.N.Y. 2017)

NATURE OF THE BUSINESS

Chi Ping Patrick Ho ("Ho", also known as Patrick C.P. Ho), of Hong Kong, China, was the head of an unnamed non-governmental organization ("Energy NGO") based in Hong Kong and Virginia which was funded by an unnamed Chinese energy conglomerate ("Energy Company"). Cheikh Gadio, of Senegal and a lawful permanent resident of the United States, was the former Minister of Foreign Affairs of Senegal and the chief executive of a Senegalese consulting firm.

INFLUENCE TO BE OBTAINED

According to the complaint, Ho participated in two schemes to bribe foreign officials in two African countries for the purpose of obtaining business advantages for the Energy Company. Gadio, who met Ho at the United Nations in New York, allegedly participated in the first scheme.

Chad

In the first alleged scheme, Ho allegedly caused the Energy Company to promise a $2 million donation to the President of Chad. The complaint alleges that this donation was in reality a bribe made to help the Energy Company secure oil rights in Chad. Gadio allegedly connected Ho with the President of Chad and delivered the pledge to the President. As compensation, Gadio allegedly received $400,000 in payments sent through a bank in New York.

Uganda

In the second alleged scheme, Ho allegedly caused the Energy Company to wire a $500,000 donation through a New York bank to the Foreign Minister of Uganda. According to the complaint, Ho had met the Foreign Minister at the UN when the Foreign Minister was serving as the President of the UN General Assembly. The $500,000 donation was, according to the complaint, actually a bribe made to help the Energy Company obtain various projects in Uganda. Ho also allegedly provided gifts and promises of future benefits to the Foreign Minister and to the President of Uganda to help the Energy Company secure other business advantages in Uganda.

ENFORCEMENT

Ho was arrested on November 20, 2017, and was found guilty by jury trial on December 5, 2018. Ho was convicted on seven counts: one count of conspiring to violate the FCPA, four counts of violating the FCPA, one count of conspiring to commit international money laundering, and one count of committing international money laundering. Ho was acquitted on an additional eighth count of money laundering.

Gadio was arrested in New York on November 17, 2017 and appeared in court on November 18, 2017. Gadio was charged with conspiracy to violate the FCPA, two counts of violating the FCPA, conspiracy to commit money laundering, and one count of money laundering. His case is currently pending.

KEY FACTS

Citation. *United States v. Ho and Gadio*, 17-MAG-8611 (S.D.N.Y. 2017).

Date Filed. November 16, 2017.

Date Unsealed. November 20, 2017.

Country. Chad; Uganda.

Date of Conduct. 2014 – 2017.

Amount of the Value. $2.5 million.

Amount of Business Related to the Payment. Not stated.

Intermediary. **Agent**.

Foreign Official. President of Chad; Foreign Minister of Uganda; President of Uganda.

FCPA Statutory Provision.

- **Chi Ping Patrick Ho**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Cheikh Gadio**. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision.

- **Chi Ping Patrick Ho**. Conspiracy (Money Laundering); Money Laundering.
- **Cheikh Gadio**. Conspiracy (Money Laundering); Money Laundering.

Disposition.

- **Chi Ping Patrick Ho**. Jury Conviction.
- **Cheikh Gadio**. Pending.

Defendant Jurisdictional Basis.

- **Ho**. Conspiracy; Domestic Concern, Territorial Jurisdiction.
- **Gadio**. Conspiracy. Domestic Concern, Territorial Jurisdiction.

Defendant's Citizenship. Not stated (Ho); Not stated (Gadio).[45]

Total Sanction.

- **Chi Ping Patrick Ho**. Pending.
- **Cheikh Gadio**. Pending.

Related Enforcement Actions. None.

[45] Cheikh Gadio was a legal permanent resident of the United States.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

192. UNITED STATES V. MACE (S.D. TEX. 2017)
UNITED STATES V. ZUBIATE (S.D. TEX. 2017)

NATURE OF THE BUSINESS

SBM Offshore N.V. ("SBM") is a Netherlands-based company specializing in the manufacture and design of offshore oil drilling equipment. SBM Offshore USA, Inc. ("SBM USA") is a wholly owned subsidiary of SBM based in the United States. Anthony Mace, a U.K. citizen, was SBM's CEO from 2008 to 2011, and a former board member of one of its wholly-owned Houston subsidiaries. Robert Zubiate, a U.S. citizen, was a former Texas and California-based sales and marketing executive at SBM USA.

INFLUENCE TO BE OBTAINED

According to the Information, beginning in around 1996, SBM, SBM USA, and various executives, employees, and sales agents entered into an agreement to pay bribes to foreign officials, including officials at Petrobras, Sonangol, and GEPetrol, the national oil companies of Brazil, Angola, and Equatorial Guinea, respectively. These payments were designed to obtain and retain business for SBM Offshore. The bribes were allegedly paid primarily through two intermediaries and shell companies controlled by the intermediaries, and the bribes continued through 2012.

ENFORCEMENT

On October 6, 2017, the DOJ filed a criminal information in the Southern District of Texas against Robert Zubiate alleging one count of conspiracy to violate the anti-bribery provisions of the FCPA. Zubiate pleaded guilty to the charge on November 6, 2017. In September 2018, Zubiate was sentenced to thirty months in prison and ordered to pay a criminal fine of $50,000.

On October 19, 2017, the DOJ filed a criminal information in the Southern District of Texas against Mace alleging one count of conspiracy to violate the anti-bribery provisions of the FCPA. On November 9, 2017, Mace entered into a plea agreement with the government. In September 2018, Mace was sentenced to thirty-six months in prison and ordered to pay a fine of $150,000.

In a related action, on November 29, 2017, the DOJ announced that it had entered into a DPA with SBM for violations of the FCPA's anti-bribery provision. According to the DPA, SBM agreed to pay a total monetary penalty of $238 million.

See DOJ Digest Number D-194.

KEY FACTS

Citation. *United States v. Mace*, No. 17-CR-00618 (S.D. Tex. 2017)*; United States v. Zubiate*, No. 17-CR-00591 (S.D. Tex. 2017).

Date Filed. October 6, 2017 (Zubiate); October 19, 2017 (Mace)

Country. Angola, Brazil, and Equatorial Guinea.

Date of Conduct. 2008 – 2011.

Amount of the Value. Not stated.

Amount of Business Related to the Payment. Not stated.

Intermediary. Unnamed intermediaries; Shell Companies Controlled by Intermediaries.

Foreign Official. Unnamed officials from Brazilian state energy company; Unnamed officials from Angolan state oil companies; Unnamed officials at an Equatorial Guinean government agency and state oil company.

FCPA Statutory Provision.

- **Mace**. Conspiracy (Anti-Bribery).
- **Zubiate**. Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition. Plea Agreement (Mace); Plea Agreement (Zubiate).

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United Kingdom (Mace); United States (Zubiate).

Total Sanction.

- **Mace**. 36 months imprisonment, $150,000 criminal fine.
- **Zubiate**. 30 months imprisonment, $50,000.

Related Enforcement Actions. *United States v. SBM Offshore*; *United States v. SBM Offshore USA, Inc.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

191. UNITED STATES V. KEITH BARNETT (S.D. OH. 2016)
UNITED STATES V. ANDREAS KOHLER (S.D. OH. 2017)
UNITED STATES V. ALOYSIUS JOHANNES JOZEF ZUURHOUT (S.D. OH. 2017)
UNITED STATES V. JAMES FINLEY (S.D. OH. 2017)
UNITED STATES V. PETROS CONTOGURIS-TROEMEL, VITALY LESHKOV, AZAT MARTIROSSIAN (S.D. OH. 2018)

NATURE OF THE BUSINESS

Rolls-Royce plc, a British multinational public holding company, is the world's second largest manufacturer of aircraft engines and also maintains major businesses in the marine, defense, aerospace, and energy sectors. Keith Barnett is a United States citizen who was an employee at Rolls-Royce's U.S.-based subsidiary, Rolls-Royce Energy Systems, Inc. ("RRESI"). Aloysius Johannes Jozef Zuurhout, a Dutch citizen, was an employee of Rolls-Royce's subsidiaries in the Netherlands, where he sold equipment, some of which had been produced by RRESI. James Finely, a British citizen, was a senior executive at Rolls-Royce who was responsible for the sales division.

Andreas Kohler, an Austrian citizen, was employed at an unnamed German company that acted as a "Technical Advisor" in the infrastructure, oil and gas, and energy sectors. Petros Contoguris is a Greek citizen who was the founder and Chief Executive Officer of a Turkey-based company, Gravitas & CIE International Ltd., which provided commercial agent and advisory services for oil and gas projects worldwide. He also served as an agent for RRESI.

Vitaly Leshkov, a Russian citizen, and Azat Martirossian, an Armenian national, were employed by an unnamed international engineering and consulting company ("Technical Advisor"), which was retained by the Asia Gas Pipeline LLP ("AGP"), a joint venture owned by the Kazahk and Chinese governments, to advise on projects, including designing bid specifications and assisting in the process of awarding bids.

INFLUENCE TO BE OBTAINED

According to the DOJ, from 1999 to 2013, the Defendants participated in a scheme to make improper payments to government officials in exchange for awarding contracts to RRESI for work with AGP.

As part of the scheme, the Rolls-Royce and RRESI employees, including Barnett, Finley, and Zuurhout, conspired with Kohler, who worked for the Technical Advisor on the AGP project, to pay bribes to foreign officials in Kazakhstan and China to secure lucrative contracts with AGP. In 2009, AGP did award RRESI with a contract to provide eleven gas turbine units, worth approximately $145 million. To disguise the illegal payments, Rolls-Royce paid commissions to Technical Advisor employees, including allegedly Leshkov and Martirossian, and to Contoguris's company, Gravitas, which they would then pass on to foreign officials. The Defendants also utilized code names, communicated by personal email accounts, and deleted incriminating documents to hide their corrupt activities.

ENFORCEMENT

On November 7, 2017, the DOJ unsealed its charges filed against Barnett, Kohler, Zuurhourt, Finley, and Contoguris in the Southern District of Ohio.

Barnett was charged with conspiracy to violate the FCPA. On December 20,

KEY FACTS

Citation. *United States v. Barnett*, No. 2:16-cr-00831 (S.D.N.Y. 2016); *United States v. Kohler*, No. 2:17-cr-00113 (S.D. Oh. 2017); *United States v. Zuurhout*, No. 2:17-cr-00122 (S.D. Oh. 2017); *United States v. Finley*, No. 2:17-cr-00160 (S.D. Oh. 2017); *United States v. Contoguris et al.*, No. 2:17-cr-00233 (S.D. Oh. 2017).

Date Filed.

- **Keith Barnett**. December 20, 2016.
- **Andreas Kohler**. June 6, 2017.
- **Aloysius Zuurhout**. June 9, 2017.
- **James Finley**. July 21, 2017.
- **Petros Contoguris**. May 24, 2018.
- **Vitaly Leshkov**. May 24, 2018.
- **Azat Martirossian**. May 24, 2018.

Date Unsealed. November 7, 2017.

Country. China, Kazakhstan.

Date of Conduct. 1999 – 2013.

Amount of the Value. $500,000.

Amount of Business Related to the Payment. Not stated.

Intermediary. Third-party consultant; Subsidiaries.

Foreign Official. Unnamed official from Middle Eastern country.

FCPA Statutory Provision.

- **Keith Barnett**. Conspiracy (Anti-Bribery).
- **Andreas Kohler**. Conspiracy (Anti-Bribery).
- **Aloysius Zuurhout**. Conspiracy (Anti-Bribery).
- **James Finley**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Petros Contoguris**. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision.

- **Keith Barnett**. None.
- **Andreas Kohler**. None.
- **Aloysius Zuurhout**. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

2016, Barnett pleaded guilty to one count of conspiracy to violate the FCPA. Sentencing is scheduled for early 2018.

Kohler was charged with conspiracy to violate the FCPA. On June 6, 2017, Kohler pleaded guilty to one count of conspiracy to violate the FCPA. Sentencing is scheduled for early 2018.

Zuurhout was charged with conspiracy to violate the FCPA. On June 13, 2017, Zuurhout pleaded guilty to one count of conspiracy to violate the FCPA. Sentencing is scheduled for early 2018.

Finley was charged with conspiracy to violate the FCPA. On July 28, 2017, Finley pleaded guilty to one count of conspiracy to violate the FCPA and one count of violating the FCPA. Sentencing is scheduled for early 2018.

Contoguris was charged with one count of conspiracy to violate the FCPA, one count of conspiracy to launder money, seven counts of violating the FCPA, and ten counts of money laundering. On May 24 2018, the DOJ filed a superseding Indictment in which it also charged Leshkov and Martirossian with one count of money laundering conspiracy and ten counts of money laundering. The case is currently ongoing.

See DOJ Digest Number B-185.

- **James Finley**. None.
- **Petros Contoguris**. Conspiracy (Money Laundering); Money Laundering.
- **Vitaly Leshkov**. Conspiracy (Money Laundering); Money Laundering.
- **Azat Martirossian**. Conspiracy (Money Laundering); Money Laundering.

Disposition.

- **Keith Barnett**. Plea Agreement.
- **Andreas Kohler**. Plea Agreement.
- **Aloysius Zuurhout**. Plea Agreement.
- **James Finley**. Plea Agreement.
- **Petros Contoguris**. Pending.
- **Vitaly Leshkov**. Pending.
- **Azat Martirossian**. Pending.

Defendant Jurisdictional Basis.

- **Keith Barnett**. Domestic Concern; Conspiracy.
- **Andreas Kohler**. Agent of Domestic Concern; Conspiracy.
- **Aloysius Zuurhout**. Not Applicable.
- **James Finley**. Domestic Concern; Conspiracy.
- **Petros Contoguris**. Agent of Domestic Concern; Conspiracy.
- **Vitaly Leshkov**. Agent of Domestic Concern; Conspiracy.
- **Azat Martirossian**. Agent of Domestic Concern; Conspiracy.

Defendant's Citizenship.

- **Keith Barnett**. United States.
- **Andreas Kohler**. Austria.
- **Aloysius Zuurhout**. Netherlands.
- **James Finley**. United Kingdom.
- **Petros Contoguris**. Greece.
- **Vitaly Leshkov**. Russia.
- **Azat Martirossian**. Armenia.

Total Sanction. Pending (all).

Related Enforcement Actions. *United States v. Rolls-Royce PLC*, No. 2:16-cr-00247 (S.D. Ohio 2016).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

190. UNITED STATES V. JOSEPH BAPTISTE & ROGER RICHARD BONCY (D. MASS. 2017)

NATURE OF THE BUSINESS

Joseph Baptiste, a United States citizen, is a retired U.S. Army colonel who currently resides in Maryland

Roger Richard Boncy is a dual United States and Haitian citizen who works as a tourism and jobs promoter, and currently resides in Madrid, Spain.

INFLUENCE TO BE OBTAINED

According to the indictment, Baptiste and Boncy solicited bribes from undercover FBI agents ("Agents") who were posing as potential investors in a project to develop a port in Haiti. The DOJ alleges that Baptiste told the Agents at a meeting in Boston that he could make the payments to the Haitian officials through a non-profit he controlled. In exchange for the payments the Haitian officials would approve the port project. The DOJ alleges that Boncy played a role in corresponding with the Agents as part of this scheme, both in emails and meetings with the Agents together with Baptiste. The Agents wired Baptiste's non-profit approximately $50,000 to make the supposed bribes, but Baptiste allegedly used the money for personal purposes instead of making the bribe.

ENFORCEMENT

On October 4, 2017, the DOJ filed a three-count Information against Baptiste and Boncy, alleging one count of conspiracy to commit offenses against the United States, including Travel Act and FCPA violations, one count of violating the Travel Act, and one count of conspiracy to commit money laundering. The case remains ongoing. Baptiste's trial is scheduled to begin on December 3.

KEY FACTS

Citation. *United States v. Baptiste & Boncy*, No. 1:17-cr-10305 (D. Mass. 2017).

Date Filed. October 4, 2017. Superseding Indictment filed October 30, 2018.

Country. Haiti.

Date of Conduct. 2014 – 2015.

Amount of the Value. $50,000.

Amount of Business Related to the Payment. Approximately $84 million.

Intermediary. Non-profit.

Foreign Official. Unnamed Haitian government officials.

FCPA Statutory Provision.

- **Baptiste**. Conspiracy (Anti-Bribery).
- **Boncy**. Conspiracy (Anti-Bribery).

Other Statutory Provision.

- **Baptiste**. Conspiracy (Travel Act; Money Laundering); Travel Act.
- **Boncy**. Conspiracy (Travel Act; Money Laundering); Travel Act.

Disposition. Pending.

Defendant Jurisdictional Basis. Domestic Concern; Territorial Jurisdiction.

Defendant's Citizenship. United States.

Total Sanction. Pending.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

189. UNITED STATES V. TELIA COMPANY AB (S.D.N.Y. 2017)
UNITED STATES V. COSCOM LLC (S.D.N.Y. 2017)

NATURE OF THE BUSINESS

Telia Company AB is a multinational telecommunications company headquartered and incorporated in Sweden. It provides telecomm services throughout Europe and Asia. Prior to September 5, 2007, Telia was registered as an issuer, and traded securities under Section 12(b) of the Securities and Exchange Act of 1934 on the NASDAQ. Telia operates through a wide network of subsidiaries and joint ventures. Around 2007, Telia began operating its mobile telecommunications services in Uzbekistan through its indirect subsidiary Coscom LLC. Coscom LLC is a majority-owned subsidiary of Telia Company AB.

INFLUENCE TO BE OBTAINED

According to the DOJ, throughout the relevant period Telia paid approximately $330 million in bribes to an unnamed Uzbek foreign official in order to enter and operate in Uzbekistan.

In 2006, Telia began to explore expansion opportunities in the Eurasia market, and identified Uzbekistan as its target. According to the DOJ, Telia understood that to expand its operations in Uzbekistan, it would have to make corrupt payments to a foreign official who could cause government regulators to approve the expansion. Telia allegedly developed and maintained a relationship with an unnamed Uzbek foreign official who could exert influence over those government regulators. The DOJ alleges that Telia accomplished its expansion through a series of agreements with the Uzbek foreign official, or people known to be acting on behalf of the foreign official.

First, in July 2007, Telia and the foreign official entered into a cooperation agreement that broadly outlined the terms of the bribery scheme. The terms of the cooperation agreement included that the foreign official would receive a $30 million payment, as well as shares in a subsidiary company (which owned 99.97% of Coscom), with an option to sell the shares back to Telia at a substantial profit. The cooperation agreement was later formalized in a Shareholders Agreement which carried out the initial $30 million bribery scheme. Telia first made an $80 million payment to a shell company that was beneficially owned by the foreign official. Contemporaneously, a Telia subsidiary entered into a Shareholder Agreement with the shell company. Pursuant to that agreement, the shell company paid Telia $50 million for a 26% ownership interest in Coscom, and the shell company was granted a right to sell the shares back to Telia at a profit. The net effect of these transactions was a $30 million bribe payment to the foreign official, who was also given an option to sell the 26% interest back at a profit.

In another scheme to benefit the foreign official, Telia allegedly agreed to assume a $15 million third party debt owed by a company owned by the foreign official. Telia forgave the debt owed by the Swiss company in order to benefit the foreign official. In return, the foreign official allowed Coscom to

KEY FACTS

Citation. *United States v. Telia Company AB*, No. 1:17-cr-00581-GBD (S.D.N.Y. 2017); *United States v. Coscom*, No. 1:17-cr-00581 (S.D.N.Y. 2017).

Date Filed. September 21, 2017.

Country. Uzbekistan.

Date of Conduct. 2007 – 2010.

Amount of the Value. $330,000,000

Amount of Business Related to the Payment. Approximately $2,500,000,000 in profit.

Intermediary. Shell Company.

Foreign official. Unnamed government official in Uzbekistan.

FCPA Statutory Provision. Anti-Bribery; Conspiracy (Anti-Bribery).

Other Statutory Provision. Criminal Forfeiture.

Disposition. Deferred Prosecution Agreement (Telia Company AB); Plea Agreement (Coscom LLC).

Defendant Jurisdictional Basis. Issuer; Conspiracy (Telia); Conspiracy (Coscom).

Defendant's Citizenship. Sweden (Telia); Uzbekistan (Coscom).

Total Sanction. $548,603,972.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In the Matter of Telia Company AB.*, Admin. Proc. File No. 3-18185 (September 21, 2017).

Total Combined Sanction. $965,603,972 (Global Resolution); $691,603972 (U.S. Recovery).[46]

[46] The Global Resolution includes sanctions imposed on Telia by U.S., Dutch, and Swedish agencies. The U.S. Recovery only includes sanctions paid to U.S. authorities, and may be further reduced based on disgorgment that may be imposed by Dutch or Swedish regulators.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

obtain 4G frequencies throughout Uzbekistan.

In addition to the schemes described above, Telia paid a series of other bribes to the foreign official in order to obtain licenses, frequencies, and networks, or simply as a means to continue operating in Uzbekistan. These payments included a $2 million payment made by Coscom management; a $9.2 million bribe to the shell company to facilitate Coscom's acquisition of a number series and network codes, and to continue its business operations; and finally a $220 million payment to the shell company after the shell company exercised its option under the Shareholder Agreement.

ENFORCEMENT

On September 21, 2017, the DOJ entered into a deferred prosecution agreement with Telia for violations of the FCPA's anti-bribery provisions. According to the deferred prosecution agreement, Telia agreed to pay a monetary penalty in the amount of $548,603,972 and undertake voluntary remedial measures. Coscom LLC entered signed a plea agreement with the DOJ. It pleaded guilty to one count of conspiracy to violate the anti-bribery provisions of the FCPA. Coscom agreed to pay a $500,000 criminal fine, and $40,000,000 in criminal forfeiture. In addition, Telia entered into a separate settlement with the SEC wherein it agreed to pay $457,000,000 in disgorgement.

See SEC Digest Number D-173.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

188. IN RE CDM SMITH INC. (2017)

NATURE OF THE BUSINESS

CDM Smith Inc. is a privately held construction and engineering firm incorporated and headquartered in Boston, Massachusetts.

INFLUENCE TO BE OBTAINED

According to the DOJ, from 2011 until 2015, employees of CDM Smith's wholly owned Indian subsidiary bribed officials in the National Highways Authority of India in exchange for contracts from the authority. The alleged bribes generally ranged from 2% to 4% of the contract price and were paid through fraudulent subcontractors. In addition, the DOJ claims that CDM Smith's Indian subsidiary paid $25,000 to local officials in the Indian state of Goa to connection with a water project contract.

ENFORCEMENT

On June 29, 2017, the DOJ announced that it would decline to charge CDM Smith for violations to the FCPA, subject to the company's willingness to disgorge $4,037,138 in illicit profits. The declination was offered as part of the DOJ's FCPA Pilot Program.

KEY FACTS

Citation. *In re CDM Smith Inc.* (2017)

Date Filed. June 29, 2017.

Country. India.

Date of Conduct. 2011 – 2015.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Approximately $4 million.

Intermediary. Subsidiary; Subcontractors.

Foreign Official. Officials from the National Highways Authority of India; Unnamed officials from the Indian state of Goa.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Declination with Disgorgement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. $4,037,138.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

187. IN RE LINDE NORTH AMERICA INC., LINDE GAS NORTH AMERICA LLC (2017)

NATURE OF THE BUSINESS

Linde North America Inc. and Linde Gas North America LLC (collectively "Linde North America") are subsidiaries of the German manufacturer and supplier of industrial gases, Linde Group.

INFLUENCE TO BE OBTAINED

According to the DOJ, from 2006 to 2009, Linde North America made corrupt payments to high-level officials at the National High Technology Center of the Republic of Georgia. The payments were allegedly made through Spectra Gases, Inc, an entity which Linde North America acquired in October 2006. The DOJ claims that on or about November 13, 2006, Spectra purchased assets and equipment from the National High Technology Center which were used to produce boron gas. As part of the transaction, executives at Spectra agreed to share the profits earned from the sale of boron gas with certain high-level officials at the National High Technology Center in return for those officials assistance in ensuring that Spectra would be selected as the purchaser of the equipment and assets.

ENFORCEMENT

On June 16, 2017, the DOJ publicly announced that it would decline to bring charges against Linde North America for potential violations of the FCPA as part of the FCPA Pilot Program. According to the DOJ, Linde voluntarily disclosed the scheme, cooperated with investigators, and took the remedial steps necessary to correct the compliance failures. In exchange for the declination, Linde North America agreed to disgorge $7,820,000 and forfeit an additional, $3,415,000, for a total sanction of $11,235,000.

KEY FACTS

Citation. *In re Linde North America Inc.*, Linde Gas North America LLC (2017)

Date Filed. June 16, 2017.

Country. Georgia.

Date of Conduct. 2006 – 2009.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. $7,820,000.

Intermediary. Subsidiaries.

Foreign Official. Officials from the National High Technology Center of the Republic of Georgia.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Declination with Disgorgement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. $11,235,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

186. IN RE LAS VEGAS SANDS CORP. (2017)

NATURE OF THE BUSINESS

Las Vegas Sands Corp. ("LVS"), a Nevada corporation, owns and operates integrated resorts and casinos in Asia and the United States through a network of subsidiaries. LVS maintains a class of publicly traded securities on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to the DOJ, from 2006 to at least 2009, LVS transferred approximately $60 million in payments to a Chinese consultant (the "Consultant") to execute a series of business transactions described below. In doing so, the DOJ claims that LVS failed to devise and maintain a reasonable system of internal accounting controls over its operations in China and Macao.

First, in 2007, LVS allegedly sought to purchase a basketball team with the purported purpose of improving the company's image in China and attracting visitors to the company's casinos. However, according to the DOJ, the Chinese Basketball Association prohibited gaming companies such as LVS from owning a team. To circumvent the regulatory prohibition, the DOJ alleged that LVS used the Consultant as a straw man who purchased the basketball team on behalf of LVS. In order to execute the transaction, an LVS subsidiary in China allegedly transferred several million dollars to companies controlled by the Consultant, but the contractual documentation for these transactions did not accurately reflect the identities of the parties involved. Despite engaging a forensic accounting firm to review the payments to the Consultant, both the Consultant and an LVS executive were able to impede the accounting firm's progress. Nevertheless, by the end of its review in February 2008, the accounting firm had uncovered over $700,000 in unaccounted-for funds.

Second, from 2006 through 2008, LVS allegedly used the Consultant as an intermediary to create a joint venture to develop a resort facility with a Chinese state-owned travel agency. As part of this joint venture, the DOJ claims that LVS agreed to acquire several floors of a large building in Beijing. LVS allegedly paid approximately $42 million—without proper approval by an authorized LVS employee—to the Consultant's company to acquire the floors in the Beijing building. In addition, ignoring concerns of an employee in LVS's finance department and of outside counsel, LVS allegedly paid the Consultant's companies approximately $3.6 million as a pre-payment for a five-year lease of the Beijing building's basement.

Notwithstanding the red flags raised by the transactions above, LVS allegedly continued to pay the Consultant millions of dollars over the course of 2008 and 2009 without any discernible business purpose or proper documentation.

ENFORCEMENT

On January 19, 2017, the DOJ announced that it had entered into a non-prosecution agreement with LVS to resolve alleged violations of the FCPA. According to the NPA, LVS agreed to pay a $6,960,000 criminal penalty to resolve the charges. The DOJ's sanction was in addition to a $9 million sanction imposed by the SEC in 2016.

See SEC Digest Number D-150.

KEY FACTS

Citation. *In re Las Vegas Sands Corp.* (2017).

Date Filed. January 19, 2017.

Country. China.

Date of Conduct. 2006 – 2009.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Consultant.

Foreign Official. Unnamed foreign officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $6,960,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *In the Matter of Las Vegas Sands Corp.*

Total Combined Sanction. $15,960,000.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

185. UNITED STATES V. ROLLS-ROYCE PLC (S.D. OHIO 2016)

NATURE OF THE BUSINESS

Rolls-Royce plc, a British multinational public holding company, is the world's second largest manufacturer of aircraft engines and also maintains major businesses in the marine propulsion and energy sectors. Since 2002, Rolls-Royce has been a publically traded company in the United Kingdom. Rolls-Royce Energy Systems, Inc. ("RRESI") is an indirect subsidiary of Rolls-Royce headquartered in Mount Vernon, Ohio. RRESI produced and supplied gas turbines, compressors, and aftermarket products and services for oil and gas and power generation projects worldwide.

INFLUENCE TO BE OBTAINED

According to the DOJ, between 2000 and 2013, Rolls-Royce, certain employees, and RRESI conspired to cause RRESI to make over $35 million in commission payments to commercial advisors and others while knowing that the commission payments would be used to bribe foreign officials on behalf of Rolls-Royce and RRESI in Thailand, Brazil, Kazakhstan, Azerbaijan, Angola, Iraq, and elsewhere. The DOJ claims that the bribe payments were in exchange for foreign officials' assistance in providing confidential information and awarding contracts to Rolls-Royce, RRESI, and other affiliated entities.

ENFORCEMENT

On January 17, 2017, the DOJ announced that it had unsealed charges against Rolls-Royce involving violations of the FCPA. According to a deferred prosecution agreement, Rolls Royce would pay a $169,917,710 criminal penalty after the company allegedly conspired to violate the FCPA. The DOJ's sanction against Rolls Royce was part of an $800 million global resolution of investigations by U.S., U.K., and Brazilian authorities.

See DOJ Digest Number B-191.

KEY FACTS

Citation. *United States v. Rolls-Royce PLC*, No. 2:16-cr-00247 (S.D. Ohio 2016).

Date Filed. December 20, 2016.

Country. Angola; Azerbaijan; Brazil; Iraq; Kazakhstan; Thailand.

Date of Conduct. 2000 – 2013.

Amount of the Value. Approximately $35 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Commercial Advisors.

Foreign Official. Unnamed government officials in Angola, Azerbaijan, Brazil, Iraq, Kazakhstan and Thailand.

FCPA Statutory Provision. Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Domestic Concern; Territorial Jurisdiction; Conspiracy.

Defendant's Citizenship. United Kingdom.

Total Sanction. $195,496,880 (Total Criminal Penalty); $169,917,710 (U.S. Recovery).[47]

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *United States v. Barnett*, *United States v. Kohler*, *United States v. Zuurhout*, *United States v. Finley*, *United States v. Contoguris et al.*

[47] The Total Criminal Penalty was reduced by the $25,579,170 paid to Brazil as part of a leniency agreement which covered similar conduct as the U.S. resolution. The U.S. Recovery only includes sanctions paid to U.S. authorities.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

184. UNITED STATES V. JOO HYUN BAHN, A/K/A "DENNIS BAHN," BAN KI SANG, AND MALCOLM HARRIS (S.D.N.Y. 2016)
UNITED STATES V. SAN WOO, A/K/A "JOHN WOO" (S.D.N.Y. 2017)

NATURE OF THE BUSINESS

Joo Hyun Bahn ("Bahn", also known as Dennis Bahn), a South Korean national and resident of New Jersey, was a commercial real estate broker in New York, New York. Bahn's father, Ban Ki Sang ("Ban"), was a senior executive at a South Korean construction company, Keangnam Enterprises Co., Ltd. Keangnam built and owned Landmark 72, a large commercial building in Hanoi, Vietnam. Malcolm Harris is, according to the DOJ, a "self-described arts and fashion consultant and blogger" who resided in New York. Sang Woo (also known as John Woo), is a South Korean national and worked as a real estate broker in New York City.

INFLUENCE TO BE OBTAINED

The DOJ claims that beginning in 2013, Keangnam began searching for an investor to buy or refinance Landmark 72 for approximately $800 million to ease liquidity problems it was facing at the time. Ban allegedly convinced his company to enter an exclusive broker agreement with his son and his realty firm that offered a multi-million dollar commission upon completion.

In his search for investors, Bahn allegedly initiated discussions with Harris, who claimed to have connections to the royal family of a Middle Eastern country. According to the DOJ, Harris offered to use his connections to secure the investment of the country's sovereign wealth fund in Landmark 72 in exchange for a portion of Bahn's commission from the sale. As part of the scheme, Bahn and his father, with the assistance of Woo, allegedly arranged for Keangnam to pay a $500,000 commission-advance to Bahn's firm, which Bahn then passed to Harris to be ostensibly used as a bribe in hopes of finalizing the investment in Landmark 72. According to the DOJ, upon receipt of the $500,000, Harris pocketed the funds for himself, never having intended to complete the bribery scheme.

ENFORCEMENT

On January 10, 2017, the DOJ unsealed its charges filed against Bahn, Ban, Woo, and Harris in the Southern District of New York.

Bahn was charged with conspiracy to violate the FCPA, three counts of violating the FCPA, conspiracy to commit money laundering, two counts of money laundering, wire fraud, and aggravated identity theft. On January 10, 2017, Bahn pleaded not guilty to the charges, but on January 5, 2018, he entered into a plea agreement with the DOJ. In September 2018, Bahn was sentenced to six months in prison. On a related matter, the SEC issued a cease-and-desist order against Bahn for violations of the FCPA's anti-bribery and books-and-records provisions. As per the order, Bahn must pay $225,000 in disgorgement, although it can be satisfied in part or in whole by any payments he may make pursuant to the criminal matter.

Ban was charged with conspiracy to violate the FCPA, three counts of violating the FCPA, conspiracy to commit money laundering, and one count of money laundering. Ban has not appeared in the case and is a fugitive.

Harris was charged with wire fraud, money laundering, and aggravated

KEY FACTS

Citation. *United States v. Bahn*, No. 1:16-cr-00831 (S.D.N.Y. 2016); *United States v. Woo*, No. 1:17-mj-00139 (S.D.N.Y. 2017).

Date Filed. December 15, 2016 (Bahn; Sang; Harris); January 10, 2017 (Woo).

Date Unsealed. January 15, 2017.

Country. Korea; Middle East.

Date of Conduct. 2013 – 2015.

Amount of the Value. $500,000.

Amount of Business Related to the Payment. Not stated.

Intermediary. Not stated.

Foreign Official. Unnamed official from Middle Eastern country.

Disposition.

- **Dennis Bahn**. Plea Agreement.
- **Ban Ki Sang**. Pending.
- **Malcolm Harris**. Plea Agreement.
- **John Woo**. Pending.

Defendant Jurisdictional Basis.

- **Dennis Bahn**. Domestic Concern; Conspiracy.
- **Ban Ki Sang**. Agent of Domestic Concern; Conspiracy.
- **Malcolm Harris**. Not Applicable.
- **John Woo**. Domestic Concern; Conspiracy.

FCPA Statutory Provision.

- **Dennis Bahn**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Ban Ki Sang**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Malcolm Harris**. None.
- **John Woo**. Conspiracy (Anti-Bribery).

Other Statutory Provision.

- **Dennis Bahn**. Conspiracy (Money Laundering); Money Laundering; Wire Fraud; Identity Theft; Criminal Forfeiture.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

identify theft. On June 16, 2017, Harris pleaded guilty to one count of wire fraud and one count of identity theft. Sentencing is scheduled for September 2017.

Woo was charged with conspiracy to violate the FCPA.

See SEC Digest Number D-183.

- **Ban Ki Sang**. Conspiracy (Money Laundering); Money Laundering; Criminal Forfeiture.
- **Malcolm Harris**. Wire Fraud; Identify Theft; Money Laundering.

Defendant's Citizenship.

- **Dennis Bahn**. South Korea.[48]
- **Ban Ki Sang**. South Korea.
- **Malcolm Harris**. United States.
- **John Woo**. South Korea.[49]

Total Sanction.

- **Dennis Bahn**. $225,000; Six-month Imprisonment.
- **Ban Ki Sang**. Pending.
- **Malcolm Harris**. Pending.
- **John Woo**. Pending.

Related Enforcement Actions. *In the Matter of Joohyunn Bahn* (2018).

[48] Dennis Bahn was a legal permanent resident of the United States.

[49] John Woo was a legal permanent resident of the United States.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

183. UNITED STATES V. SOCIEDAD QUÍMICA Y MINERA DE CHILE, S.A. (D.D.C. 2017)

NATURE OF THE BUSINESS

Sociedad Química y Minera de Chile ("SQM") is a Chilean chemical and mining company with sales offices around the world. SQM trades its shares in the form of American Depository Receipts on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to the DOJ, from 2008 to 2015, SQM maintained a discretionary fund worth between $3.3 million and $5.7 million each year for use by the company's CEO. The funds budgeted for the CEO's discretionary fund were allegedly designated within SQM's accounting system as being intended for payment of, among other things, the CEO's travel, certain SQM publicity efforts, and consulting and advisory services deemed necessary by the CEO. The DOJ claims that the company failed to maintain internal accounting oversight of the fund to ensure that the fund was used in accordance with applicable law and properly recorded on the company's books and records. As a result, the DOJ alleges that an SQM executive used the discretionary fund to make direct payments of approximately $14.75 million to Chilean politicians, political candidates, and individuals connected to them.

ENFORCEMENT

On January 13, 2017, the DOJ announced that it had entered a deferred prosecution agreement with SQM. According to the agreement, SQM agreed to pay a $15,487,500 criminal penalty as a result of alleged violations of the FCPA's books-and-records and internal controls provisions. In addition to the criminal penalty, SQM agreed to work with an independent monitor for two years.

On the same day, the SEC separately announced that it had resolved an FCPA enforcement action against SQM in which the company agreed to pay an additional civil monetary penalty of $15 million. On September 25, 2018, the SEC announced that it had settled an enforcement action against SQM's former CEO for violations of the FCPA's internal controls and books-and-records provisions, pursuant to which he must pay a civil monetary penalty of $125,000.

See SEC Digest Number D-169.

KEY FACTS

Citation. *United States v. Sociedad Química y Minera de Chile, S.A.*, No. 1:17-cr-00013 (D.D.C. 2017).

Date Filed. January 13, 2017.

Country. Chile.

Date of Conduct. 2008 – 2015.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign Official. Unnamed Chilean politicians, political candidates, and individuals connected to them.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Chile.

Total Sanction. $15,487,500.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *In the Matter of Sociedad Química y Minera de Chila, S.A.* (2017); *In the Matter of Contesse González* (2018).

Total Combined Sanction. $30,487,500.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

182. UNITED STATES V. ZIMMER BIOMET HOLDINGS, INC. (D.D.C. 2017)
UNITED STATES V. JERDS LUXEMBOURG HOLDING S.ÀR.L. (D.D.C. 2017)

NATURE OF THE BUSINESS

Biomet, Inc. is a medical device company headquartered in Warsaw, Indiana that sells medical devices and dental products. Prior to 2008, Biomet's stock was registered with the Commission. In March 2012, Biomet entered into a deferred prosecution agreement with the DOJ for FCPA violations in Brazil, China, and Argentina. In June 2015, Biomet was acquired by Zimmer Holdings, Inc. and was renamed Zimmer Biomet. Jerds Luxembourg Holding S.ÀR.L. is a Luxembourg subsidiary of Biomet which, in turn, owns several of Biomet's subsidiaries, including its Mexican subsidiaries.

INFLUENCE TO BE OBTAINED

According to the DOJ, despite being aware of red flags and prior corruption-related misconduct in Biomet's Mexican and Brazilian subsidiaries, and despite entering into a 2012 DPA with the DOJ in connection with corruption in Brazil and other countries, Biomet knowingly failed to implement and maintain an adequate system of internal controls designed to detect and prevent bribery by its agents. As a result, the DOJ alleged that Biomet's Mexican and Brazilian operations violated the FCPA.

In Mexico, the DOJ alleged that Biomet's subsidiaries used a customs broker whose subagents bribed Mexican customs officials to allow Biomet to export mislabeled products to Mexico. According to the DOJ, between 2010 and 2013, Biomet's Mexican subsidiary paid approximately $980,774 to the customs broker's subagents, knowing that at least part of this amount would be passed on to customs officials, and falsified corporate records to disguise the bribe payments.

In Brazil, Biomet allegedly knew that a Brazilian distributor it was utilizing had previously paid bribes to win business for Biomet, leading to the 2012 DPA. According to the DOJ, as a result, Biomet prohibited its employees from using all companies affiliated with the Brazilian distributor. Despite prohibiting Biomet from utilizing the Brazilian distributor, Biomet employees, including an executive, allowed the Brazilian distributor to sell, import, and market Biomet products through a separate, but related, company and took steps to conceal the transactions.

ENFORCEMENT

On January 12, 2017, the DOJ announced that it had entered into a deferred prosecution agreement with Biomet for violations of the internal controls provision of the FCPA. According to the deferred prosecution agreement, Biomet was required to pay a criminal penalty of $17,460,300. Biomet was also required to engage an independent compliance monitor for a period of three years. The SEC separately resolved an enforcement action against Biomet wherein the company agreed to pay a civil sanction of $13,022,805.

See DOJ Digest Number B-130 and D-182.
See SEC Digest Number D 107 and D-168.
See Ongoing Investigation Number F 56.

KEY FACTS

Citation. *United States v. Zimmer Biomet Holdings, Inc.*, No. 1:12-cr-00080 (D.D.C. 2017); *United States v. Jerds Luxembourg Holding S.ÀR.L.*, No. 1:17-cr-00007 (D.D.C. 2017).

Date Filed. January 12, 2017.

Country. Brazil; Mexico.

Date of Conduct. 2010 – 2013.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated

Intermediary. Third-Party Distributors; Customs Brokers; Agents.

Foreign official. Unnamed Mexican customs officials; Unnamed Brazilian officials.

FCPA Statutory Provision.

- **Zimmer Biomet**. Internal Controls.
- **Jerds Luxembourg**. Books-and-Records.

Other Statutory Provision. None.

Disposition.

- **Zimmer Biomet**. Deferred Prosecution Agreement.
- **Jerds Luxembourg**. Plea Agreement.

Defendant Jurisdictional Basis.

- **Zimmer Biomet**. Issuer.
- **Jerds Luxembourg**. Agent of Issuer.

Defendant's Citizenship.

- **Zimmer Biomet**. United States.
- **Jerds Luxembourg**. Luxembourg.

Total Sanction. $17,460,300.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *United States v. Biomet, Inc.*; *In the Matter of Biomet, Inc.*; *SEC v. Biomet, Inc.*

Total Combined Sanction. $30,483,105.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

181. UNITED STATES V. GENERAL CABLE CORPORATION (2016)[50]

NATURE OF THE BUSINESS

General Cable Corporation is a Delaware corporation based in Kentucky that manufactures, distributes, and installs cable and wire. General Cable maintains operations around the world through various subsidiaries. General Cable's shares are publicly traded on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to the DOJ, between 2002 and 2013, General Cable's subsidiaries paid approximately $13 million to third-party agents and distributors who, in turn, allegedly used a portion of the funds to make unlawful payments to obtain business in Angola, Bangladesh, Indonesia, Thailand, and China. The DOJ claims that, in total, the alleged bribery schemes netted the company approximately $51 million in profits.

Furthermore, the DOJ claims that employees from General Cable's subsidiaries expressed concerns to regional and parent-level executives that commission payments for third-party agents and distributors were being used for improper purposes, including bribery. Nevertheless, according to the DOJ, General Cable failed to implement and maintain a system of internal accounting controls designed to detect and prevent such corrupt and otherwise improper payments. As a result, the DOJ alleges that even after executives at General Cable became aware of the improper payments, they allowed the conduct to continue.

ENFORCEMENT

On December 29, 2016, the DOJ announced that it had resolved an FCPA enforcement action against General Cable. According to the non-prosecution agreement, General Cable would be required to pay a criminal penalty of $20,469,694.80. General Cable separately resolved an FCPA enforcement action by the SEC wherein the company agreed to pay a total sanction of approximately $55 million in disgorgement and prejudgment interest.

See SEC Digest Number D-166.
See Parallel Litigation Digest H-A27.

KEY FACTS

Citation. *United States v. General Cable Corp.* (2016).

Date Filed. December 22, 2016.

Country. Angola; Bangladesh; China; Indonesia; Thailand.

Date of Conduct. 2002 – 2013.

Amount of the Value. Approximately $13 million.

Amount of Business Related to the Payment. Approximately $51 million.

Intermediary. Third-Party Agents; Distributors.

Foreign Official. Unnamed government officials in Angola, Bangladesh, China, Indonesia, and Thailand.

FCPA Statutory Provision. Anti-Bribery; Books and Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $20,469,694.80.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *In the Matter of General Cable Corporation*; *In the Matter of Karl J. Zimmer*.

Total Combined Sanction. $75,751,591.80.

[50] Matter resolved through a non-prosecution agreement (December 2016).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

180. UNITED STATES V. DOUGLAS RAY (S.D. TEX. 2016)
UNITED STATES V. VICTOR HUGO VALDEZ PINON (S.D. TEX. 2016)
UNITED STATES V. KAMTA RAMNARINE (S.D. TEX. 2016)
UNITED STATES V. DANIEL PEREZ (S.D. TEX. 2016)
UNITED STATES V. ERNESTO HERNANDEZ-MONTEMAYOR (S.D. TEX. 2015)
UNITED STATES V. RAMIRO ASCENCIO NEVAREZ (S.D. TEX. 2016)

NATURE OF THE BUSINESS

Douglas Ray, Daniel Perez, and Kamta Ramnarine, each U.S. citizens, are officials from unnamed aviation companies based in Texas that repair, maintain, and overhaul aircraft. Victor Hugo Valdez Pinon, a Mexican citizen, was a sales agent of an unnamed aviation company affiliated with Ray and was responsible for delivering the company Mexican customers in need of aircraft parts and maintenance services. Eduardo Hernandez-Montemayor, a Mexican citizen, was the Chief Pilot for the Mexican state of Tamaulipas that represented the Tamaulipas government in all aviation matters. Ramiro Ascencio Nevarez, a Mexican citizen, was an employee at a public university in Tamaulipas, Mexico, who was responsible for maintaining the university's aircraft.

INFLUENCE TO BE OBTAINED

According to the DOJ, from approximately 2006 to 2016, the defendants organized and perpetrated a scheme to make improper payments to government officials in Mexico to obtain or retain business. Specifically, the DOJ claims that Ray conspired with Valdez to pay bribes to various Mexican officials to secure parts and servicing contracts with Mexican government-owned customers. Ray allegedly agreed to pay bribes to seven different foreign officials, including Hernandez-Montemayor. To execute the scheme, Hernandez-Montemayor, acting on behalf of the Tamaulipas government, allegedly agreed to accept higher prices for aircraft maintenance services so that, once paid, a portion of the funds would be used as kickbacks. Separately, Ramnarine and Perez allegedly conspired to pay bribes to Hernandez-Montemayor and Nevarez, along with several other foreign officials between 2007 and 2015 to ensure that their Brownsville, Texas-based company won aircraft parts and services contracts with Mexican government-owned customers.

ENFORCEMENT

On December 27, 2016, the DOJ announced that it had unsealed the charges against six defendants who had allegedly participated in the bribery scheme. Ray and Valdez pleaded guilty to conspiracy to violate the FCPA and conspiracy to commit wire fraud. Ramnarine and Perez separately pleaded guilty to one count each of conspiracy to violate the FCPA. The alleged recipients of the bribes, Hernandez-Montemayor and Ascencio Nevarez, both pleaded guilty to one count of conspiracy to commit money laundering.

On June 7, 2016, Nevarez was sentenced to 15-months in prison. On January 23, 2017, Hernandez-Montemayor was sentenced to 24-months in prison. On February 13, 2017, Perez and Ramnarine were each sentenced to 3-years probation. On March 3, 2017, Valdez was sentenced to 12-months and one day in prison and ordered to pay $90,783,50 in restitution. On April 17, 2017, Ray was sentenced to 18-months in prison and ordered to pay $589,698.87 in

KEY FACTS

Citation. *United States v. Ray*, No. 4:16-cr-00409 (S.D. Tex. 2016); *United States v. Valdez Pinon*, No. 4:16-cr-00409 (S.D. Tex. 2016); *United States v. Ramnarine*, No. 7:16-cr-01164 (S.D. Tex. 2016); *United States v. Perez*, No. 7:16-cr-01164 (S.D. Tex. 2016); *United States v. Hernandez-Montemayor*, No. 4:15-cr-00617 (S.D. Tex. 2015); *United States v. Ascencio Nevarez*, No. 7:16-cr-00252 (S.D. Tex. 2016).

Date Filed. September 15, 2016 (Ray); August 16, 2016 (Valdez Pinon); August 15, 2016 (Ramnarine; Perez); November 6, 2015 (Hernandez-Montemayor); March 4, 2016 (Ascencio Nevarez).

Date Unsealed. December 27, 2016.

Country. Mexico.

Date of Conduct. 2005 – 2016.

Amount of the Value. Approximately $2 million.

Amount of Business Related to the Payment. Not stated.

Intermediary. Not stated.

Foreign Official. Eduardo Hernandez-Montemayor, former Chief Pilot for the Tamaulipas government; Ramiro Ascencio Nevarez, a Mexican public university employee; Other unnamed Mexican officials.

FCPA Statutory Provision.

- **Douglas Ray**. Conspiracy (Anti-Bribery).
- **Victor Hugo Valdez Pinon**. Conspiracy (Anti-Bribery).
- **Kamta Ramnarine**. Conspiracy (Anti-Bribery).
- **Daniel Perez**. Conspiracy (Anti-Bribery).

Other Statutory Provision.

- **Douglas Ray**. Conspiracy (Wire Fraud); Criminal Forfeiture.
- **Victor Hugo Valdez Pinon**. Conspiracy (Wire Fraud); Criminal Forfeiture.
- **Ernesto Hernandez-Montemayor**. Conspiracy (Wire Fraud).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

restitution.	• **Ramiro Ascencio Nevarez**. Conspiracy (Money Laundering); Criminal Forfeiture. **Disposition**. • **Douglas Ray**. Plea Agreement. • **Victor Hugo Valdez Pinon**. Plea Agreement. • **Kamta Ramnarine**. Plea Agreement. • **Daniel Perez**. Plea Agreement. • **Ernesto Hernandez-Montemayor**. Plea Agreement. • **Ramiro Ascencio Nevarez**. Plea Agreement. **Defendant Jurisdictional Basis**. Domestic Concern (Ray; Perez; Ramnarine); Territorial Jurisdiction (Valdez Pinon). **Defendant's Citizenship**. United States (Ray; Perez; Ramnarine); Mexico (Valdez Pinon; Hernandez-Montemayor; Ascencio Nevarez). **Total Sanction**. • **Douglas Ray**. 18-Months Imprisonment; $589,698.87 in Restitution. • **Victor Hugo Valdez Pinon**. 12-Months and 1-Day imprisonment; $90,883.50 in Restitution. • **Kamta Ramnarine**. 3-Years Probation. • **Daniel Perez**. 3-Years Probation. • **Ernesto Hernandez-Montemayor**. 24-Months Imprisonment. • **Ramiro Ascencio Nevarez**. 15-Months Imprisonment. **Related Enforcement Actions**. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

179. UNITED STATES V. TEVA PHARMACEUTICAL INDUSTRIES LTD. (S.D. FLA. 2016) UNITED STATES V. TEVA LLC (RUSSIA) (S.D. FLA. 2016)

NATURE OF THE BUSINESS

Teva Pharmaceutical Industries Ltd., headquartered in Petah Tikva, Israel, is a pharmaceutical and drug manufacturing company. From 1987 to 2012, Teva maintained American Depository Receipts on the Nasdaq National Market and in 2012, moved its ADRs to the New York Stock Exchange. Teva LLC is Teva's wholly-owned Russian subsidiary.

INFLUENCE TO BE OBTAINED

According to the DOJ, Teva and several of its subsidiaries facilitated schemes in Russia, Ukraine, and Mexico to obtain or retain business by making improper payments to government officials and employees of state-owned enterprises.

In Russia, from 2006 to 2012, Teva allegedly agreed to make corrupt payments to a "Russian Official," "intending that the Russian Official would use his position and ability to influence the Russian government to purchase [Teva's products] through tender offers." To do so, Teva's Russian subsidiary partnered with a local Russian distributor ("Russian Distributor") that was effectively owned and controlled by the Russian Official. The Russian Official allegedly ensured that Teva's drugs received beneficial treatment within the Russian market and, in exchange, the Russian Official received improper payments through the high profit margins the Russian Distributor earned as Teva's repackager and distributor in Russia.

In Ukraine, between 2001 and 2011, Teva allegedly made improper payments to a government official ("Ukrainian Official") to secure business advantages for its products. Specifically, Teva allegedly provided the Ukrainian Official with $200,000 and five paid vacations to obtain his influence in supporting the clinical approval and advantages.

In Mexico, between 2007 and 2012, the DOJ asserts that Teva's Mexican subsidiary used a third-party distributor to make payments to physicians and other healthcare providers employed at government-owned facilities in exchange for promoting Teva's products. According to the DOJ, despite becoming aware of the alleged improper payments, Teva failed to implement a system of adequate compliance protocols to prevent the payments from continuing in the future.

ENFORCEMENT

On December 22, 2016, the DOJ announced that it had signed a deferred prosecution with Teva to resolve the FCPA charges against it. As part of the agreement, Teva agreed to pay a criminal penalty of over $283 million. The DOJ also announced that Teva Russia would plead guilty to a one-count criminal information. In a separate enforcement action announced on the same day, the SEC reached a settlement agreement with Teva that required Teva to pay $236 million in disgorgement.

See SEC Digest Number D 165.
See Parallel Litigation Digest Number H-D14.

KEY FACTS

Citation. *United States v. Teva Pharmaceutical Industries Ltd*., No. 1:16-cr-20968 (S.D. Fla. 2016); *United States v. Teva LLC* (Russia), No. 1:16-cr-20967 (S.D. Fla. 2016).

Date Filed. December 22, 2016.

Country. Russia; Ukraine; and Mexico.

Date of Conduct. 2006 – 2012.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Approximately $221 million.

Intermediary. Third-Party Distributors.

Foreign Official. An unnamed Russian government official; An unnamed Ukrainian government official; Doctors employed by Mexican state-owned health facilities.

FCPA Statutory Provision.

- **Teva**. Conspiracy; Internal Controls.
- **Teva Russia**. Conspiracy.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement (Teva); Plea Agreement (Teva Russia).

Defendant Jurisdictional Basis. Issuer (Teva); Agent of Issuer (Teva Russia).

Defendant's Citizenship. Israel (Teva); Russia (Teva Russia).

Total Sanction. $283,177,384.

Compliance Monitor/Reporting Requirements. Compliance Monitor (Teva).

Related Enforcement Actions. SEC v. Teva Pharmaceutical Industries Ltd.

Total Combined Sanction. $519,279,172.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

178. UNITED STATES V. ODEBRECHT S.A. (E.D.N.Y. 2016)
UNITED STATES V. BRASKEM S.A. (E.D.N.Y. 2016)

NATURE OF THE BUSINESS

Odebrecht S.A. is a Brazilian private holding company that operates in twenty-seven countries in various sectors, including engineering, oil and gas, and real estate development. Odebrecht's partially owned subsidiary, Braskem S.A., is headquartered in São Paulo, Brazil and produces petrochemical and thermoplastic products. Braskem maintains American Depository Shares on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to the DOJ, between 2001 and 2016, Odebrecht coordinated a bribery scheme to make approximately $788 million in improper payments to foreign officials in at least twelve countries to obtain or retain business.

Specifically, Odebrecht allegedly sought to influence foreign officials through the payment of bribes, primarily to secure public works contracts or other contracts with state-owned enterprises. To facilitate these payments, the DOJ claims that Odebrecht generated unrecorded funds through off-book transactions involving overhead payments from subsidiaries, overcharges to service providers not included in project budgets, undeclared retainers, and self-insurance transactions. Odebrecht then allegedly sent the unrecorded funds to an "elaborate, secret financial structure." According to the DOJ, the structure eventually developed into a separate entity, known as the Division of Structure Operations, with its own clandestine communication system. The Division of Structure Operations would allegedly receive the off-book funds from Odebrecht and organize their delivery to the designated officials, sometimes utilizing numerous offshore entities and bank accounts to disguise the operation.

Part of Odebrecht's alleged bribery scheme involved the petrochemical company, Braskem. In a separate action against Braskem, the DOJ claims that Braskem made improper payments to Brazilian officials, often diverting funds through Odebrecht's Division of Structured Operations to do so. Specifically, the DOJ alleges that Braskem generated false commissions and invoices using shell companies and then transferred the funds to off-book accounts held by Odebrecht. Once Odebrecht had the funds, its internal financial structure would allegedly deliver the payments to the Brazilian officials. Odebrecht and Braskem allegedly used this process to obtain numerous benefits, including (i) the continuation of contracts with Petrobras, (ii) favorable terms in supply agreements with Petrobras, and (iii) tax advantages from the government of Brazil.

ENFORCEMENT

On December 21, 2016, the DOJ announced that Odebrecht had pleaded guilty to one count of conspiracy to violate the FCPA's anti-bribery provision.

KEY FACTS

Citation. *United States v. Odebrecht S.A.*, No. 16-cr-00643 (E.D.N.Y. 2016); *United States v. Braskem S.A.*, No. 16-cr-00644 (E.D.N.Y. 2016).

Date Filed. December 21, 2016.

Country. Angola; Argentina; Brazil; Colombia; Dominican Republic; Ecuador; Guatemala; Mexico; Mozambique; Panama; Peru; Venezuela.

Date of Conduct. 2001 – 2016.

Amount of the Value. Approximately $788 million (Odebrecht); Approximately $250 million (Braskem).

Amount of Business Related to the Payment. Approximately $788 million (Odebrecht); Approximately $250 million (Braskem).

Intermediary. Third-Party Distributors.

Foreign Official. Multiple unnamed officials from Brazil's state-owned oil company, Petróleo Brasileiro S.A. ("Petrobras"); Multiple unnamed Brazilian government officials; Unnamed government officials in Angola, Argentina, Colombia, Dominican Republic, Ecuador; Guatemala, Mexico, Mozambique, Panama, Peru, and Venezuela.

FCPA Statutory Provision.

- **Odebrecht**. Conspiracy (Anti-Bribery).
- **Braskem**. Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition. Plea Agreement (Odebrecht); Plea Agreement (Braskem).

Defendant Jurisdictional Basis. Stockholder of Issuer (Odebrecht); Issuer (Braskem).

Defendant's Citizenship. Brazil (Odebrecht); Brazil (Braskem).

Total Sanction. $283,177,384.

Compliance Monitor/Reporting Requirements. Compliance Monitor (Odebrecht); Compliance Monitor (Braskem).

Related Enforcement Actions. *SEC v. Braskem*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

In its plea, Odebrecht agreed to pay criminal penalties of up to $4.5 billion; however, it represented that it was only able to pay a penalty of $2.6 billion. The total penalty paid by Odebrecht was divided between the U.S., Brazilian, and Swiss authorities, with the U.S. and Switzerland receiving 10% each and Brazil receiving the remaining 80%. U.S. and Brazilian authorities planned to conduct an independent analysis to verify whether Odebrecht is only able to pay a $2.6 billion criminal penalty and would complete the investigation by March 31, 2017. On April 11, 2017, the DOJ confirmed that Odebrecht was unable to pay a penalty in excess of $2.6 billion and as a result, the DOJ reduced the amount Odebrecht owed to the United States in criminal penalties from $260 million to $93 million.

Similarly, Braskem pleaded guilty to one count of conspiracy to violate the FCPA's anti-bribery provision. According to the plea agreement, Braskem agreed to pay a total criminal penalty of approximately $632 million. Of the total criminal penalty against Braskem, the U.S., Swiss, and Brazilian authorities would each receive approximately $94.9 million, $94.9 million, and $442.8 million, respectively.

Braskem was separately charged by the SEC for violations of the FCPA's anti-bribery, books-and-records, and internal controls provisions. According to its resolution with the SEC, Braskem agreed to disgorge a total of $325 million to U.S. and Brazilian authorities.

See SEC Digest Number D 164.
See Parallel Litigation Number H-A20 and H-A29.

S.A.

Total Combined Sanction. $3,390,625,336.81 (Global Resolution);[51] $252,893,800.52 (U.S. Recovery).

[51] The $3.4 billion global resolution was divided between Brazilian, Swiss, and U.S. authorities.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

177. UNITED STATES V. MAHMOUD THIAM (S.D.N.Y. 2016)

NATURE OF THE BUSINESS

Mahmoud Thiam is a U.S. citizen who served as the Minister of Mines and Geology of the Republic of Guinea from approximately 2009 until 2010.

INFLUENCE TO BE OBTAINED

According to the DOJ, between 2009 and 2010, while the Guinean Minister of Mines and Geology, Thiam allegedly engaged in a scheme to accept bribes from senior representatives of an unnamed Chinese conglomerate and to launder that money into the United States and elsewhere. Specifically, Thiam allegedly received $8.5 million in improper payments from the Chinese conglomerate in exchange for his willingness to use his position as Minister of Mines and Geology to award the Chinese conglomerate "exclusive and highly valuable investment rights in a wide range of sectors of the Guinean economy, including near total control of Guinea's valuable mining sector."

In order to conceal the scheme, Thiam allegedly opened a bank account in Hong Kong and misreported his occupation to hide his status as a public official. Later, Thiam allegedly transferred millions of dollars in bribe money from the Hong Kong bank account to, among other things, bank accounts located in the United States, a Malaysian company that facilitated the purchase of real estate in the United States, private schools attended by Thiam's children, and at least one other West African public official.

ENFORCEMENT

On December 12, 2016, the DOJ filed a complaint charging Thiam with two counts of money laundering. Thiam was arrested the next day. On January 24, 2017, Thiam pleaded not guilty to the charges. Following a six-day jury trial, on May 3, 2017, Thiam was found guilty on both counts of money laundering. On August 25, 2017, Thiam was sentenced to seven years in prison.

KEY FACTS

Citation. *United States v. Thiam*, No. 1:16-mj-07960 (S.D.N.Y. 2016); *United States v. Thiam*, No. 1:17-cr-00047 (S.D.N.Y. 2017).

Date Filed. December 12, 2016.

Country. Guinea.

Date of Conduct. 2009 – 2011.

Amount of the Value. Approximately $8.5 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign Official. Minister of Mines and Geology of the Republic of Guinea.

FCPA Statutory Provision. None.

Other Statutory Provision. Money Laundering.

Disposition. Convicted.

Defendant Jurisdictional Basis. Not Applicable.

Defendant's Citizenship. United States.

Total Sanction. Seven-years imprisonment.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

176. UNITED STATES V. JOHN W. ASHE, FRANCIS LORENZO, NG LAP SENG, JEFF C. YIN, SHIWEI YAN, AND HEIDI HONG PIAO (S.D.N.Y. 2015)
UNITED STATES V. JULIA VIVI WANG (S.D.N.Y. 2016)
UNITED STATES V. NG LAP SENG AND JEFF C. YIN (SUPERSEDING INDICTMENT FILED NOVEMBER 2016)

NATURE OF THE BUSINESS

John W. Ashe was a lawful permanent resident of the United States who served as the U.N. Ambassador for Antigua and Barbuda and President of the U.N. General Assembly. Francis Lorenzo is a U.S. citizen who served as the Deputy Permanent Representative to the U.N. for the Dominican Republic and later Special Advisor to the President of the U.N. General Assembly.

Ng Lap Seng is a Chinese citizen and the head of a major real estate development company in Macau as well as the founder of an unnamed non-governmental organization. Jeff C. Yin is a U.S. citizen and served as the principal assistant to Ng.

Shiwei Yan is a U.S. citizen and is the chief executive officer of an unnamed non-governmental organization based in New York. Heidi Hong Piao is a U.S. citizen and was the finance director of the non-governmental organization associated with Yan.

Julia Vivi Wang is a U.S. citizen and the vice president of two non-governmental organizations in New York.

INFLUENCE TO BE OBTAINED

According to the DOJ, from at least 2011 to 2014, Ashe solicited and accepted bribes while serving as the U.N. Ambassador for Antigua and the President of the U.N. General Assembly from Ng, Yin, Yan, Piao, and Wang. The alleged bribes were made in exchange for Ashe's willingness to perform certain official acts on behalf of the U.N. and Antigua for the benefit of Ng, Yin, Yan, Piao, and Wang. According to court documents, the alleged corruption involved three separate bribery schemes discussed below.

First, the DOJ claims that Ng and Yin funneled Ashe and Lorenzo hundreds of thousands of dollars in exchange for Ashe's willingness to advance Ng's business interests. Specifically, Ng allegedly paid or agreed to pay bribes in exchange for Ashe's support for the construction of a multi-billion dollar conference center that Ng hoped to build in Macau, China for the purpose of hosting future U.N. events. Separately, Ng is accused of making improper payments to Ashe to obtain access to potentially lucrative investment opportunities in Antigua. During the course of the scheme, the DOJ claims that Yin served as Ng's principal representative, often coordinating the transactions on Ng's behalf. Separately, according to the DOJ, Lorenzo served as Ashe's special advisor and, in addition to receiving improper payments of his own, used his position to aid Ng, Yin, and Ashe to facilitate the alleged bribery scheme.

Second, according to the DOJ, Yan and Piao separately funneled hundreds of thousands of dollars to Ashe on behalf of multiple Chinese businessmen in exchange for Ashe's willingness to grant the businessmen access to lucrative investments and government contracts in Antigua.

Third, the DOJ claims that Wang funneled Ashe at least $500,000 to purchase

KEY FACTS

Citation. *United States v. Ashe, et al.*, No. 1:15-cr-00706 (S.D.N.Y. 2015); *United States v. Wang*, No. 1:16-cr-00495 (S.D.N.Y. 2016); *United States v. Ng, et al.*, No. 1:15-cr-00706 (S.D.N.Y. 2016).

Date Filed. October 6, 2015 (Ashe; Ng; Piao; Yan; Yin); July 11, 2016 (Lorenzo); March 16, 2016 (Wang).

Country. Antigua and Barbuda; China.

Date of Conduct. 2011 – 2015.

Amount of the Value. Approximately $1.2 million.

Amount of Business Related to the Payment. Not stated.

Intermediary. None.

Foreign Official. Permanent Representative of Antigua to the U.N. and U.N. General Assembly President (John W. Ashe); Deputy Permanent Representative of the Dominican Republic to the U.N. and Special Advisor to the U.N. General Assembly President (Francis Lorenzo); Unnamed Antiguan Officials.

FCPA Statutory Provision.

- **Ng Lap Seng**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Jeff Yin**. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision.

- **John Ashe**. Tax Fraud.
- **Francis Lorenzo**. Conspiracy (Bribery); Bribery; Conspiracy (Money Laundering); Money Laundering; Tax Fraud; Willful Failure to File Reports of Foreign Bank and Financial Records; Criminal Forfeiture.
- **Ng Lap Seng**. Conspiracy (Bribery); Bribery; Conspiracy (Money Laundering); Money Laundering; Criminal Forfeiture.
- **Jeff Yin**. Conspiracy (Bribery); Bribery; Conspiracy (Money Laundering); Money Laundering; Criminal Forfeiture; Conspiracy to Defraud the United States; Corrupt Attempt to Impede Due Administration of the Internal Revenue Code.
- **Shiwei Yan**. Conspiracy (Bribery); Bribery; Conspiracy (Money Laundering); Money

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

Antiguan diplomatic positions for her late husband and another Chinese businessman.

ENFORCEMENT

On October 6, 2015, the U.S. Attorney for the Southern District of New York announced that Ashe, Lorenzo, Ng, Yin, and Piao had been arrested and would be charged with multiple criminal counts of inter alia bribery, money laundering, and tax fraud. Wang was separately arrested and charged on March 17, 2016 with conspiracy and money laundering.

On October 22, 2015, Ashe pleaded not guilty to two counts of tax fraud. In June 2016, Ashe died and the charges against him were dropped.

On January 14, 2016, Piao pleaded guilty to two counts of conspiracy, money laundering, bribery, and failure to file reports of a foreign bank and financial records. Piao's sentencing is presently scheduled for April 2018.

On January 20, 2016, Yan pleaded guilty to one count of bribery and was ordered to forfeit $300,000. Yan was sentenced to 20 months in prison on July 29, 2016.

On March 16, 2016, Lorenzo pleaded guilty to two counts of conspiracy, bribery, money laundering, tax fraud, and failure to file reports of a foreign bank and financial records. Lorenzo's sentencing is presently scheduled for February 2018.

On July 21, 2016, Wang pleaded not guilty to the charges, but in April 2018, Wang pleaded guilty to charges of conspiracy to violate the FCPA's anti-bribery provisions, violations of the anti-bribery provision of the FCPA, and filing false income tax returns. Wang is scheduled to be sentenced in March 2019.

On November 22, 2016, the DOJ filed a superseding indictment against Ng and Yin charging the two defendants with one count of conspiracy to violate the FCPA and two substantive counts of violating the FCPA—in addition to conspiracy to commit money laundering, money laundering, conspiracy to defraud the United States, bribery, and obstruction of justice. On November 23, 2016 and December 7, 2016, Ng and Yin, respectively, pleaded not guilty to the charges. On July 27, 2017, Seng was convicted on all counts by a jury following a four-week trial. Seng was sentenced to 48 months in prison. He was also ordered to pay a $1 million fine, $302,977 in restitution to the United Nations, and a forfeiture money judgment of $1.5 million.

Laundering; Criminal Forfeiture.

- **Heidi Hong Piao**. Conspiracy (Bribery); Bribery; Conspiracy (Money Laundering); Money Laundering; Willful Failure to File Reports of Foreign Bank and Financial Records; Criminal Forfeiture.
- **Julia Vivi Wang**. Conspiracy (Money Laundering); Money Laundering.

Disposition.

- **John Ashe**. Dismissed.
- **Francis Lorenzo**. Plea Agreement.
- **Ng Lap Seng**. Convicted.
- **Jeff Yin**. Plea Agreement.
- **Shiwei Yan**. Plea Agreement.
- **Heidi Hong Piao**. Plea Agreement.
- **Julia Vivi Wang**. Plea Agreement.

Defendant Jurisdictional Basis.

- **Ng Lap Seng**. Territorial Jurisdiction.
- **Jeff Yin**. Territorial Jurisdiction.

Defendant's Citizenship.

- **John Ashe**. Antigua and Barbuda.
- **Francis Lorenzo**. Dominican Republic.
- **Ng Lap Seng**. Not Stated.
- **Jeff Yin**. Not Stated.
- **Shiwei Yan**. Not Stated.
- **Heidi Hong Piao**. Not Stated.
- **Julia Vivi Wang**. Not Stated.

Total Sanction.

- **John Ashe**. Not Sentenced.
- **Francis Lorenzo**. Pending.
- **Ng Lap Seng**. $2,802,977; 48-month Imprisonment.
- **Jeff Yin**. Pending.
- **Shiwei Yan**. 20-Months Imprisonment; 2-Years Supervised Release.
- **Heidi Hong Piao**. Pending.
- **Julia Vivi Wang**. Pending.

Compliance Monitor/Reporting Requirements. Not Applicable.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

175. UNITED STATES V. JPMORGAN (ASIA PACIFIC) LIMITED (2016)[52]

NATURE OF THE BUSINESS

JPMorgan is a Delaware incorporated, New York headquartered financial services firm with operations around the world. JPMorgan's shares are publicly traded on the New York Stock Exchange. JPMorgan Securities (Asia Pacific) Limited ("JPMorgan-APAC") is JPMorgan's wholly-owned subsidiary headquartered in Hong Kong, China. JPMorgan-APAC principally carries out JPMorgan's investment banking services for the Asia-Pacific Region.

INFLUENCE TO BE OBTAINED

According to the DOJ, between approximately 2006 and 2013, JPMorgan-APAC bankers set up and used a client-referral program (often referred to as the "Sons & Daughters Program") to hire job candidates for the purpose of influencing senior officials at clients to award business to the company on a quid pro quo basis—in contravention of the company's express anti-corruption policies. In several cases, the DOJ alleges that as a result of the Sons & Daughters Program, JPMorgan-APAC received investment banking mandates from Chinese state-owned entities whose executives referred candidates to the company. According to the DOJ, the bank's improper hiring practices netted the company $35 million in profits.

ENFORCEMENT

On November 17, 2016, the DOJ announced that it had resolved its FCPA enforcement action against JPMorgan-APAC. According to the parties' non-prosecution agreement, JPMorgan-APAC was required to pay a $72 million penalty as a result of its violation of the FCPA. On the same day, the SEC announced a separate FCPA enforcement action against JPMorgan-APAC's parent company, JPMorgan, wherein the New York bank was required to pay an additional $130.5 million sanction.

See SEC Digest Number D-163.
See Ongoing Investigation Number F-35.

KEY FACTS

Citation. *United States v. JPMorgan (Asia Pacific) Ltd*. (2016).

Date Filed. November 17, 2016.

Country. China.

Date of Conduct. 2006 – 2013.

Amount of the Value. Approximately $35 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign Official. Unnamed employees and executives of Chinese stated-owned instrumentalities.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $72,000,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *In the Matter of JP Morgan Chase & Co.*

Total Combined Sanction. $264,523,905.

[52] Matter resolved through non-prosecution agreement (November 2016).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

174. UNITED STATES V. EMBRAER, S.A. (S.D. FLA. 2016)

NATURE OF THE BUSINESS

Embraer, S.A. is a manufacturer and exporter of mid-sized commercial jets headquartered in Brazil with operations in Fort Lauderdale, Florida. During the relevant period of time, Embraer maintained a class of common shares that were registered with the SEC and were traded in the form of American Depository Receipts listed on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to the DOJ, between 2005 and 2011 Embraer engaged in a series of improper business practices, including the bribery of foreign officials, in the Dominican Republic, Saudi Arabia, Mozambique, and India. Those alleged improper practices are described below.

Dominican Republic

According to the DOJ, between 2008 and 2010 Embraer paid $3.52 million to government officials from the Dominican Republic to obtain an aircraft contract valued at approximately $96.4 million.

Beginning in 2007, Embraer allegedly initiated efforts to sell a series of military aircraft to the Dominican Republic's airforce. The DOJ claims that negotiations were managed by a "Dominican Official" whom Embraer employees allegedly referred to as the "General Manager" or "Managing Director of the Project." During the course of the negotiations, the DOJ alleges that Embraer agreed to pay the Dominican Official a $3.52 million commission in exchange for ensuring that the Dominican government approved and financed the purchase of Embraer's aircraft. The DOJ claims that Embraer later allegedly executed a consulting agreement with a third-party agent to funnel the money to the Dominican Official. Court documents suggest that the funds paid to the Dominican Official would be distributed to other officials in the Dominican government.

Saudi Arabia

According to the DOJ, between 2009 and 2011, Embraer paid a Saudi Arabian government official $1.65 million to obtain a contract for the sale of three private jets to a Saudi Arabian instrumentality.

Beginning in 2007, Embraer allegedly learned that an unnamed Saudi Arabian instrumentality was interested in purchasing used executive jets. By 2009 the Saudi Arabian instrumentality had narrowed its interest in purchasing the aircraft to Embraer and one other manufacturer. In late 2009, an official from the Saudi Arabian instrumentality (the "Saudi Official") allegedly met with an Embraer official and offered to help the company win the aircraft contract in addition to changing the terms of the sale from used to new jets in exchange for a commission. Following a series of exchanges, Embraer allegedly agreed to pay the Saudi Official $550,000 per aircraft. After Embraer finalized the sale of three new executive jets to the Saudi Arabian instrumentality, Embraer allegedly funneled $1.65 million to the Saudi Official through a third-party agent.

Mozambique

According to the DOJ, in 2009 Embraer paid $800,000 to a third-party agent

KEY FACTS

Citation. *United States v. Embraer, S.A.*, No. 0:16-cr-60294 (S.D. Fla. 2016).

Date Filed. October 24, 2016.

Country. Dominican Republic, India, Mozambique, Saudi Arabia.

Date of Conduct. 2008 – 2011.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. $83,816,476.

Intermediary. Local Consultants/Agents; Shell Companies.

Foreign Official. Official from the Dominican Republic Air Force serving as representative during contract negotiations; Unnamed officials from a Saudi Arabian instrumentality; Unnamed officials from a Mozambican state-owned airline, Linhas Aéreas de Moçambique ("LAM").

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Conspiracy (Books-and-Records); Internal Controls.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Brazil.

Total Sanction. $107,285,090.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *United States v. Steven; SEC v. Embraer, S.A.*

Total Combined Sanction. $205,533,381.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

(the "Mozambican Agent") in connection with a contract valued at $65 million for the sale of two aircraft to LAM.

Beginning in approximately May 2008, the DOJ explains that Embraer entered into negotiations with LAM for the sale of two aircraft. The DOJ claims that in approximately August 2008 the Mozambican Agent, who had not previously worked with Embraer, contacted an Embraer executive involved in the LAM negotiations. According to the DOJ, the Mozambican Agent informed the executive that he would be serving as a consultant on the deal and stated that Embraer should be prepared to make a "gesture" when delivering the first aircraft to LAM. In response, Embraer allegedly offered to pay the Mozambican Agent a consultancy fee of $100,000 for the two aircraft. The DOJ claims that upon receiving Embraer's offer, the Mozambican Agent stated that he was expecting a higher fee and that LAM may award the contract to a competitor instead. Later, a high-ranking official from LAM allegedly contacted Embraer stating that the initial offer was an "insult" and that a commission of between $1 million and $800,000 would be more appropriate.

According to the DOJ, in mid-September 2008 Embraer finalized the sale of two aircraft to LAM and secured a down payment of approximately $300,000 on a third. Seven months later, Embraer allegedly entered into a consultancy agreement with a recently formed company in São Tomé and Principe that was controlled by the Mozambican Agent. Pursuant to the consultancy agreement, in July and August 2009 Embraer allegedly paid the São Tomé and Principe company a total sum of $800,000 and recorded the payments as a "Sales Commission" on its books-and-records.

India

According to the DOJ, between 2005 and 2009 Embraer paid $5.76 million to a third-party agent (the "Indian Agent") who assisted the company to obtain a defense contract with the Indian Air Force worth $208 million. The payments to the Indian Agent were made in spite of an Indian law that Embraer believed prohibited the use of agents for military sales. To conceal the agency relationship between Embraer and the Indian Agent, Embraer allegedly executed multiple consulting agreements with entities in the U.K. and Singapore to conceal a $5.76 million commission that the company ultimately sought to pay the Indian Agent. The DOJ claims that the transactions were misreported on Embraer's books and records.

ENFORCEMENT

On October 24, 2016, the DOJ announced that it resolved an FCPA enforcement action against Embraer through a deferred prosecution agreement. According to the agreement, Embraer acknowledged that it would be charged with one count of conspiracy to violate the FCPA and one count of violating the FCPA's internal controls provision. Embraer agreed to pay a criminal monetary penalty of $107,285,090 and would appoint an independent compliance monitor for a term of three years. On the same day, the SEC announced that it had resolved a parallel FCPA enforcement action against Embraer where Embraer would be required to pay monetary sanction of $98,248,291.

See DOJ Digest Number B-195.
See SEC Digest Number D-162.
See Parallel Litigation Digest H-A25.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

173. UNITED STATES V. OCH-ZIFF CAPITAL MANAGEMENT GROUP LLC (E.D.N.Y. 2016)
UNITED STATES V. OZ AFRICA MANAGEMENT GP, LLC (E.D.N.Y. 2016)

NATURE OF THE BUSINESS

Och-Ziff Capital Management Group LLC ("Och-Ziff") is a Delaware limited liability company and one of the largest alternative asset and hedge fund managers in the world. Och-Ziff has its headquarters in New York and maintains a class of common stock that is listed on the New York Stock Exchange. Those securities are registered with the SEC pursuant to Section 12 of the Securities Exchange Act of 1934. Och-Ziff controls numerous consolidated subsidiaries and affiliates through which it operates and provides investment advisory and management services to Och-Ziff investor funds in return for management fees and incentive income, including OZ Africa Management GP, LLC. OZ Africa Management GP, LLC ("OZ Africa") is a Delaware limited liability company and an indirectly owned subsidiary of Och-Ziff.

INFLUENCE TO BE OBTAINED

According to the DOJ, from approximately 2007 until 2013, Och-Ziff engaged in a series of bribery schemes involving officials from the Democratic Republic of the Congo ("DRC"), Libya, and other African countries. Those alleged schemes are described in greater detail below.

Democratic Republic of the Congo

From approximately 2005 until 2015, an unnamed Israeli businessman ("DRC Partner") with significant diamond and mining interests in the Democratic Republic of the Congo allegedly paid more than $100 million in bribes to DRC officials to obtain special access to and preferential prices for opportunities in the government-controlled mining sector. Beginning in 2007, Och-Ziff employees allegedly initiated discussions with the DRC Partner about forming a joint venture between Och-Ziff and the DRC Partner, through the DRC Partner's companies, for purposes of acquiring and consolidated mining assets in the DRC into one large publicly traded mining company. The DOJ claims that as part of the arrangement, the DRC Partner would offer Och-Ziff special access to investment opportunities in the DRC while Och-Ziff would finance the DRC Partner's operations.

Between 2007 and 2011, Och-Ziff allegedly provided funds to the DRC Partner in the form of equity investments and loans worth several hundred million dollars. According to the DOJ, throughout this process Och-Ziff was aware of a high-risk that a portion of the funds provided to the DRC Partner would be used as bribes. In fact, at least two employees of Och-Ziff allegedly were aware of and participated in making corrupt payments to DRC officials to secure mining interests using funds provided by Och-Ziff.

Libya

From around 2007 to 2010, Och-Ziff retained a London-based third-party consultant ("Libyan Intermediary") to aid the company to obtain investments from Libya's sovereign wealth fund, Libya Investment Authority ("LIA"). Och-Ziff agreed to pay the consultant a $3.75 million "finder's fee" even though an Och-Ziff employee allegedly knew that all or a portion of the fee would be used to bribe Libyan officials to influence the LIA to invest into Och-Ziff's funds. According to the DOJ, the corrupt payments secured a $300 million

KEY FACTS

Citation. *United States v. Och-Ziff Capital Management Group LLC*, No. 1:16-cr-00516 (E.D.N.Y. 2016); *United States. v. OZ Africa Management GP, LLC*, No. 1:16-cr-00515 (E.D.N.Y. 2016).

Date Filed. October 17, 2016.

Country. Chad; Libya; Niger.

Date of Conduct. 2007 – 2013.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Business Partner; Local Agents.

Foreign Official. Senior officials in the Democratic Republic of the Congo; Ambassador-at-Large and national parliamentarian of the Democratic Republic of the Congo; Unnamed individual from Libya that conducted high-profile foreign and domestic affairs on behalf of the Libyan government and influenced the decisions of the Libyan sovereign wealth fund; Unnamed high-ranking Libyan government official; Unnamed high-ranking official at the Libyan sovereign wealth fund.

FCPA Statutory Provision.

- **Och-Ziff Capital Mgmt**. Conspiracy (Anti-Bribery), Books-and-Records; Internal Controls.
- **Och-Ziff Africa**. Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement (Och-Ziff Capital Mgmt.); Plea Agreement (Och-Ziff Africa).

Defendant Jurisdictional Basis. Issuer (Och-Ziff Capital Mgmt.); Domestic Concern (Och-Ziff Africa); Agent of Issuer (Och-Ziff Africa).

Defendant's Citizenship. United States.

Total Sanction. $213,055,689.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *In the Matter of Och-Ziff Capital Management Group LLC, OZ Management LP, Daniel S. Och, and Joel M. Frank; United States v. Samuel Mebiame; SEC v. Cohen & Baros; United States v. Michael Leslie Cohen*.

Total Combined Sanction. $412,100,856.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

investment into Och-Ziff's funds and resulted in a $100 million pecuniary gain.

In addition, following a $40 million investment by Och-Ziff into a Libyan real estate development project, Och-Ziff allegedly paid a $400,000 "deal fee" to an entity controlled by the Libyan Intermediary which Och-Ziff allegedly understood was to compensate the Libyan Intermediary for bribes paid to Libyan officials in connection with Och-Ziff's real estate investment.

Other African Investments

According to the DOJ, Och-Ziff also invested in companies doing business in the mining and mineral sectors in other African countries with a high risk of corruption such as Chad, and Niger. The DOJ claims that these additional investments were facilitated through the use of bribery.

ENFORCEMENT

On September 29, 2016, the DOJ announced that it had entered into a DPA with Och-Ziff for violations of the FCPA's anti-bribery, books-and-records, and internal controls provisions. According to the DPA, Och-Ziff agreed to pay a total monetary penalty of $213,055,689. The DOJ also announced that OZ Africa had accepted a plea agreement for its involvement in the alleged bribery scheme in the DRC. As part of the plea agreement, OZ Africa would not be required to pay a criminal penalty in light of the DOJ sanction levied against Och-Ziff. The SEC separately resolved charges against Och-Ziff in a parallel enforcement action whereby Och-Ziff was ordered to pay a total sanction of $199,045,167.

See DOJ Digest Number B-170.
See SEC Digest Numbers D-160 and D-171.
See Ongoing Investigation Number F-43.
See Parallel Litigation Digest Number H-F26.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

172. IN RE NCH CORPORATION (2016)[53]

NATURE OF THE BUSINESS

NCH is an industrial supply and maintenance company based in Irving, Texas.

INFLUENCE TO BE OBTAINED

According to the DOJ, from approximately February 2011 until mid-2013, NCH's Chinese subsidiary ("NCH China") illegally provided Chinese government officials with cash, gifts, meals, and entertainment to influence those officials' purchasing decisions. NCH China allegedly described these fees in internal records as "customer maintenance fees," "customer cooperation fees," and "cash to customer." Additionally, NCH China allegedly paid for Chinese government officials to attend a 10-day trip to various cities in the United States and Canada, which included minimal business activities.

ENFORCEMENT

On September 29, 2016, the DOJ announced that it would decline to bring charges against NCH in exchange for NCH's agreement to disgorge $335,342 in ill-gotten gains.

KEY FACTS

Citation. *In re NCH Corp.* (2016).

Date Filed. October 15, 2016.

Country. China.

Date of Conduct. 2011 – 2013.

Amount of the Value. $44,545.

Amount of Business Related to the Payment. $355,342.

Intermediary. Chinese Subsidiary.

Foreign Official. Unnamed Chinese government officials.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Declination Letter with Disgorgement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. $335,342.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $335,342.

[53] Matter resolved through a declination letter (September 2016).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

171. IN RE HMT LLC (2016)[54]

NATURE OF THE BUSINESS

HMT is a Delaware corporation headquartered in Texas which manufactures, supplies, and services aboveground liquid storage tanks for the petroleum, oil, and gas industries.

INFLUENCE TO BE OBTAINED

According to the DOJ, from approximately 2002 until 2011, an HMT sales agent allegedly bribed Venezuelan government officials to persuade PDVSA to purchase HMT products. To fund the alleged bribes, an agent for HMT allegedly quoted prices to PDVSA which were substantially higher than the price quoted by HMT. The DOJ claimed that PDVSA paid the inflated prices to HMT, which kept the amount it had quoted the agent, and paid the agent the difference as a "commission" and "subcontracting" fees. The DOJ alleged that a portion of the funds received by the agent was subsequently paid to PDVSA employees and Venezuelan government officials.

Additionally, from approximately 1999 through 2011 an HMT distributor allegedly paid bribes to Chinese government officials in exchange for the purchase of HMT products by Chinese state-owned enterprises.

ENFORCEMENT

On September 29, 2016, the DOJ announced that it would decline to bring charges against HMT in exchange for HMT's agreement to disgorge $2,719,412 in ill-gotten gains.

KEY FACTS

Citation. *In re HMT LLC* (2016).

Date Filed. October 15, 2016.

Country. China, Venezuela.

Date of Conduct. 2002 – 2011.

Amount of the Value. Approximately $500,000.

Amount of Business Related to the Payment. $2,719,412.

Intermediary. Sales Agent, Local Distributor.

Foreign Official. Unnamed Venezuelan government officials; Employees of Petróleos de Venezuela, S.A. ("PDVSA"), the Venezuelan stated-owned and state-controlled energy company; Unnamed Chinese government officials.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Declination Letter with Disgorgement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. $2,719,412.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $2,719,412.

[54] Matter resolved through a declination letter (September 2016).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

170. UNITED STATES V. SAMUEL MEBIAME (E.D.N.Y. 2016)

NATURE OF THE BUSINESS

According to court documents, Samuel Mebiame is a Gabonese national who worked as a consultant for a joint venture between an unnamed U.S.-based hedge fund (publicly known to be Och-Ziff Capital Management Group) and an unnamed Turks & Caicos Islands incorporated entity.

INFLUENCE TO BE OBTAINED

According to the DOJ, Mebiame worked as a "fixer" to obtain rights to mineral concessions in Africa by bribing government officials in Niger, Guinea, and Chad. The alleged bribes included payments for cars and a $100,000 payment to a charity run by a Niger official; payment of $440,000 to rent a private jet for a Guinean official; and cash payments and paying for travel and shopping expenses of a Chad official and his spouse.

ENFORCEMENT

On August 16, 2016, Mebiame was arrested in Brooklyn, New York and charged with violating the FCPA. Membiame later, on December 15, 2016, agreed to plead guilty to one count of conspiracy to violate the FCPA. On June 14, 2017, the district court sentenced Mebiame to a term of 24-months in prison.

See DOJ Digest Number B-173.
See SEC Digest Number D-160 and D-171.
See Ongoing Investigation F-43.

KEY FACTS

Citation. *United States v. Mebiame,* No. 1:16-cr-00627 (E.D.N.Y. 2016)*; United States v. Mebiame,* No. 1:16-mj-00752 (E.D.N.Y. 2016).

Date Filed. September 30, 2016.

Country. Chad; Guinea; Niger.

Date of Conduct. 2007 – 2015.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign Official. Unnamed government officials from Niger, Guinea, and Chad.

FCPA Statutory Provision. Conspiracy.

Other Statutory Provision. None.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Territorial Jurisdiction.

Defendant's Citizenship. Gabon.

Total Sanction. 24-months imprisonment.

Related Enforcement Actions. *United States v. Och-Ziff Capital Management Group LLC*; *United States. v. OZ Africa Management GP, LLC*; *In the Matter of Och-Ziff Capital Management Group, OZ Management LP, Daniel S. Och, and Joel M. Frank; SEC v. Cohen & Baros*.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

169. UNITED STATES V. LATAM AIRLINES GROUP S.A. (S.D. FLA. 2016)

NATURE OF THE BUSINESS

LAN Airlines S.A., now LATAM Airlines S.A., is an airline company based in Santiago, Chile. LAN provided passenger and cargo transportation services throughout South and Central America as well as the United States, Europe, and Australia. At the time of the alleged FCPA violations, LAN maintained a class of securities listed stock on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to the DOJ's deferred prosecution agreement, LAN negotiated and executed a "fictitious consulting agreement" in 2006 worth $1.15 million to allegedly funnel bribes to Argentine labor union officials and stem potential labor unrest that threatened the company's expansion into the Argentine airline market. According to the DPA, LAN executives knew at the time they approved the consulting agreement that the services described would never be provided and the company failed to perform any meaningful due diligence into the consultant. Furthermore, the DOJ claims that upon receipt of invoices for the consulting agreement, LAN approved payment and intentionally misreported the payments on the company's books and records.

ENFORCEMENT

On July 25, 2016, the DOJ announced that LATAM, as successor-in-interest to LAN, settled the charges against the company for violations of the FCPA's books-and-records and internal controls provisions through a deferred prosecution agreement. According to the agreement, LATAM would pay a criminal penalty of $12.75 million. Pursuant to a separate enforcement action by the SEC, LAN Airlines agreed to pay an additional sanction of $9,437,788. The SEC also separately charged LAN Airlines' CEO, Ignacio Cueto Plaza, with violations of the FCPA.

See SEC Digest Number D-143.

KEY FACTS

Citation. *United States v. LATAM Airlines Group S.A.*, No. 0:16-cr-60195 (S.D. Fla. 2016).

Date Filed. July 25, 2016.

Country. Argentina.

Date of Conduct. 2006 – 2007.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. $6,743,932.

Intermediary. Local Agent.

Foreign Official. Unnamed foreign officials from Argentine labor unions.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Chile.

Total Sanction. $12,750,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *In the Matter of LAN Airlines S.A.*; *In the Matter of Ignacio Cueto Plaza*.

Total Combined Sanction. $22,187,788.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

168. UNITED STATES V. BK MEDICAL APS (2016)[55]

NATURE OF THE BUSINESS

BK Medical ApS is the Danish subsidiary of the Massachusetts-based Analogic Corporation. Analogic designs and manufactures medical imaging, ultrasound, and security technology systems. Analogic maintains a class of common stock on the NASDAQ exchange. BK Medical ApS focuses on the manufacture and sale of Analogic ultrasound systems.

INFLUENCE TO BE OBTAINED

According to the DOJ, between 2001 and 2011, BK Medical engaged in an improper payment scheme to channel approximately $20 million in payments to various third parties and conceal those payments by creating fictitious invoices, causing Analogic to falsify its books and records.

As the DOJ explains, the scheme involved the creation of fictitious documents reflecting inflated purchase prices for products BK Medical sold to its Russian distributor. The DOJ alleges that, at the Russian distributor's request, BK Medical would facilitate the creation of inflated invoices which the Russian distributor would pay, and at a later point in time, the Russian distributor would direct BK Medical to wire the excess funds to an unknown entity. According to the DOJ, BK Medical complied with the Russian distributor's instructions despite not knowing how the funds were being used. The DOJ alleges that there is at least some evidence that the payments were ultimately made to doctors employed by Russian state-owned entities.

ENFORCEMENT

On June 21, 2016, the DOJ announced that it had entered into a non-prosecution agreement with BK Medical for violations of the books-and-records and internal controls provisions of the FCPA. According to the non-prosecution agreement, BK Medical would agree to pay a $3.4 million criminal penalty to resolve the charges. The DOJ's sanction was in addition to an $11.5 million sanction imposed by the SEC.

See SEC Digest Number D 153.

KEY FACTS

Citation. *United States v. BK Medical ApS* (2016).

Date Filed. July 11, 2016.

Country. Russia.

Date of Conduct. 2001 – 2011.

Amount of the Value. Approximately $20 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Third-Party Distributors.

Foreign Official. Unnamed Foreign Officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $3,402,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *In the Matter of Analogic Corporation and Lars Frost.*

Total Combined Sanction. $14,884,962.

[55] Matter resolved through a non-prosecution agreement (June 2016).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

167. UNITED STATES V. OLYMPUS LATIN AMERICA, INC. (D.N.J. 2016)

NATURE OF THE BUSINESS

Olympus Latin America ("OLA") is a Delaware corporation headquartered in Miami, Florida. OLA is a majority owned subsidiary of Olympus Corporation of the Americas, a company headquartered in Pennsylvania which engages in the business distributing medical imaging, photographic, and surgical equipment in the United States, Canada, Central America, and South America.

INFLUENCE TO BE OBTAINED

Between 2006 and 2011, senior management at OLA allegedly developed and implemented a plan to increase medical equipment sales by providing cash, gifts, entertainment and travel to HCPs at various state-owned and private health care facilities. OLA allegedly delivered these improper benefits to HCPs by opening and directing side benefits to "training centers" and selecting certain HCPs, known as "Key Opinion Leaders," to run and manage the training centers. HCPs who were best able to influence purchasing decisions at state-owned medical facilities or who sat on public tender boards were allegedly chosen as Key Opinion Leaders.

As compensation for their management of OLA's training centers in South America, the DOJ claims that Key Opinion Leaders were provided an annual salary of $65,000 per year, given a 50% discount on Olympus equipment and provided a $130,000 budget for "VIP Management." In addition, OLA is accused of establishing a "Miles Program" which provided Key Opinion Leaders with free travel for personal, non-business reasons. According to the DOJ, Key Opinion Leaders were provided between 5,000 and 30,000 "miles"—the equivalent of $5,000 to $30,000—in compensation under the Miles Program.

Throughout the relevant period, the DOJ claims that senior management and certain sales representatives from OLA made efforts to hide the improper benefits to HCPs from government agencies and hospital authorities in the United States and across South America. This was allegedly accomplished by omitting any reference to payments, gifts, travel or personal equipment discounts from relevant contact language or entering into side agreements with the HCP.

ENFORCEMENT

On March 1, 2016, the DOJ announced that it had entered into a deferred prosecution agreement with OLA in which OLA agreed to pay a criminal penalty of $22.8 million to settle one count of conspiracy to violate the FCPA and one substantive count of violating the FCPA's anti-bribery provision. In addition to the FCPA violations, OLA's corporate parent, Olympus Corporation of the Americas, entered into a separate three-year deferred prosecution agreement to settle violations of the Anti-Kickback Statute, agreeing to pay a $312.4 million criminal penalty and $310.8 million to settle civil claims under the federal and various state False Claims Acts.

KEY FACTS

Citation. United States. v. Olympus Latin America, Inc., No. 2:16-mj-03525 (D.N.J. 2016).

Date Filed. April 18, 2016.

Country. Argentina; Bolivia; Brazil; Chile; Colombia; Costa Rica; Mexico.

Date of Conduct. 2006 – 2011.

Amount of the Value. Approximately $3 million.

Amount of Business Related to the Payment. Approximately $7.5 million.

Intermediary. Agents; Third-Party Distributors.

Foreign Official. Health care practitioners employed at government-owned and private health care facilities.

FCPA Statutory Provision. Anti-Bribery; Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. Japan.

Total Sanction. $22,800,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. Not Applicable.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

166. UNITED STATES V. VIMPELCOM LTD. (S.D.N.Y. 2016)
UNITED STATES V. UNITEL LLC (S.D.N.Y. 2016)

NATURE OF THE BUSINESS

VimpelCom Ltd., headquartered in the Netherlands, is a global provider of telecommunications services. VimpelCom is the sixth largest telecommunications company in the world, operating in Europe, Asia, and Africa. It maintains a class of publicly traded securities on NASDAQ and, until 2013, a class of securities on the New York Stock Exchange. Unitel LLC is VimpelCom's wholly-owned Uzbek subsidiary.

INFLUENCE TO BE OBTAINED

According to the DOJ, between 2006 and 2012 VimpelCom and Unitel conspired to pay an Uzbek government official over $114 million in exchange for (i) access to the Uzbek telecommunications market, (ii) the acquisition of important Uzbek licenses and frequencies, and (iii) general support to allow the company to operate in the Uzbek market. The company allegedly concealed bribes by making payments to a shell company ("Shell Company") that VimpleCom knew to be beneficially owned by the official. As explained by the DOJ, the alleged schemed occurred in various stages described below.

First, beginning in 2006, VimpelCom allegedly paid $60 million to acquire a local Uzbek company which VimpelCom knew was partially owned by Shell Company, and therefore, indirectly owned by the foreign official. VimpelCom management knew that the acquisition of this local Uzbek company would facilitate VimpelCom's entry into the Uzbek market.

Second, in 2006, VimpelCom and Unitel entered into an agreement that allowed Shell Company to obtain a minority interest in Unitel which VimpelCom would later repurchase for a guaranteed profit of at least $37.5 million. The purpose of the transaction was to allegedly pay a bribe to the foreign official in exchange for permitting VimpelCom and Unitel to conduct operations in Uzbekistan.

Third, in 2007, VimpelCom management allegedly caused a $25 million bribe to be paid to the foreign official via Shell Company to enable VimpleCom to obtain valuable 3G frequencies in Uzbekistan that the Shell Company previously owned. Specifically, VimpelCom bribed the foreign official to ensure that the Shell Company waived its right to certain 3G frequencies and that the Uzbek telecommunications authorities reissued the frequencies to Unitel.

Fourth, VimpelCom allegedly entered into fake consulting contracts with Shell Company for $2 million in 2008 and $30 million in 2011. According to the DOJ, in both cases, Shell Company did no real work to justify the consulting fees. Instead, the DOJ claimed that the true purpose was to provide the foreign official with approximately $32 million in exchange for additional valuable telecommunications assets and to allow Unitel to continue to operate in Uzbekistan.

KEY FACTS

Citation. *United States. v. VimpelCom Ltd.*, No.1:16-cr 00137 (S.D.N.Y. 2016); *United States. v. Unitel LLC*, No. 1:16-cr-00137 (S.D.N.Y. 2016).

Date Filed. February 18, 2016.

Country. Uzbekistan.

Date of Conduct. 2006 – 2012.

Amount of the Value. Over $114 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Shell Company.

Foreign Official. Unnamed Uzbek government official and close relative of a high-ranking Uzbek government official, with significant influence over Uzbek telecommunication authorities.

FCPA Statutory Provision.

- **VimpleCom**. Conspiracy; Internal Controls.
- **Unitel**. Conspiracy.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement (VimpelCom); Plea Agreement (Unitel).

Defendant Jurisdictional Basis. Issuer (VimpelCom); Agent of Issuer (Unitel).

Defendant's Citizenship. Netherlands.

Total Sanction. $230,100,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor (VimpelCom).

Related Enforcement Actions. *SEC v. VimpelCom Ltd.*

Total Combined Sanction. $795,326,398 (Global Resolution); $230,163,199.20 (U.S. Recovery).[56]

[56] The Global Resolution includes sanctions imposed on VimpleCom by U.S. and Dutch agencies. The U.S. Recovery only includes sanctions paid to U.S. authorities.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

Fifth, VimpelCom allegedly conducted complex sham "reseller" transactions to transfer an additional $20 million in bribes to the government official through Shell Company.

According to the DOJ, throughout the relevant time period VimpelCom failed to implement a system of adequate internal controls and misreported the $114 million in bribe payments on its books and records as legitimate transactions.

ENFORCEMENT

On February 18, 2016, the DOJ announced that it had resolved an FCPA enforcement action against VimpelCom and Unitel. VimpelCom entered into a three-year deferred prosecution agreement which accused the company of conspiring to violate the FCPA's anti-bribery and books-and-records provisions and violating the FCPA's internal controls provisions. As part of the deferred prosecution agreement, VimpelCom was required to pay a total criminal penalty of $460,326,398.40. Of that amount, approximately $230 million would be paid to Dutch regulators.

Unitel separately entered into a plea agreement whereby the company pleaded guilty to one count of conspiracy to violate the FCPA's anti-bribery provision. In light of the penalties imposed on VimpelCom, Unitel was not required to pay an additional fine.

In addition to the DOJ's action against VimpelCom and Unitel, the SEC and Dutch regulators announced on February 22, 2016 that they had resolved separate enforcement actions against VimpelCom. According to the announcement, VimpelCom would be required to pay an additional $375 million in disgorgement. Of that amount, $167.5 million was paid to Dutch regulators and $40 million was credited towards the DOJ's criminal penalty.

See SEC Digest Number D-146.
See Ongoing investigation Number F-44.
See Parallel Litigation Digest Number H-H3.
See Parallel Litigation Digest Number H-A22.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

165. UNITED STATES V. PARAMETRIC TECHNOLOGY (SHANGHAI) SOFTWARE CO. LTD. AND PARAMETRIC TECHNOLOGY (HONG KONG) LIMITED (2016)

NATURE OF THE BUSINESS

Parametric Technology (Shanghai) Software Co. Ltd. and Parametric Technology (Hong Kong) Limited (collectively "PTC China") are wholly owned subsidiaries of PTC Inc. (formerly Parametric Technology Company). PTC is a Massachusetts corporation headquartered in Needham, Massachusetts. PTC designs, manufactures, and sells software, including computer aided design software and product lifecycle management software. PTC's operations in China, including sales to Chinese customers, are managed through PTC China. PTC's stock is registered with the U.S. Securities and Exchange Commission and is listed on NASDAQ.

INFLUENCE TO BE OBTAINED

According to the DOJ, from at least 2008 to 2011, PTC China provided improper payments of over $1 million to customers who were employed at Chinese state-owned entities to obtain or retain business. The DOJ claims that PTC China made the improper payments in one of two ways: (1) by providing over $1 million to third-party agents disguised as commission or sub-contracting payments that were used to pay for non-business foreign travel for the Chinese officials; and (2) by allowing sales staff to provide gifts and excessive entertainment of over $250,000 to the Chinese officials. During the time period, PTC China entered into more than $13 million in contracts with the Chinese state-owned entities.

The DOJ claims that PTC China employees and business partners directly or indirectly funded 24 trips that included a recreational component for Chinese officials. PTC China employees allegedly organized overseas trips in conjunction with visits to a PTC facility. As part of these business trips, PTC China employees allegedly included several days of sightseeing to destinations such as New York, Las Vegas, Los Angeles, and Hawaii for recreational purposes.

In addition to the above, between 2009 and 2011, PTC China employees directly provided gifts and entertainment of over $250,000 to Chinese officials, in part to obtain or retain business from state-owned entities. The gifts and entertainment were made in contravention of PTC's internal policies which impose approval requirements and monetary limits on gifts and entertainment for government officials.

ENFORCEMENT

On February 16, 2016, the DOJ announced that it had entered into a three-year non-prosecution agreement with PTC China. According to the agreement, PTC China would pay a criminal penalty of $14.54 million.

See SEC Digest Number D-145.

KEY FACTS

Citation. *United States v. Parametric Tech. (Shanghai) Software Co. Ltd.* (2016).

Date Filed. February 16, 2016.

Country. China.

Date of Conduct. 2008 – 2011.

Amount of the Value. Over $1 million.

Amount of Business Related to the Payment. Approximately $13 million.

Intermediary. Local "Business Partners."

Foreign Official. Employees of Chinese state-owned entities.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $14,540,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *In the Matter of PTC Inc.*

Total Combined Sanction. $28,162,000.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

164. PETRÓLEOS DE VENEZUELA, S.A.
UNITED STATES V. ROBERTO ENRIQUE RINCON-FERNANDEZ, ABRAHAM JOSE SHIERA-BASTIDAS (S.D. TEX. 2015)
UNITED STATES V. ALFONSO ELIEZER GRAVINA-MUNOZ (S.D. TEX. 2015)
UNITED STATES V. CHRISTIAN JAVIER MALDONADO-BARILLAS (S.D. TEX. 2015)
UNITED STATES V. MOISES ABRAHAM MILLAN ESCOBAR (S.D. TEX. 2016)
UNITED STATES V. JOSE LUIS RAMOS-CASTILLO (S.D. TEX. 2015)
UNITED STATES V. JUAN JOSE HERNANDEZ-COMERMA (S.D. TEX. 2017)
UNITED STATES V. CHARLES QUINTARD BEECH III (S.D. TEX. 2017)
UNITED STATES V. LUIS CARLOS DE LEON-PEREZ, NERVIS GERARDO VILLALOBOS-CARDENAS, CESAR DAVID RINCON-GODOY, ALEJANDRO ISTURIZ-CHIESA, RAFAEL ERNESTO REITER-MUNOZ (S.D. TEX. 2017)
UNITED STATES V. JUAN CARLOS CASTILLO RINCON (S.D. TEX. 2018)
UNITED STATES V. JOSE ORLANDO CAMACHO (S.D. TEX. 2017)
UNITED STATES V. FERNANDO ARDILA-RUEDA (S.D. TEX. 2017)
UNITED STATES V. JOSE MANUEL GONZALEZ TESTINO (S.D. TEX. 2018)

NATURE OF THE BUSINESS

Since 2009, the DOJ has investigated bribery and corruption schemes involving Venezuela's state-owned oil and natural gas company, Petróleos de Venezuela, S.A. ("PDVSA"). Seventeen individuals have been charged in connection with the investigation:

- Roberto Enrique Rincon Fernandez: a resident of Texas and permanent resident of the United States, who controlled a series of unnamed closely held companies that were used to secure contracts from PDVSA;
- Abraham Jose Shiera Bastidas: a Venezuelan national that resided in Florida, like Rincon, controlled a series of unnamed closely held companies which were used to secure contracts from PDVSA;
- Moises Abraham Millan Escobar: a Venezuelan national that resided in Texas, who was employed by Shiera as an independent contractor and acted as an agent for Shiera's and Rincon's companies;
- Juan Jose Hernandez Comerma: a U.S. permanent resident residing in Florida, who was an employee of Shiera and served as a general manager of one of Shiera's companies;
- Charles Quintard Beech III: a U.S. citizen and resident of Texas, who controlled a number of closely-held companies that were used to secure contracts with PDVSA;
- Fernando Ardila-Rueda: a U.S. resident, who was a business partner and minority owner of companies owned by Shiera;
- Jose Manuel Gonzalez Testino: a U.S. citizen, who controlled several U.S.- and Panama-based energy companies that supplied services and equipment to PDVSA;
- Luis Carlos de Leon Perez: a dual citizen of the U.S. and Venezuela, who was formerly employed as an official of the Venezuelan government;
- Juan Carlos Castillo Rincon: a U.S. citizen, who was the former manager of a logistics and shipping company located in the United States;

KEY FACTS

Citation. *United States v. Rincon-Fernandez et al.*, No. 4:15-cr-00654 (S.D. Tex. 2015); *United States v. Gravina-Munoz*, No. 4:15-cr-00637 (S.D. Tex. 2015); *United States v. Maldonado-Barillas*, No. 4:15-cr-00635 (S.D. Tex. 2015); *United States v. Millan*, No. 4:16-cr-00009 (S.D. Tex. 2016); *United States v. Ramos-Castillo*, No. 4:15-cr-00636 (S.D. Tex. 2015); *United States v. Hernandez-Comerma*, No. 4:17-cr-00005 (S.D. Tex. 2017); *United States v. Beech*, No. 4:17-cr-00006 (S.D. Tex. 2017); *United States v. Ardila-Rueda*, No. 4:17-cr-00515 (S.D. Tex. 2017); *United States v. De Leon-Perez et al.*, No. 4:17-cr-00514 (S.D. Tex. 2017); *United States v. Gonzalez Testino*, No. 1:18-mj-03171 (S.D. Fla. 2018).

Date Filed. November 24, 2015 (Gravina; Maldonado; Ramos); December 10, 2015 (Rincon-Fernandez; Bastidas); January 7, 2016 (Millan); January 4, 2017 (Hernandez; Beech); July 5, 2017 (Camacho) August 23, 2017 (Leon-Perez, Villalobos-Cardenas, Rincon-Godoy, Isturiz-Chiesa, Reiter-Munoz); August 24, 2017 (Ardila-Rueda); April 11, 2018 (Castillo-Rincon); July 31, 2018 (Gonzalez Testino).

Country. Venezuela.

Date of Conduct. 2008 – 2014.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not stated.

Intermediary. None.

Foreign Official. Officials from PDVSA named Alfonso Eliezer Gravina-Munoz, Christian Javier Maldonado-Barillas, Jose Luis Ramos Castillo; unnamed officials at PDVSA.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

- Jose Orlando Camacho: a U.S. citizen, who was employed by PDVSA or its wholly-owned subsidiaries or affiliates;
- Christian Javier Maldonado-Barillas: a resident of Venezuela and Texas, who was employed by PDVSA or its wholly-owned subsidiaries or affiliates;
- Alfonzo Eliezer Gravina-Munoz: a U.S. citizen and resident of Texas, who was employed by PDVSA or its wholly-owned subsidiaries or affiliates;
- Jose Luis Ramos-Castillo: a resident of Venezuela and Texas, who was employed by PDVSA or its wholly-owned subsidiaries or affiliates; and
- Nervis Gerardo Villalobos Cardenas, Cesar David Rincon Godoy, Alejandro Isturiz Chiesa, Rafael Ernesto Reiter Munoz: all citizens of Venezuela, who were employed by the Venezuelan government or its instrumentalities, including PDVSA or its wholly owned subsidiaries.

INFLUENCE TO BE OBTAINED

According to court documents filed in the Southern District of Texas, beginning in 2009, Rincon-Fernandez, Shiera, Ardila-Rueda, and Millan Escobar allegedly agreed to bribe officials at PDVSA to secure lucrative energy contracts for Rincon-Fernandez's and Shiera's companies. To execute the alleged scheme, the Government argued that Rincon-Fernandez, Shiera, Millan Escobar, Ardila-Rueda, and Hernandez attempted to bribe PDVSA officials (including Gravina, Maldonado-Barillas, and Ramos) in exchange for rigging a competitive bidding process in Rincon-Fernandez's and Shiera's favor. Specifically, according to the indictment, PDVSA awarded its project contracts by way of "bidding panels" composed of companies that would be invited to bid on a particular project. The "bidding panels" were compiled by one of a number of PDVSA officials. Rincon-Fernandez, Shiera, Ardila-Rueda, and Millan Escobar allegedly bribed those PDVSA officials responsible for selecting the "bidding panels" (including Gravina, Maldonado-Barillas, and Ramos) with money as well as travel, meals, and other entertainment in exchange for agreeing to place one or more of Rincon-Fernandez's and Shiera's closely-held companies on the panels and directing the contracts to one of Rincon-Fernandez's and Shiera's companies.

Although Rincon-Fernandez and Shiera are accused of controlling the award of the PDVSA contracts, they allegedly sought to place several of their closely held companies on the bidding panels to create the illusion that the contracts were awarded through a competitive bidding process. According to the DOJ, Rincon-Fernandez, Shiera, Millan Escobar, Gravina, Maldonado-Barillas, and Ramos-Castillo made efforts to conceal the fact that Rincon-Fernandez and Shiera controlled several of the companies on the bidding panels. Once awarded the project contracts, Rincon-Fernandez, Shiera, Ardila-Rueda, and Millan Escobar allegedly wired funds from their closely held companies to bank accounts or entities controlled by the officials, the officials' relatives, or other designated individuals. The payments were frequently referred to as "commissions" for equipment or services that were allegedly never provided.

Separately, according to the DOJ, Beech engaged in a similar scheme to pay bribes to Gravina in exchange for securing PDVSA Contracts. The DOJ also alleged that Gonzalez Testino engaged in a scheme to make payments and provide other things of value to a Venezuelan government official from PDVSA to secure business and other advantages for the companies controlled by Gonzalez Testino.

In another related case, the DOJ alleged that Castillo Rincon conspired to

FCPA Statutory Provision.

- **Rincon-Fernandez**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Shiera-Bastidas**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Leon-Perez**. Conspiracy (Anti-Bribery).
- **Villalobos-Cardenas**. Conspiracy (Anti-Bribery).
- **Millan Escobar**. Conspiracy (Anti-Bribery).
- **Hernandez-Comerma**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Beech**. Conspiracy (Anti-Bribery).
- **Ardila-Rueda**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Gonzalez Testino**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Castillo-Rincon**. Conspiracy (Anti-Bribery).
- **Camacho**. Conspiracy (Anti-Bribery).

Disposition.

- **Rincon-Fernandez**. Plea Agreement.
- **Shiera-Bastidas**. Plea Agreement.
- **Millan Escobar**. Plea Agreement.
- **Hernandez-Comerma**. Plea Agreement.
- **Beech**. Plea Agreement.
- **Gravina-Munoz**. Plea Agreement.
- **Maldonado-Barillas**. Plea Agreement.
- **Ramos-Castillo**. Plea Agreement.
- **Ardila-Rueda**. Plea Agreement.
- **Gonzalez Testino**. Pending.
- **Rincon Godoy**. Plea Agreement.
- **Leon Perez**. Plea Agreement.
- **Camacho**. Plea Agreement.
- **Castillo-Rincon**. Plea Agreement
- **Villalobos-Cardenas**. Pending.
- **Isturiz-Chiesa**. Fugitive.
- **Reiter Munoz**. Pending.

Defendant Jurisdictional Basis. Domestic Concern (all FCPA defendants).

Defendant's Citizenship. United States (Beech;

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

bribe Camacho, a PDVSA official, to obtain or retain business.

The DOJ also filed charges against five former Venezuelan government officials allegedly involved in receiving and/or laundering improper payments: De Leon Perez, Villalobos Cardenas, Rincon Godoy, Reiter Munoz, Isturiz Chiesa, Camacho, Maldonado-Barillas, Gravina-Munoz, and Ramos-Castillo ("Venezuelan Officials"). The DOJ's Indictment alleges that the Venezuelan Officials requested vendors and providers for bribes and kickbacks in exchange for directing business to them and providing them with payment priority. The indictment alleges further that the Venezuelan Officials laundered the proceeds of the bribery scheme.

ENFORCEMENT

On December 16, 2015 and December 17, 2015, Shiera and Rincon-Fernandez, respectively, were brought into custody by U.S. officials. According to a criminal indictment that was unsealed on December 21, 2015, both Shiera and Rincon-Fernandez were charged with multiple counts of conspiracy to violate the FCPA and the federal money laundering statute along with substantive counts of the offenses. In March 2016 and June 2016, Shiera and Rincon-Fernandez, respectively, pleaded guilty to multiple violations of the FCPA. Shiera's and Rincon-Fernandez's sentencing is pending.

In March 2016, charges against Millan Escobar, Gravina, Maldonado-Barillas, and Ramos-Castillo were unsealed. Millan Escobar pleaded guilty to one count of conspiracy to violate the FCPA in January 2016 and was ordered to forfeit $533,578.13 on October 3, 2016. Millan's sentencing is presently scheduled for February 2018.

Separately, Gravina, Maldonado-Barillas, and Ramos-Castillo each pleaded guilty to one count of conspiracy to commit money laundering. Gravina also pleaded guilty to one count of tax fraud on November 24, 2015. Gravina and Maldonado-Barillas were subsequently ordered to forfeit $590,446 and $165,000, respectively. Ramos was ordered to forfeit multiple real-estate properties along with a monetary sum of $210,625.79. Sentencing for Gravina, Maldonado-Barillas, and Ramos-Castillo is scheduled for February 2018.

On January 10, 2017, the DOJ unsealed charges against Hernandez and Beech. On the same day, the DOJ announced that Hernandez had pleaded guilty to one count of conspiracy to violate the FCPA and one substantive count of violating the FCPA. Beech separately pleaded guilty to one count of conspiracy to violate the FCPA. Sentencing for Hernandez and Beech is scheduled for November 2018 and February 2019, respectively.

On August 24, 2017, the DOJ filed charges against Ardila-Rueda for one count of conspiracy to violate the FCPA and one count of violations of the anti-bribery provision of the FCPA. On October 11, 2017, Ardila-Rueda pleaded guilty to both counts. Sentencing is currently pending.

On February 12, 2018, the DOJ unsealed the charges against De Leon Perez, Villalobos Cardenas, Rincon Godoy, Reiter Munoz, and Isturiz Chiesa. Rincon Godoy was removed to the U.S. and pleaded guilty to one count of conspiracy to commit money laundering. De Leon Perez also pleaded guilty to one count of conspiracy to violate the FCPA and one count of conspiracy to commit

Gravina, De Leon Perez, Camacho); Not Stated (Rincon-Fernandez; Shiera; Maldonado; Ramos Castillo; Hernandez; Millan; Ardila-Rueda, Gonzalez Testino; Castillo-Rincon)[57]; Venezuela (De Leon Perez, Villalobos-Cardenas, Rincon Godoy, Isturiz Chiesa, Reiter Munoz).

[57] Rincon, Shiera, Maldonado, Castillo, Hernandez, Ardila-Rueda, Gonzalez Testino, and Millan are each ostensibly permanent residents of the United States.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

money laundering. Sentencing is pending.

On July 31, 2018, Gonzalez Testino was arrested at Miami International Airport based on a complaint filed against him. Currently, a removal hearing is scheduled for August 29, 2018.

On September 13, 2018, the DOJ unsealed the charges against Castillo Rincon for one count of conspiracy to violate the FCPA, three counts of violations of the FCPA's anti-bribery provisions, and one count of conspiracy to commit money laundering. On September 13, 2018, the DOJ announced that Castillo Rincon pleaded guilty to one count of conspiracy to violate the FCPA. His sentencing is currently pending.

See Parallel Litigation Digest Number H-I2.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

163. UNITED STATES V. DAREN CONDREY (D. MD. 2015)
UNITED STATES V. VADIM MIKERIN (D. MD. 2014)

NATURE OF THE BUSINESS

Daren Condrey, a citizen of the United States and resident of Maryland, was an owner, executive, and later co-president of an unnamed transportation company ("Transportation Company") headquartered in Maryland. Vadim Mikerin, a Russian citizen and resident of Maryland, was a director of the Pan American Department of JSC Techsnabexport ("Tenex"), an entity indirectly owned and controlled by the Russian Government, and later President of a wholly-owned U.S. subsidiary of Tenex known as Tenam Corporation. Both Tenex and Tenam are uranium suppliers and uranium enrichment service providers for nuclear power companies worldwide and in the United States, respectively.

INFLUENCE TO BE OBTAINED

According to the Government, Vadim Mikerin conspired with a series of other individuals, including Daren Condrey, to secure bribe payments for his and others' benefit in exchange for awarding business to a series of service providers connected to Tenex and Tenam. The DOJ alleges that Tenex and Tenam were government instrumentalities as defined by the FCPA and that therefore, Mikerin constituted a "foreign official."

The DOJ alleges that Condrey sought to bribe Mikerin to secure contracts with Tenex on behalf of Transportation Company. To make the bribe payments, the DOJ claims that Condrey inflated the prices Transportation Company charged Tenex for services rendered. Once in possession of the funds generated by the inflated sales prices, Condrey allegedly wired thousands of dollars to Mikerin from a bank account in Maryland owned by Transportation Company to a bank account located in Zurich, Switzerland. The DOJ also alleges that Condrey caused Transportation Company to serve as an intermediary for another unnamed "Ohio Corporation" to funnel bribe payments to Mikerin.

ENFORCEMENT

On June 1, 2015, the Government and Condrey entered into a plea agreement where Condrey agreed to plead guilty for conspiracy to violate the FCPA and to commit wire fraud for conduct associated with Mikerin. Condrey's sentencing was scheduled for June 2017, but no publicly available documents on the docket indicate that Condrey has been sentenced.

On August 14, 2015, the DOJ announced that it had entered into a plea agreement with Mikerin, where Mikerin agreed to plead guilty to one count of conspiracy to commit money laundering with the intention of furthering FCPA violations. Mikerin also agreed to forfeit $2,126,622.36 in ill-gotten gains. On December 15, 2015, Mikerin was sentenced to 48 months in prison.

On August 31, 2015, the DOJ announced that it would separately charge Boris Rubizhevsky of Closter, New Jersey with conspiracy to commit money laundering. According to the DOJ, Rubizhevsky conspired alongside Mikerin and Condrey to facilitate improper payments to Mikerin in violation of the FCPA. On June 15, 2015, Rubizhevsky pleaded guilty to the charge and is scheduled to be sentenced on June 1, 2017.

See Ongoing Investigation Number F-56.

KEY FACTS

Citation. *United States v. Condrey*, No. 8:15-cr-00336 (D. Md. 2015); *United States v. Mikerin*, No. 8:14-cr-00529 (D. Md. 2014).

Date Filed. November 12, 2014 (Mikerin); June 16, 2015 (Condrey).

Country. Russia.

Date of Conduct. 2004 – 2014.

Amount of the Value. $2,126,622.36.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign Official. Director and President of uranium supplier and uranium enrichment services provider owned by the Russian Federation.

FCPA Statutory Provision.

- **Daren Condrey**. Conspiracy (Anti-Bribery).

Other Statutory Provision.

- **Daren Condrey**. Conspiracy (Wire Fraud).
- **Vadim Mikerin**. Conspiracy (Money Laundering).

Disposition.

- **Daren Condrey**. Plea Agreement.
- **Vadim Mikerin**. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern (Condrey).

Defendant's Citizenship. United States (Condrey); Russia (Mikerin).

Total Sanction.

- **Daren Condrey**. Pending.
- **Vadim Mikerin**. 48-Months Imprisonment; Forfeiture of $2,126,622.32.

Related Enforcement Action. *United States v. Rubizhevsky*, No. 8:15-cr-00332 (D. Md. 2015).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

162. UNITED STATES V. VICENTE EDUARDO GARCIA (N.D. CAL. 2015)

NATURE OF THE BUSINESS

Vicente Eduardo Garcia, a U.S. citizen and Florida resident, was a senior executive of SAP International, a wholly-owned subsidiary of the German-based software company, SAP SE. SAP SE is an internationally recognized technology solutions provider headquartered in Waldorf, Germany with operations in over 180 countries. SAP maintains American Depository Shares that are registered with the SEC and listed on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

Garcia was responsible, in part, for securing the award of valuable technology contracts in countries across Latin America and the Caribbean, including Panama. According to a criminal information filed in the Northern District of California, Garcia and others agreed to pay bribes to two Panamanian government officials as well as to an agent of a third government official to secure a $14.5 million dollar technology contract. According to the government, soon thereafter, an SAP partner operating in Panama (the "Local Partner") was awarded the multi-million dollar contract, which included $2.1 million in SAP software licenses.

The government claimed that Garcia sought to conceal the scheme by creating a sham consulting contract between a company controlled by a Panamanian official and the Local Partner. After the government contract was awarded to the Local Partner, an unnamed "consultant" and "advisor" caused the Panamanian officials to collectively receive over $100,000 in bribes. The funds allegedly used as bribes were generated from the proceeds of the government contract that the Local Partner had been awarded. Garcia was also accused of personally receiving a kickback from the proceeds of the sale of SAP software licenses to the Panamanian government.

ENFORCEMENT

On August 12, 2015, the government announced that Garcia pleaded guilty to one count of conspiracy to violate the anti-bribery provisions of the FCPA. Approximately four months later, on December 16, 2015, Garcia was sentenced to 22 months in prison. On August 12, the SEC settled its case with Garcia for violations of the FCPA after Garcia agreed to pay $92,395 in sanctions.

See SEC Digest Number D-137.

KEY FACTS

Citation. *United States. v. Garcia*, No. 3:15-cr-00366 (N.D. Cal. 2015).

Date Filed. August 12, 2015.

Country. Russia.

Date of Conduct: 2009 – 2013.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Approximately $2.1 million.

Intermediary. Subsidiaries; Local Panamanian Partner.

Foreign Official. Senior government officials of the Republic of Panama.

FCPA Statutory Provision. Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. 22-Months Imprisonment; $92,395 in Sanctions.

Related Enforcement Actions. *In the Matter of Vicente E. Garcia*; *In the Matter of SAP SE*.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

161. UNITED STATES V. LOUIS BERGER INTERNATIONAL, INC. (D.N.J 2015)
UNITED STATES V. RICHARD HIRSCH (D.N.J. 2015)
UNITED STATES V. JAMES MCCLUNG (D.N.J. 2015)

NATURE OF THE BUSINESS

Louis Berger International, Inc. is a New Jersey-based, privately-held consulting firm that provides engineering, architecture, program, and construction management services. Richard Hirsch, a U.S. citizen residing in the Philippines, was Senior Vice President, Asia of Louis Berger. James McClung, a U.S. citizen residing in India, was Senior Vice President of Louis Berger.

INFLUENCE TO BE OBTAINED

According to court documents released by the DOJ, between 1998 and 2010, Louis Berger along with two senior officials, Richard Hirsch and James McClung, engaged in a scheme to pay bribes to foreign officials in Indonesia, Vietnam, India, and Kuwait to secure contracts with government agencies and instrumentalities in violation of the FCPA. Each of the alleged bribery schemes is discussed below.

Indonesia

According to the DOJ, Louis Berger used employees and agents to pay "commitment fees" and "counterpart per diems" in connection with contracts with the Indonesian government. The "fees" were allegedly bribes that, once wired to Louis Berger's bank accounts in Indonesia or the accounts of Indonesian subcontractors (who provided no legitimate services), were diverted to Indonesian government officials. More specifically, the DOJ's pleadings state that in or around 2006, Louis Berger sought contracts with the Indonesian government as a sub-contractor and engaged a middle-man consulting company to bribe Indonesian officials in exchange for the subcontract.

The DOJ alleges that Hirsch organized and approved the bribes to Indonesian officials. Furthermore, following the initiation of investigations by both the company and the DOJ into Louis Berger's Indonesian operations, the DOJ alleges that Hirsch attempted to prevent the discovery of the bribery scheme and refused to cooperate with investigators.

Vietnam

Court documents allege that Louis Berger utilized a "Foundation," a non-governmental organization that Louis Berger established in Vietnam as the company's local sponsor to provide local labor and operational support, to funnel bribes to Vietnamese officials. The funding of the alleged bribes was generated by "donations" from Louis Berger to the "Foundation" or was masked by invoices from the "Foundation" which Louis Berger paid from its bank accounts in the United States. Once the "Foundation" received the funding, the money was withdrawn from a joint account and allegedly paid to Vietnamese officials by Louis Berger employees.

In connection with Louis Berger's operations in Vietnam, the DOJ alleged that in 2003, Hirsch approved of an $18,000 bribe to government officials in Vietnam. The DOJ also asserted that McClung discussed making bribes with Louis Berger employees by telephone and email using coded language, such

FACTS

Citation. *United States v. Louis Berger Int'l, Inc., Mag.* No. 15-3624 (D.N.J. 2015); *United States v. Hirsch*, No. 15-cr-00358-MLC (D.N.J. 2015); *United States v. McClung*, No. 15-cr-00357-MLC (D.N.J. 2015).

Date Filed. July 17, 2015 (Louis Berger; Hirsch; McClung).

Country. India; Indonesia; Kuwait; Vietnam.

Date of Conduct: 1998 – 2010.

Amount of the Value. Approximately $3,934,431.

Amount of Business Related to the Payment. More than $7 million.

Intermediary. Subcontractor; Non-Government Organization; Agent; Vendors.

Foreign Official. Unnamed foreign officials in Vietnam, Indonesia, and India; Official of the Kuwaiti Ministry of Public Works.

FCPA Statutory Provision.

- **Louis Berger**. Conspiracy (Anti-Bribery).
- **Richard Hirsch**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **James McClung**. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision. None.

Disposition.

- **Louis Berger**. Deferred Prosecution Agreement.
- **Richard Hirsch**. Plea Agreement.
- **James McClung**. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern (Louis Berger; Hirsch; McClung).

Defendant's Citizenship. United States (Louis Berger; Hirsch; McClung).

Total Sanction.

- **Louis Berger**. $17,100,000.
- **Richard Hirsch**. 2-Years Probation; $10,000 Criminal Fine.
- **James McClung**. 1-Year and 1-day Imprisonment.

Compliance Monitor/Reporting Requirements.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

as "field operation expenses." In 2008, McClung allegedly approved of a $13,000 payment ultimately denoted as "logistics support and travel cost." Later in 2010, the DOJ claims that an email from an unnamed Louis Berger employee suggests that McClung approved a $200,000 payment to a Vietnamese official regarding several projects.

India

According to the DOJ, Louis Berger officials made illicit payments to Indian officials in exchange for two water development projects in Goa and Guwahati, India. The alleged bribes were disguised as payments to project vendors for services that were never actually rendered. The DOJ asserts that multiple consortium partners, alongside Louis Berger, were involved in the scheme to bribe Indian officials. McClung allegedly approved of and directed payments to officials for projects, including $976,630 in relation to a project in Goa.

Kuwait

In 2005, Louis Berger was awarded a $66 million road construction project with the Kuwaiti Ministry of Public Works. To secure the contract, Louis Berger is accused of paying approximately $71,000 to an official in the Ministry of Public Works. According to the DOJ, the alleged illicit payments were disguised as "proposal" or "business development" costs, though little other detail is provided as to how the alleged bribe payments were transferred to Kuwaiti officials.

ENFORCEMENT

On July 17, 2015, the DOJ settled its case against Louis Berger through a deferred prosecution agreement, pursuant to which Louis Berger agreed to pay a criminal fine of $17.1 million. On the same day, both Hirsch and McClung pleaded guilty to one count of conspiracy to violate the FCPA and one substantive count of violating the FCPA's anti-bribery provisions. In July 2016, Hirsch was sentenced to two years of probation and fined $10,000 and McClung was sentenced to one year and a day in prison.

See Parallel Litigation Digest Number H-D15.

Compliance Monitor.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

160. IN RE IAP WORLD WIDE SERVICES, INC. (2015) UNITED STATES V. JAMES M. RAMA (E.D. VA. 2015)

NATURE OF THE BUSINESS

IAP Worldwide Services, Inc. is a Delaware corporation headquartered in Cape Canaveral, Florida. IAP provides facilities management, contingency operations, and professional and technical services in contracting capacities to the U.S. military and civilian agencies. IAP operates in multiple foreign countries around the world, including Kuwait. James M. Rama served as Vice President of Special Projects and Programs from 2005 to 2007 for IAP. After 2007, Rama worked as a consultant to IAP.

INFLUENCE TO BE OBTAINED

According to an agreed upon statement of facts, beginning in 2004 the Kuwaiti Ministry of Interior ("MOI") initiated the Kuwait Security Program ("KSP") to provide nationwide surveillance capabilities for several Kuwaiti government agencies. The KSP would be divided into two phases. Phase I involved a planning stage and Phase II involved the construction stage of the project. It was understood that the revenues generated by Phase II would be greater than those generated by Phase I.

In or about November 2005, IAP and Rama allegedly received non-public indications from the MOI that their bid would be selected for the Phase I contract. Thereafter, the DOJ explained that, at the direction of MOI and an unnamed "Kuwaiti Consultant," Rama and others established a shell entity named "Ramaco" to bid on the Phase I contract. According to the DOJ, this was done to allow IAP to hide its involvement in Phase I and participate in Phase II without any apparent conflict of interest. Ramaco won the KSP Phase I contract for approximately $4 million. According to the DOJ, IAP and Rama agreed to divert $2 million of the revenues from the Phase I contract to the Kuwaiti Consultant, who, in turn, would use the money to bribe MOI officials. The alleged bribes were intended to ensure IAP retained the Phase I contract and was awarded the Phase II contract.

To execute the alleged scheme, IAP and Rama also used an unnamed "Kuwaiti Company," a general trading company established under the laws of Kuwait, to make payments to the Kuwaiti Consultant. The DOJ asserts that IAP and Rama knew that Kuwaiti Company inflated its invoices to IAP by charging IAP for the total amount of both legitimate services rendered by Kuwaiti Company and payments being funneled to the Kuwaiti Consultant. In total, from September 2006 to March 2008, IAP and Rama were accused of funneling $1,783,688 in illicit payments to the Kuwaiti Consultant for use as bribes.

ENFORCEMENT

On June 16, 2015, the DOJ announced that it settled charges against IAP through a non-prosecution agreement. In exchange, IAP agreed to pay a monetary penalty of $7.1 million. On the same day, Rama pleaded guilty to one count of conspiracy to violate the FCPA. Rama was sentenced on October 15, 2015 to 120 days in prison followed by a two-year period of supervised release. Rama was not ordered to pay a criminal fine or restitution.

KEY FACTS

Citation. *In re IAP WorldWide Services, Inc.* (2015); *United States. v. Rama*, No. 1:15-CR-143-GBL (E.D. Va. 2015).

Date Filed. June 16, 2015 (IAP; Rama).

Country. Kuwait.

Date of Conduct: 2004 – 2008.

Amount of the Value. $1,783,688.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Consultant; Shell Entity.

Foreign Official. Officials from Kuwait's Ministry of Interior.

FCPA Statutory Provision.

- **IAP WorldWide**. Anti-Bribery.
- **James M. Rama**. Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition.

- **IAP Worldwide**. Non-Prosecution Agreement.
- **James M. Rama**. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern (IAP; Rama).

Defendant's Citizenship. United States (IAP; Rama).

Total Sanction.

- **IAP Worldwide**. $7,100,000 Criminal Penalty.
- **James M. Rama**. 120-Days Imprisonment.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

159. UNITED STATES V. DMITRIJ HARDER (E.D. PA. 2015)

NATURE OF THE BUSINESS

Dmitrij Harder is the former owner and President of Chestnut Consulting Group Inc. and Chestnut Consulting Group Co. The Chestnut Group provides consulting and other services to companies seeking financing from multilateral development banks.

INFLUENCE TO BE OBTAINED

According to the DOJ, beginning in 2007, Harder bribed an official at the European Bank for Reconstruction and Development ("EBRD") in exchange for the bank's decision to offer two of Harder's clients millions of dollars in financing. As a result of these payments, the Chestnut Group allegedly secured approvals on two applications for financing for two of Chestnut Group's corporate clients. The first resulted in an $85 million investment and a €90 million loan and the second resulted in a $40 million investment and a $60 million loan.

The DOJ's indictment claims that two unnamed companies agreed to pay Harder a "success fee" of a certain percentage of the funds obtained as part of the financing from the EBRD. According to the DOJ, Harder was paid approximately $8 million in success fees as a result of the EBRD's approval of his clients' financing applications and subsequently wired a portion of those funds to a series of bank accounts belonging to the EBRD official's sister. The DOJ claims that the funds Harder wired to the EBRD official's sister were bribe payments for the benefit of the EBRD official.

The DOJ alleges that Harder attempted to conceal the payments by creating false paperwork to make it appear as though the EBRD official's sister had provided consulting and other business services in exchange for the payments. According to the DOJ, the EBRD official's sister provided no such services.

ENFORCEMENT

On January 6, 2015, Harder was indicted by a federal grand jury for allegedly violating the FCPA's anti-bribery provisions and the Travel Act for his participation in a scheme to bribe the foreign European banking official. Harder was also indicted for money laundering and conspiracy to commit international money laundering. After initially pleading not guilty to the charges, on April 20, 2016 Harder pleaded guilty to two counts of violating the FCPA. On July 18, 2017, the district court sentenced Harder to 60 months in prison.

Harder appealed to the Third Circuit Court of Appeals, arguing that the fact that his actions resulted in no loss to any victims and had "uplift[ed] the entire economy] of Eastern Siberia" warranted mitigation of his sentence. The Third Circuit court rejected this argument, and Harder's argument that his sentence was disparate when considered with the average FCPA-related sentence, and affirmed the district court's decision.

KEY FACTS

Citation. *United States v. Harder*, No. 2:15-cr-00001 (E.D. Pa. 2015); *United States v. Harder*, WL 5877238 (3d Cir. 2018).

Date Filed. January 27, 2015.

Country. Not stated.

Date of Conduct: 2007 – 2009.

Amount of the Value. More than $3.5 million.

Amount of Business Related to the Payment. Approximately $8 million in "success fees."

Intermediary. Sister of the Foreign Official.

Foreign Official. A foreign official who served as a senior banker working in the Natural Resources Group at the European Bank for Reconstruction and Development.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. Russia; Germany.[58]

Total Sanction. 60 Months Imprisonment.

Related Enforcement Actions. None.

[58] Harder is a permanent resident of the United States.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

158. UNITED STATES V. ASEM M. ELGAWHARY (D. MD. 2014)

NATURE OF THE BUSINESS

Asem Elgawhary, a U.S. citizen and resident of Maryland, is a former principal vice president of Bechtel Corporation—a U.S.–based construction company headquartered in San Francisco, California. Elgawhary served as a general manager of the Power Generation Engineering and Services Company ("PGESCo"), a joint venture between Bechtel and the Egyptian state–owned and controlled electricity company—the Egyptian Electrical Holding Company ("EEHC"). Elgawhary was responsible for managing and awarding project subcontracts on behalf of the EEHC.

INFLUENCE TO BE OBTAINED

According to court documents, in approximately 1996, Elgawhary was appointed to be the General Manager of PGESCo. His responsibilities as General Manager included overseeing the competitive bidding process and assisting in selecting companies to perform subcontracting work for the EEHC. Between 2003 and 2011, Elgawhary began to accept payments from consultants representing various French, Japanese, and Kuwaiti power companies in exchange for awarding the power companies valuable EEHC contracts.

In the course of his duties as the General Manager for PGESCo, Elgawhary regularly reported on the financial details of the EEHC contracts and certified audit reports which stated that PGESCo's books-and-records were in compliance with legal and accounting requirements without mentioning that he received kickback payments in connection with those contracts. Elgawhary also regularly reported to Bechtel that (1) there had been no material agreements which were improperly recorded on the company's books-and-records; (2) he had no knowledge of any fraud or suspected fraud at PSEGCo which could have a material impact on the company's financial statements; and (3) there were not violations or suspected violations of law which should be considered for purposes of PGESCo's financial statements.

ENFORCEMENT

On February 10, 2014, the DOJ announced multiple charges against Elgawhary for mail fraud, wire fraud, conspiracy to launder money, and tax evasion. On December 4, 2014, Elgawhary pleaded guilty to the mail fraud, conspiracy to launder money, and tax evasion charges. On March 23, 2015, the district court sentenced Elgawhary to a term of 42 months in prison plus one year of supervised release and ordered him to pay a forfeiture of $5,258,995.

See DOJ Digest Numbers D-137, D-151, and D-157.

KEY FACTS

Citation. *United States v. Elgawhary*, No. 8:14–cr–00068 (D. Md. 2014).

Date Filed. February 10, 2014.

Country. Egypt.

Date of Conduct. 2003 – 2011.

Amount of the Value. Approximately $5,258,995.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Consultants.

Foreign Official. Official for the Egyptian Electrical Holding Company.

FCPA Statutory Provision. None.

Other Statutory Provision. Conspiracy (Money Laundering); Mail Fraud; Interference with Internal Revenue Laws.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. 42-Months Imprisonment; Forfeiture of $5,258,995.

Related Enforcement Actions. *United States v. Alstom S.A.*; *United States v. Alstom Power, Inc.*; *United States v. Alstom Network Schweiz AG*; *United States v. Alstom Grid, Inc.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

157. UNITED STATES V. ALSTOM S.A. (D. CONN. 2014)
UNITED STATES V. ALSTOM NETWORK SCHWEIZ AG (D. CONN. 2014)
UNITED STATES V. ALSTOM GRID, INC. (D. CONN. 2014)
UNITED STATES V. ALSTOM POWER, INC. (D. CONN. 2014)

NATURE OF THE BUSINESS

Alstom S.A. is a French power and transportation company focused on constructing and providing services related to power generation facilities, power grids, and rail transportation systems around the world. Alstom S.A. maintained a class of securities on the New York Stock Exchange until August 2004. Alstom Network Schweiz AG is a subsidiary of Alstom S.A. headquartered in Switzerland. Alstom Grid, Inc. is a subsidiary of Alstom S.A. headquartered in New Jersey. Alstom Power, Inc. is a subsidiary of Alstom S.A. headquartered in Connecticut.

INFLUENCE TO BE OBTAINED

According to court documents, Alstom S.A. and its subsidiaries (collectively "Alstom") engaged in repeated acts of bribery for more than a decade in countries around the world. The most significant of the DOJ's allegations concern Alstom's practice of retaining "consultants" to funnel bribes to influential government officials in Indonesia, Saudi Arabia, Egypt, and the Bahamas in exchange for valuable power and infrastructure projects. According to the DOJ, the consultants were regularly paid large sums of money, which Alstom officials improperly recorded as "commissions" or "consultancy fees" despite knowing that most of the money would be used as bribes. According to the DOJ, the decision to hire the consultants should have raised several red flags in light of the fact that the consultants were often hired for duplicative services, appeared to have no relevant experience in the relevant industries, required that Alstom make large upfront payments in exchange for their services, and were often friends and family of high-ranking government officials.

The Department also makes reference to Alstom's decision to hire a Taiwanese consultant. Although there are no specific allegations related to the payment of bribes, the DOJ highlights that the retention of the Taiwanese consultant was in violation of Alstom's internal policies and that, despite numerous red flags, the company failed to ensure that the consultant could not be used to make improper payments to government officials.

Finally, in addition to using consultants to allegedly bribe government officials, the DOJ claims that Alstom paid for expensive travel and entertainment for an Egyptian official associated with a pair of Egyptian power projects.

ENFORCEMENT

On December 22, 2014, the DOJ announced that it settled the charges against Alstom and its subsidiaries. According to a plea agreement reached with Alstom S.A., the company would agree to pay a criminal fine of $772.3 million for violating the books-and-records and internal controls provisions of the FCPA. As part of the plea agreement, the DOJ would forgo the requirement that Alstom S.A. appoint an independent compliance monitor because the company was already subject to certain monitoring requirements as part of a November 2012 Negotiated Resolution Agreement between the World Bank Group. Alstom S.A. was formally sentenced to pay the $772.3 million fine on

KEY FACTS

Citation. *United States v. Alstom S.A.*, No. 3:14–cr–00246 (D. Conn. 2014); *United States v. Alstom Network Schweiz AG*, No. 3:14–cr–00245 (D. Conn. 2014); *United States v. Alstom Grid, Inc.*, No. 3:14–cr–00247 (D. Conn. 2014); *United States v. Alstom Power, Inc.*, No. 3:14–cr–00248 (D. Conn. 2014).

Date Filed. December 22, 2014 (Alstom S.A.; Alstom Network Schweiz AG; Alstom Grid, Inc.; Alstom Power, Inc.).

Country. Indonesia, Saudi Arabia, Egypt, the Bahamas, and Taiwan.

Date of Conduct. 1999 – 2014.

Amount of the Value. Approximately $75 million.

Amount of Business Related to the Payment. Approximately $4 billion in projects with a gain of approximately $296 million.

Intermediary. Consultants.

Foreign Official. Indonesian officials with the ability to influence the award of state infrastructure contracts; Officials from the Saudi Electric Company—the state-owned and controlled electric company of Saudi Arabia; Egyptian officials with the ability to influence the award of state infrastructure contracts; and Board member of the Bahamas Electrical Corporation—the state-owned and controlled electric company of the Bahamas.

FCPA Statutory Provision.

- **Alstom S.A.** Books-and-Records; Internal Controls.
- **Alstom Network Schweiz AG**. Conspiracy (Anti-Bribery).
- **Alstom Grid, Inc.** Conspiracy (Anti-Bribery).
- **Alstom Power, Inc.** Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition.

- **Alstom S.A.** Plea Agreement.
- **Alstom Network Schweiz AG**. Plea Agreement.
- **Alstom Grid, Inc.** Deferred Prosecution Agreement.
- **Alstom Power, Inc.** Deferred Prosecution

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

November 13, 2015, by Judge Janet Bond Arterton of the District of Connecticut, making the DOJ's case against Alstom S.A. the largest criminal FCPA fine ever.

Alstom Network Schweiz AG also entered into a plea agreement where the company agreed to plead guilty to conspiracy to violate the FCPA. Alstom Network Schweiz AG was also sentenced on November 13, 2015 alongside Alstom S.A. No additional fine was imposed on the company beyond the $772.3 million fine imposed on Alstom S.A.

Both Alstom Grid, Inc. and Alstom Power, Inc. entered into deferred prosecution agreements with the DOJ.

See DOJ Digest Numbers D-137, D-151, and D-158.

Agreement.

Defendant Jurisdictional Basis. Issuer (Alstom S.A.); Domestic Concern (Alstom Grid, Inc.; Alstom Power, Inc.); Conspirator (Alstom Network Schweiz AG).

Defendant's Citizenship. France (Alstom S.A.); United States (Alstom Grid, Inc.; Alstom Power, Inc.); Switzerland (Alstom Network Schweiz AG).

Total Sanction. $772,290,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *United States v. Hoskins*; *United States v. Pierucci*; *United States v. Rothschild*; *United States v. Marubeni*.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

156. UNITED STATES V. AVON PRODUCTS, INC. (S.D.N.Y. 2014)
UNITED STATES V. AVON PRODUCTS (CHINA) CO. LTD. (S.D.N.Y. 2014)

NATURE OF THE BUSINESS

Avon Products, Inc. is a U.S.-based corporation headquartered in New York focusing on the sale of beauty, home, and health products. Avon Products (China) Co. Ltd. is an indirect subsidiary of Avon that manufactures and sells Avon products in China. Avon China's books-and-records were consolidated into Avon's financial statements.

INFLUENCE TO BE OBTAINED

According to court documents, between 2004 and 2008, Avon China engaged in a regular practice of providing government officials with expensive gifts, travel, and entertainment in exchange for license approvals, avoiding fines, avoiding negative media reports, obtaining favorable judicial treatment, and obtaining government approval to sell certain Avon products that did not yet meet government standards. According to the DOJ, the gifts, travel, and entertainment expenses were recorded as business-related expenses on Avon's book-and-records but in fact, the majority of the expenses were related to leisure activities.

In addition to gifts, travel, and entertainment, the DOJ claims that Avon China paid Chinese officials money by submitting false reimbursement reports for expenses that were never incurred or by paying Chinese officials money for a government fine that did not actually exist. The DOJ's pleadings also describe an instance where, to avoid the publication of a negative press article related to Avon's recruiting practices, Avon China paid approximately $77,500 to become a "sponsor" of the relevant newspaper at the request of the government official in charge of determining whether the newspaper would run the article. Finally, according to the DOJ, Avon China retained a "Consulting Company" to interact with Chinese officials. Avon China allegedly paid the Consulting Company thousands of dollars without conducting due diligence and knowing that the Consulting Company did not provide any legitimate services. Much like the gifts, travel, and entertainment expenses, the DOJ claims that none of the other payments were properly recorded on Avon's and Avon China's books-and-records.

Throughout the period between 2004 and 2008, the DOJ claims that Avon did not maintain proper internal controls. According to the DOJ, the company lacked a dedicated compliance officer and personnel and failed to make its subsidiaries aware of the Company's code of conduct which prohibited bribery. The DOJ claims that upon discovering the improper payments through an internal audit, Avon executives attempted to cover up the activity and failed to take action to prevent any potentially illegal conduct from reoccurring.

ENFORCEMENT

On December 17, 2014, the DOJ announced that it had settled charges against Avon and Avon China for violating the FCPA's books-and-records provision. Avon China pleaded guilty to one count of conspiracy to violate the FCPA's books-and-records provisions and agreed to pay $67,648,000 in criminal penalties. Avon entered into a three-year deferred prosecution agreement with the DOJ, agreeing to appoint an independent compliance monitor for 18-months. Following the end of the monitorship, Avon agreed it would supply

KEY FACTS

Citation. *United States v. Avon Products, Inc.*, No. 1:14-cr-00828 (S.D.N.Y. 2014); *United States v. Avon Products (China) Co. Ltd.*, No. 1:14-cr-00828 (S.D.N.Y. 2014).

Date Filed. December 17, 2014.

Country. China.

Date of Conduct. 2004 – 2008.

Amount of the Value. Approximately $8 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Consultant.

Foreign Official. Unspecified Chinese Government Officials.

FCPA Statutory Provision.

- **Avon Products Inc.** Books-and-Records; Internal Controls.
- **Avon Products (China) Co. Ltd.** Conspiracy (Books-and-Records).

Other Statutory Provision. None.

Disposition.

- **Avon Products Inc.** Deferred Prosecution Agreement.
- **Avon Products (China) Co. Ltd.** Plea Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $67,648,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *SEC v. Avon Products, Inc.*

Total Combined Sanction. $135,013,013.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

regular compliance reports at 6-month intervals for the remainder of the agreement. In a parallel action by the SEC, Avon agreed to pay corporate penalties in excess of $67 million.

See SEC Digest Number D-132.
See Parallel Litigation Digest Numbers H-A13, H-B2, H-F13.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

155. UNITED STATES V. DALLAS AIRMOTIVE, INC. (N.D. TEX. 2014)

NATURE OF THE BUSINESS

Dallas Airmotive, Inc. ("DAI") is an aircraft engine maintenance, repair, and overhaul services company headquartered in Grapevine, Texas. The company is a wholly-owned subsidiary of BBA Aviation plc, a U.K. company traded on the London Stock Exchange.

INFLUENCE TO BE OBTAINED

According to court documents, between 2008 and 2012, DAI made or planned to make several improper payments to various government officials in Argentina, Brazil, and Peru who retained authority to influence the award of lucrative aircraft maintenance contracts to DAI. The DOJ claims that the illicit payments frequently took the form of kickbacks after the relevant foreign officials requested that DAI increase the value of their contract with the government agency to include additional "commissions." According to the DOJ, DAI used the "commissions" to bribe the relevant government official, frequently funneling the payments through "front companies" to conceal the activity. Additionally, on one occasion, DAI is alleged to have paid for a sergeant of the Brazilian Air Force to take a vacation with his wife.

ENFORCEMENT

On December 10, 2014, the DOJ announced that it settled an enforcement action against DAI by reaching a deferred prosecution agreement that required the company to pay a criminal penalty of $14 million and agree to annual reporting requirements for a three-year period. According to an accompanying criminal information, the DOJ charged DAI with conspiracy to violate the FCPA and a substantive violation of the FCPA's anti–bribery provisions.

KEY FACTS

Citation. *United States v. Dallas Airmotive, Inc.*, No. 3:14-cr-00483 (N.D. Tex. 2014).

Date Filed. December 18, 2014.

Country. Argentina; Brazil; Peru.

Date of Conduct. 2008 – 2012.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Third-Party Representative.

Foreign Official. Officials from the Office of the Governor of San Juan Province in Argentina; Officials from the Brazilian Air Force; Officials from the Office of the Governor of the Brazilian State of Roraima; and Officials from the Peruvian Air Force.

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. $14,000,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

154. IN RE BIO-RAD LABORATORIES, INC. (2014)

NATURE OF THE BUSINESS

Bio-Rad Laboratories, Inc. is a Delaware corporation headquartered in Hercules, California. Bio-Rad is a life-science research and clinical diagnostics company with operations in the United States and abroad. Bio-Rad's clinical diagnostics segment sells testing kits and systems to clinical laboratories and hospitals, accounting for the majority of the company's net sales. Bio-Rad maintains a class of publicly traded securities on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to an agreed upon statement of facts, between 2005 and 2010, Bio-Rad's French subsidiary ("Bio-Rad SNC"), with the assistance of an agent ("Agent 1"), entered into agreements with three offshore companies which purported to provide extensive services for Bio-Rad's operations in Russia. Bio-Rad SNC allegedly paid the offshore companies 15-30% commissions for services rendered. Despite the payments, the statement of facts alleges that the offshore companies had no employees (other than Agent 1) and were incapable of offering the services they agreed to provide in their contracts with Bio-Rad SNC.

The DOJ alleges that various managers of Bio-Rad SNC approved the agreements with the offshore companies, knowing that it was highly likely portions of the inflated commissions fees were used as bribes. The managers discussed the contracts with the offshore companies in code and issued payments in amounts under $200,000 to avoid additional internal controls approvals. As a result of the alleged bribes, Bio-Rad won 100% of the government contracts when Agent 1 was involved and lost its first major contract with the Russian government shortly after Agent 1 had been terminated in 2010.

ENFORCEMENT

On November 3, 2014, the DOJ announced that it had entered into a non-prosecution agreement with Bio-Rad to settle charges over violations of the FCPA's books-and-records and internal controls provisions. As part of the non-prosecution agreement, Bio-Rad agreed to pay a criminal penalty of $14.3 million. This criminal penalty was in addition to a $40.7 million sanction in a parallel SEC proceeding for FCPA violations that occurred in Russia, Thailand, and Vietnam.

See SEC Digest Number D-129.
See Parallel Litigation Digest Number H-D13, H-F28 and H-F17.

KEY FACTS

Citation. *In re Bio-Rad Laboratories, Inc*. (2014).

Date Filed. November 3, 2014.

Country. Russia.

Date of Conduct. 2005 – 2010.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Approximately $35.1 million.

Intermediary. Sales Agent; Consultant.

Foreign Official. Russian Ministry of Health Officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $14,300,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *In the Matter of Bio-Rad Laboratories*.

Total Combined Sanction. $55,000,000.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

153. UNITED STATES V. ZAO HEWLETT-PACKARD A.O. (N.D. CAL. 2014)
UNITED STATES V. HEWLETT-PACKARD POLSKA, SP. Z.O.O. (N.D. CAL. 2014)
IN RE HEWLETT-PACKARD MEXICO, S. DE R.L. DE C.V. (2014)

NATURE OF THE BUSINESS

Hewlett-Packard Company ("HP Co.") is a Delaware corporation with its principal place of business in Palo Alto, California and with subsidiaries around the world, including Russia (ZAO Hewlett-Packard A.O.), Poland (Hewlett-Packard Polska, SP. Z.O.O.), and Mexico (Hewlett-Packard Mexico, S. de R.L. de C.V.). HP Co. manufactures personal computers, printers and software, and provides related information services.

INFLUENCE TO BE OBTAINED

As detailed in a plea agreement reached between the DOJ and ZAO Hewlett-Packard A.O. ("HP Russia"), in 1999 the Russian government commenced a project to automate the computer and telecommunications infrastructure of the GPO. In January 2001, it was announced that HP Russia was the winner of the first phase of the project, and in June 2001 the contract was executed with a value of $35,294,000. To secure the contract, HP Russia is alleged to have used various intermediaries with close ties to the Russian government, which the DOJ implies were used to funnel bribes to the Russian officials.

According to the DOJ, HP Russia created a "slush fund" totaling several million dollars from the excess margins derived from an elaborate buy-back structure which inflated the prices of the relevant HP products and concealed the corrupt scheme. First, HP Russia sold the relevant HP products to an approved third-party channel partner (as required by HP Co. internal controls), which in turn sold the products to an intermediary controlled by one Russian government official. Second, HP bought back the very same products from the intermediary at nearly an €8 million markup and paid the channel partner an additional €4.2 million for purported services. Third, HP Russia sold the HP products to the GPO at the inflated prices. The excess profits were spent on travel, cars, jewelry, clothing, expensive watches, swimming pool technology, furniture, household appliances, and other luxury goods for Russian officials.

As described in a deferred prosecution agreement between the DOJ and Hewlett-Packard Polska, SP. Z.O.O. ("HP Poland"), beginning in 2006, an unnamed official responsible for information and technology services (the "Polish Official") at the Polish National Police agency ("Komenda Główna Policji" or "KGP") was tasked with reviewing previous and future technology contracts for the KGP. In October 2006, HP Poland and another global technology company ("Company A") allegedly invited the Polish Official to attend a conference in San Francisco, California. Officials from HP Poland and Company A paid for dinners, gifts, and sightseeing by the Polish Official, as well as an all-expenses paid trip to Las Vegas during the conference for no legitimate business purpose. In January and February 2007, the Polish Official awarded two contracts to HP Poland on behalf of the Polish government, valued at approximately $4.3 million and $5.8 million, respectively. Around February 2007, the DOJ claims that HP officials and agents offered the Polish Official large cash payments from off-the-books accounts and agreed to pay the Polish Official 1.2% of HP Poland's net revenue on any contract awarded by KGP.

In March 2007, the Polish Official signed another contract with HP Poland,

KEY FACTS

Citation. *United States v. Zao Hewlett-Packard A.O.*, No. 14-cr-00201 (N.D. Cal. 2014); *United States v. Hewlett-Packard Polska*, No. 14-cr-00202 (N.D. Cal. 2014); *In re Hewlett-Packard Mexico, S. de R.L. de C.V.* (2014).

Date Filed. April 9, 2014.

Country. Mexico; Poland; Russia.

Date of Conduct. 2000 – 2010.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Approximately $100 million between the three HP subsidiaries with additional contracts in the future valued in excess of $100 million.

Intermediary. Consultant; Intermediary Companies.

Foreign Official. Russian officials responsible for awarding a computer and telecommunications infrastructure contract with the Office of the Prosecutor General of the Russian Federation ("GPO"); Official from the Polish National Police Agency and the Polish Ministry of the Interior and Administration; and Officials of Mexico's state-owned petroleum company (Petroleos Mexicanos).

FCPA Statutory Provision.

- **HP Mexico**. Books-and-Records; Internal Controls.
- **HP Poland**. Books-and-Records; Internal Controls.
- **HP Russia**. Conspiracy (Anti-Bribery); Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition.

- **HP Mexico**. Non-Prosecution Agreement.
- **HP Poland**. Deferred Prosecution Agreement.
- **HP Russia**. Plea Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship.

- **HP Mexico**. Mexico.
- **HP Poland**. Poland.
- **HP Russia**. Russia.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

valued at approximately $15.8 million. Around this date, an executive from HP Poland is alleged to have delivered a bag filled with $150,000 in cash to the Polish Official's personal residence. Multiple cash exchanges between the HP Poland executive and the Polish Official were allegedly made in 2007 and 2009, totaling approximately $460,000. In exchange for the payments, the Polish Official awarded three agreements in 2008 worth $32 million and another in 2010 worth $4 million.

According to a non-prosecution agreement between the DOJ and Hewlett-Packard Mexico, S. de R.L. de C.V. ("HP Mexico"), beginning in mid-2008, HP Mexico began discussions with Mexico's state-owned petroleum company ("Petroleos Mexicanos" or "Pemex") to sell a suite of HP software packages and licenses (the "BTO Deal"). The DOJ alleges that for HP Mexico to complete the sale, it understood it would be required to retain the services of a Mexican technology consulting company (the "Consultant"). Pemex's Chief Operating Officer was a former principal of the Consultant and supervised Pemex's Chief Information Officer—the individual at Pemex primarily responsible for awarding technology contracts.

According to HP Co.'s internal control policies, the company could not partner with the Consultant because it was not an approved channel partner. To circumvent these internal controls, HP Mexico arranged for an approved third-party channel partner to join the transaction as an intermediary (the "Intermediary") between HP Mexico and the Consultant. HP Mexico is accused of arranging for the Intermediary to receive a portion of the commissions from the sale and to pass along those commissions to the Consultant, after deducting a small percentage as a fee. In December 2008, Pemex awarded HP Mexico the BTO Deal. In February 2009, HP Mexico is alleged to have paid the intermediary approximately $1.7 million in commissions. Thereafter, court documents state that the intermediary transferred $1.41 million to the Consultant, which then paid an entity of Pemex's Chief Information Officer approximately $125,000.

ENFORCEMENT

On April 9, 2014, the DOJ announced that it had settled FCPA-related charges against the three HP Co. subsidiaries in Russia, Poland, and Mexico. HP Russia entered into a plea agreement with the DOJ, agreeing to pay a criminal fine of $58,772,250. On September 11, 2014, HP Russia was formally sentenced by Northern California U.S. District Judge Lowell Jensen. HP Poland entered into a deferred prosecution agreement with the DOJ and HP Mexico entered into a non-prosecution agreement with the DOJ, each agreeing to pay criminal penalties of $15,450,224 and $2,527,750, respectively.

See SEC Digest Number D-126.
See Parallel Litigation Digest Numbers H-C30 and H-F27.

Total Sanction. $74,222,474.

Compliance Monitor/Reporting Requirements. Reporting Requirements (HP Russia; HP Poland).

Related Enforcement Actions: *In the Matter of Hewlett-Packard Company*.

Total Combined Sanction. $108,222,474.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

152. UNITED STATES V. DMYTRO FIRTASH, ANDRAS KNOPP, SUREN GEVORGYAN, GAJENDRA LAL, PERIYASAMY SUNDERALINGAM, AND K.V.P. RAMACHANDRA RAO (N.D. ILL. 2013)

NATURE OF THE BUSINESS

Dmytro (a.k.a. Dmitry) Firtash, a Ukrainian businessman and investor, is among Ukraine's wealthiest men. Firtash controls the international conglomerate DF Group, which manages assets around the world in the chemical industry, energy, and real estate sectors. K.V.P. Ramachandra Rao was a former official of the State Government of Andhra Pradesh and is currently a sitting member of the Indian Parliament. Little else is publicly known about the remaining co-defendants: Andras Knopp (Hungarian businessman), Suren Gevorgyan (Ukrainian citizen), Gajendra Lal (Indian businessman and permanent resident of the U.S.), and Periyasamy Sunderalingam (Sri Lankan citizen).

INFLUENCE TO BE OBTAINED

According to the DOJ, beginning in 2006, Dimitry Firtash along with the five other defendants engaged in a conspiracy to pay bribes to Indian state officials in exchange for lucrative mining licenses. The licenses would be used to develop a lucrative mining project that was expected to generate $500 million in annual sales of titanium products. Court documents provide that Firtash and others specifically arranged for the sale of the titanium products to an unnamed company headquartered in Chicago, Illinois.

According to court documents, Firtash along with several of his co-defendants regularly met with Indian officials, including the Chief Minister of the state of Andhra Pradesh, Y.S. Rajasekhara Reddy (since deceased), as well as the co-defendant and legislator, K.V.P. Ramachandra Rao, to secure the relevant mineral licenses. It is alleged that between 2006 and 2010, Firtash authorized the payment of at least $18.5 million in bribes to state and central government officials in India. In total, the indictment lists 57 different transfers of funds totaling approximately $10.59 million.

ENFORCEMENT

On June 20, 2013, the DOJ filed its indictment against the six defendants under seal alleging violations of RICO, the federal money laundering statute and the Travel Act, and conspiracy to violate the FCPA. Firtash was arrested by Austrian authorities in Vienna on March 14, 2014 and shortly thereafter the DOJ unsealed the charges. Extradition proceedings against Firtash were initiated in the Austrian courts but were dismissed on April 30, 2015, after Austrian Judge Christoph Bauer concluded that the extradition request was politically motivated and therefore inadmissible. In February 2017, Judge Bauer's decision was overturned by an Austrian appellate court; however Firtash has not yet been extradited to the United States.

On December 18, 2017, the Austrian Supreme Court announced that Firtash's case had been referred to the European Court of Human Rights after Firtash requested a retrial. A few days later on December 21, 2017, it was reported that the U.S. extradition order for Firtash, had been stayed pending a preliminary ruling from the European Court of Human Rights.

News reports indicated that U.S. authorities also requested the arrest and extradition of K.V.P. Ramachandra Rao; however, no further developments have been reported. At present, all defendants remain at large.

KEY FACTS

Citation. *United States v. Firtash*, 1:13-cr-00515 (N.D. Ill. 2013).

Date Filed. June 10, 2013.

Date Unsealed. April 2, 2014.

Country. India.

Date of Conduct. 2006 – 2010.

Amount of the Value. Approximately $18.5 million.

Amount of Business Related to the Payment. Expected profits of approximately $500 million.

Intermediary. Agent; Shell Companies.

Foreign Official. Indian state legislators and other state officials, including the Chief Minister of the Indian State of Andhra Pradesh and a sitting member of the Indian Parliament.

FCPA Statutory Provision.

- **Dmytro Firtash**. Conspiracy (Anti-Bribery);
- **Andras Knopp**. Conspiracy (Anti-Bribery);
- **Suren Gevorgyan**. Conspiracy (Anti-Bribery);
- **Gajendra Lal**. Conspiracy (Anti-Bribery);
- **Periyasamy Sunderalingam**. Conspiracy (Anti-Bribery).

Other Statutory Provision.

- **Dmytro Firtash**. Conspiracy (RICO); Money Laundering; Travel Act; Criminal Forfeiture.
- **Andras Knopp**. Conspiracy (RICO); Money Laundering; Travel Act; Criminal Forfeiture.
- **Suren Gevorgyan**. Conspiracy (RICO); Money Laundering; Travel Act; Criminal Forfeiture.
- **Gajendra Lal**. Conspiracy (RICO); Money Laundering; Travel Act; Criminal Forfeiture.
- **Periyasamy Sunderalingam**. Conspiracy (RICO); Money Laundering; Travel Act; Criminal Forfeiture.
- **K.V.P. Ramchandra Rao**. Conspiracy (RICO); Money Laundering; Travel Act; Criminal Forfeiture.

Disposition.

- **Dmytro Firtash**. Fugitive.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

See DOJ Digest Number B-137 and B-157.	• **Andras Knopp**. Fugitive. • **Suren Gevorgyan**. Fugitive. • **Gajendra Lal**. Fugitive. • **Periyasamy Sunderalingam**. Fugitive. • **K.V.P. Ramchandra Rao**. Fugitive. **Defendant Jurisdictional Basis**. • **Dmytro Firtash**. Territorial Jurisdiction. • **Andras Knopp**. Territorial Jurisdiction. • **Suren Gevorgyan**. Territorial Jurisdiction. • **Gajendra Lal**. Domestic Concern. • **Periyasamy Sunderalingam**. Territorial Jurisdiction. **Defendant's Citizenship**. • **Dmytro Firtash**. Ukraine. • **Andras Knopp**. Hungary. • **Suren Gevorgyan**. Ukraine. • **Gajendra Lal**. India. • **Periyasamy Sunderalingam**. Sri Lanka. • **K.V.P. Ramachandra Rao**. India. **Total Sanction**. Not Applicable. **Related Enforcement Actions**. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

150. UNITED STATES V. ALCOA WORLD ALUMINA (W.D. PA. 2014)

NATURE OF THE BUSINESS

Alcoa World Alumina ("AWA") is a Delaware limited liability company with its principal place of business in Pittsburgh, Pennsylvania. AWA owns and operates bauxite mining and aluminum refining facilities in North America, South America, Africa, and the Caribbean. AWA is a subsidiary of the Pennsylvania-based aluminum producer, Alcoa Inc. ("Alcoa").

INFLUENCE TO BE OBTAINED

As stated in an agreed upon statement of facts, AWA assumed direct oversight of Alcoa's long-term alumina supply contract negotiations with Alba and Bahraini government officials in 2000. In 2001, AWA retained a pair of shell companies ("Alumet" and "AAAC") and caused those shell companies to enter into an agreement with Alcoa's Australian subsidiary ("Alcoa of Australia") to make Alumet and AAAC the direct distributors of alumina from Alcoa of Australia to Alba. The shell companies were controlled by an unnamed consultant who helped manage Alcoa's relationship with Alba.

In 2002, Alcoa of Australia agreed to supply Alumet and AAAC one million tons of alumina for resale to Alba. At that time, Alcoa of Australia would cease to invoice Alba directly for the sale of Alumina and instead would invoice Alumet and AAAC, who in turn would receive payment from Alba. According to the DOJ, an unnamed executive at AWA knew that Alcoa of Australia would continue to ship alumina directly to Alba and crafted the new structure to allow Alumet and AAAC to mark-up sales of alumina to Alba from Alcoa of Australia. To ensure the success of the arrangement, from 2002 through 2004, the unnamed consultant used the mark-up of the sales to Alba to enrich himself and pay bribes to multiple Bahraini officials. Later, as Alcoa and Alba engaged in negotiations over a potential joint venture project and as Alba entered into a second supply agreement with Alumet and AAAC, additional bribes were made to Bahraini officials until 2009.

ENFORCEMENT

Shortly after Alba filed a civil suit against Alcoa in U.S. federal court in 2008, the DOJ and SEC initiated a probe into AWA's activities in Bahrain. Approximately six years later, on January 9, 2014, the DOJ announced that it had reached a plea agreement to settle the charges against AWA. In the filing, AWA agreed to plead guilty to violating the FCPA and to pay $223 million in criminal penalties.

See SEC Digest Numbers D-125.
See Parallel Litigation Digest Numbers H-E6, H-E4, H-F23, and H-F7.

KEY FACTS

Citation. *United States v. Alcoa World Alumina*, No. 2:14-cr-00007 (W.D. Pa. 2014).

Date Filed. January 9, 2014.

Country. Bahrain.

Date of Conduct. 1989 – 2009.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Sales Agent; Consultant.

Foreign Official. Officials and board members of Aluminum Bahrain B.S.C. ("Alba"), whose majority shareholder is the Kingdom of Bahrain and a senior Bahraini government official.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. $223,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In the Matter of Alcoa Inc.*

Total Combined Sanction. $384,000,000.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

149. UNITED STATES V. KNUT HAMMARSKJOLD (D.N.J. 2013)
UNITED STATES V. JOSEPH SIGELMAN (D.N.J. 2013)
UNITED STATES V. GREGORY WEISMAN (D.N.J. 2013)

NATURE OF THE BUSINESS

Knut Hammarskjold, Joseph Sigelman, and Gregory Weisman were each senior executives at the British Virgin Islands oil and gas company, PetroTiger Ltd. PetroTiger maintains operations in Colombia and New Jersey.

INFLUENCE TO BE OBTAINED

According to the DOJ, from around May 2010 to December 2010, Hammarskjold, Sigelman, and Weisman (together, the "Defendants") paid bribes to an official at Ecopetrol—a Colombian state-owned and state-controlled petroleum company—to obtain approval to enter into an oil-related services contract with another company, Mansarovar Energy Colombia Ltd. The Defendants allegedly attempted to conceal the bribes by funneling payments through the Ecopetrol official's wife and falsely claiming in documents that the payments were for finance and management consulting services that the official's wife purportedly performed for PetroTiger. According to the DOJ, as a result of the bribes, PetroTiger obtained Ecopetrol's approval to secure the Mansarovar contract.

ENFORCEMENT

On November 8, 2013, Hammarskjold, Sigelman, and Weisman were each charged in a sealed complaint filed in the District of New Jersey. Weisman surrendered to authorities and pleaded guilty to one count of conspiracy to violate the FCPA on November 8, 2013. Weisman was sentenced on September 10, 2015, to two years of probation and was ordered to pay a criminal fine of $30,000.

Hammarskjold was arrested at Newark Liberty International Airport on November 20, 2013 and, on February 8, 2014, pleaded guilty to one count of conspiracy to violate the FCPA. On September 14, 2015, Hammarskjold was sentenced to time served plus a two-year period of supervised release, and was ordered to pay a $15,000 criminal fine along with restitution of $106,592.93.

Sigelman was arrested in the Philippines on January 3, 2014 and pleaded not guilty to the charges on May 14, 2014. Following a two-week trial beginning June 2, 2015, Sigelman and the government entered into a plea agreement after the government's star witness at trial (Weisman) suffered substantial impeachment. Although portrayed in the press as a loss for the government, because it dismissed a substantive FCPA count, Sigelman nevertheless pleaded guilty to one count of conspiracy to violate the FCPA. Sigelman was sentenced on June 23, 2015, to three years of probation and was ordered to pay a $100,000 criminal fine along with restitution of $239,015.

See SEC Digest Number D-124.

KEY FACTS

Citation. *United States v. Hammarskjold*, No. 1:14-cr-00065 (D.N.J. 2013); *United States v. Sigelman*, No. 1:14-cr-00263 (D.N.J. 2013); *United States v. Weisman*, No. 1:13-cr-00730 (D.N.J. 2013).

Date Filed. November 8, 2013.

Date Unsealed. January 6, 2014.

Country. Colombia.

Date of Conduct: 2010.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Approximately $39 million.

Intermediary. Foreign Official's Wife.

Foreign Official. Official at Ecopetrol S.A., a state-owned and state-controlled petroleum company in Colombia.

FCPA Statutory Provision.

- **Knut Hammarskjold**. Conspiracy.
- **Joseph Sigelman**. Conspiracy.
- **Gregory Weisman**. Conspiracy.

Other Statutory Provision. None.

Disposition.

- **Knut Hammarskjold**. Plea Agreement.
- **Joseph Sigelman**. Plea Agreement.
- **Gregory Weisman**. Plea Agreement.

Defendant Jurisdictional Basis.

- **Knut Hammarskjold**. Domestic Concern.
- **Joseph Sigelman**. Domestic Concern.
- **Gregory Weisman**. Domestic Concern.

Defendant's Citizenship.

- **Knut Hammarskjold**. United States.
- **Joseph Sigelman**. United States.
- **Gregory Weisman**. United States.

Total Sanction.

- **Knut Hammarskjold**. Time Served; $15,000 Criminal Fine.
- **Joseph Sigelman**. Two Years of Probation; $30,000 Criminal Fine.
- **Gregory Weisman**. Three Years of Probation; $100,000 Criminal Fine; $239,015 in Restitution.

Related Enforcement Actions: None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

148. IN RE ARCHER DANIELS MIDLAND COMPANY (2013) UNITED STATES V. ALFRED C. TOEPFER INTERNATIONAL (UKRAINE) LIMITED (C.D. ILL. 2013)

NATURE OF THE BUSINESS

Archer Daniels Midland Company ("ADM"), a Delaware corporation headquartered in Illinois, manufactures, processes, and sells agricultural commodities. Alfred C. Toepfer International (Ukraine) Ltd. ("ACTI Ukraine") was an indirect 80 percent-owned subsidiary of ADM that traded and sold commodities in and outside of the Ukraine.

INFLUENCE TO BE OBTAINED

According to court filings and the admitted statement of facts attached to ADM's deferred prosecution agreement with the DOJ, ACTI Ukraine and other ADM affiliates paid bribes to government officials in Ukraine and Venezuela.

In Ukraine, ACTI Ukraine and its affiliate in Germany, Afred C. Toepfer International G.m.b.H. ("ACTI Hamburg"), engaged in multiple fraudulent schemes to pay Ukrainian officials to release VAT refunds that were being delayed or refused by the Ukrainian government. ACTI Ukraine and ACTI Hamburg entered into fraudulent agreements with a shipping company and an insurance company to raise the funds and funnel the payments and misrepresented the bribes as charitable donations or "depreciations" required by the Ukrainian government.

In Venezuela, ADM's Latin American subsidiary ("ADM LA") paid a commission to a broker in connection with the sale of soybean oil to a state-owned Venezuelan oil company, even though the broker had no involvement in the transaction. The "commission" was transferred to the bank account of an employee of the Venezuelan oil company. ADM LA also used the broker to make payments to principals of ADM's other customers in Venezuela. In addition, ADM LA participated in a scheme in which refunds for customer overpayments were paid not to the customers directly but to accounts owned by employees or principals of the customer.

ENFORCEMENT

On December 20, 2013, ADM entered into a three-year non-prosecution agreement with the DOJ, and ACTI Ukraine pleaded guilty to one count of conspiring to violate the anti-bribery provisions of the FCPA. ADM agreed to a monetary penalty of $9.45 million pursuant to the non-prosecution agreement; that amount was credited against the $17,771,613 criminal fine imposed on ACTI Ukraine pursuant to its guilty plea.

In a related civil settlement with the SEC, ADM agreed to pay approximately $36.5 million in disgorgement and prejudgment interest.

KEY FACTS

Citation. *In re Archer Daniels Midland Company* (2013); *United States v. Alfred C. Toepfer International (Ukraine) Ltd*., No. 2:13-cr-20062 (C.D. Ill. 2013).

Date Filed. December 20, 2013.

Country. Ukraine; Venezuela.

Date of Conduct. 2002 – 2009.

Amount of the Value. $22,000 in Ukraine; Not Stated as to Venezuela.

Amount of Business Related to the Payment. Approximately $100 million in Ukraine; Not Stated as to Venezuela.

Intermediary. Insurance Company; Third-Party Vendor; Third-Party Agent.

Foreign Official. Ukrainian Government Officials; Employee of Oil company Indirectly Owned by the Venezuelan Government.

FCPA Statutory Provision.

- **Archer Daniels Midland**. Internal Controls.
- **Alfred C. Toepfer International**. Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition.

- **Archer Daniels Midland**. Non-Prosecution Agreement.
- **Alfred C. Toepfer International**. Plea Agreement.

Defendant Jurisdictional Basis.

- **Archer Daniels Midland**. Issuer.
- **Alfred C. Toepfer International**. Territorial Jurisdiction; Agent of Issuer.

Defendant's Citizenship. United States (Archer Daniels Midland); Ukraine (Alfred C. Toepfer International).

Total Sanction. $17,771,613.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *SEC v. Archer-Daniels Midland Company*.

Total Combined Sanction. $54,238,979.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

147. UNITED STATES V. BILFINGER SE (S.D. TEX. 2013)

NATURE OF THE BUSINESS

Bilfinger SE is a German engineering and services company and majority owner of Bilfinger Berger Gas and Oil Services Nigeria Ltd. ("BBGOS"), a German company based in Nigeria.

INFLUENCE TO BE OBTAINED

According to the DOJ's criminal Information, Bilfinger subsidiary BBGOS entered into a consortium agreement with entities affiliated with Willbros Group Inc. to bid on and perform the Eastern Gas Gathering System ("EGGS") project, a natural gas pipeline system in the Niger Delta designed to relieve existing pipeline capacity constraints. From 2003 and 2005, Bilfinger, together with the Willbros entities, used contractual payments, fraudulent loans, and petty cash obtained by fraudulent invoices to funnel money to two "consultants" for the purposes of bribing Nigerian officials to obtain and retain the EGGS contracts. In addition, Bilfinger provided loans to Willbros to make the corrupt payments when Willbros encountered difficulties due to an internal investigation.

ENFORCEMENT

On December 9, 2013, Bilfinger entered into a three-year deferred prosecution agreement with the DOJ, pursuant to which it agreed to pay a fine of $32 million. In addition to the monetary penalty, Bilfinger agreed to retain an independent compliance monitor for 18 months, with self-reporting to follow for the remaining duration of the deferred prosecution agreement.

In April 2017, Bilfinger disclosed that the DOJ had extended its 2013 DPA with the company. According to an April 2017 statement by the company, while "U.S. authorities believe we are taking the right steps regarding compliance . . . the maturity of the compliance system has not yet reached the desired level." In December 2018, the company's DPA expired.

In 2008, the DOJ and SEC brought proceedings against Willbros Group, its subsidiary Willbros International Inc., and seven Willbros employees for related conduct. The Willbros entities paid collective fines of $32 million, and the Willbros individual defendants were subject to civil and criminal fines. Two individual defendants were also sentenced to imprisonment.

See DOJ Digest Number B-67.
See SEC Digest Number D-51.

KEY FACTS

Citation. *United States v. Bilfinger SE*, No. 4:13–cr–00745 (S.D. Tex. 2013).

Date Filed. December 9, 2013.

Country. Nigeria.

Date of Conduct. 2003 – 2005.

Amount of the Value. Approximately $6 million.

Amount of Business Related to the Payment. $388 million.

Intermediary. Third-Party Consultants.

Foreign Official. Nigerian National Petroleum Corporation ("NNPC") officials; Officials of NNPC's wholly-owned subsidiary National Petroleum Investment Management Services; Officials of NNPC's majority-owned joint venture operator, Shell Petroleum Development Company of Nigeria, Ltd.; An official in the executive branch of the Nigerian government; The dominant political party in Nigeria.

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Aiding and Abetting (Anti-Bribery); Anti-Bribery.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer; Conspiracy; Aiding and Abetting.

Defendant's Citizenship. Germany.

Total Sanction. $32,000,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *SEC v. Willbros Group, Inc.*; *United States v. Willbros Group, Inc.*; *United States v. Tillery*; *SEC v. Brown*; *United States v. Steph*; *United States v. Brown*.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

146. UNITED STATES V. WEATHERFORD INTERNATIONAL LTD. (S.D. TEX. 2013)
UNITED STATES V. WEATHERFORD SERVICES, LTD. (S.D. TEX. 2013)

NATURE OF THE BUSINESS

Weatherford International Ltd., a Swiss corporation, provides equipment and services to the oil industry in over 100 countries. During the relevant period, Weatherford was incorporated in Bermuda and headquartered in Texas. It maintains a class of securities trading on the New York Stock Exchange. Weatherford Services Ltd. ("WSL"), a Bermuda corporation, is a wholly-owned subsidiary of Weatherford International Ltd. Among other responsibilities, WSL managed most of Weatherford's activities in Angola.

INFLUENCE TO BE OBTAINED

In Angola, between 2006 and 2007, Weatherford Oil Tool Middle East Limited ("WOTME"), a wholly-owned subsidiary of Weatherford, retained a Swiss agent to pay bribes to an Angolan official. WOTME paid these bribes for the approval of an oil services contract renewal. Although the contract was with a privately-owned corporation, Angolan law requires Sonangol, the Angolan state-owned oil company, to approve the award or renewal of any oil services contract in Angola. To facilitate these bribes, WOTME entered into a consultancy agreement with the Swiss agent. Even though the agent refused to sign the initial agreement because it contained an FCPA clause, neither Weatherford nor WSL conducted any anti-corruption due diligence on the agent and ultimately retained the agent.

Also in Angola, in 2004, WSL formed a joint venture with a company controlled by Sonangol officials and a company controlled by a relative of an Angolan minister, with the view of obtaining well screen contracts from Sonangol. Prior to entering into the joint venture, neither Weatherford nor WSL conducted any meaningful due diligence on either joint venture partner. Instead, Weatherford's in-house counsel falsely represented to outside counsel that the joint venture had been vetted and approved by other outside counsel, when, in fact, no outside law firm ever conducted such vetting or gave such approval. Sonangol officials awarded all well screen contracts to the joint venture, and Weatherford paid dividends to the joint venture partners, even though they contributed no capital, expertise, or labor.

In an unidentified country in the Middle East, between 2005 and 2011, WOTME awarded improper volume discounts to a company that supplied Weatherford products to a state-owned and controlled national oil company. The volume discounts were used to create a slush fund for bribe payments to decision makers at the national oil company. Prior to entering into the contract with the distributor neither WOTME nor Weatherford conducted any due diligence on the distributor, even though: (a) the distributor would be furnishing Weatherford goods directly to an instrumentality of a foreign government; (b) a foreign official had directed WOTME to contract with that particular distributor; and (c) WOTME knew that the country's royal family had an ownership stake in the distributor.

In Iraq, WOTME paid illegal kickbacks to the Iraqi government as part of the United Nations Oil for Food Program. To conceal the payments, WOTME inflated the price of the contracts before submitting them to the UN for approval. The payments were then recorded as cost of goods sold on the company's books and records.

KEY FACTS

Citation. *United States v. Weatherford Int'l Ltd.*, No. 4:13-cr-00733 (S.D. Tex. 2013); *United States v. Weatherford Servs., Ltd.*, No. 13-cr-00734 (S.D. Tex. 2013).

Date Filed. November 26, 2013.

Country. Angola; Algeria; Albania; Iraq.

Date of Conduct. 2004 – 2011.

Amount of the Value. Approximately $14.2 million.

Amount of Business Related to the Payment. Profits of approximately $59.3 million.

Intermediary. Subsidiary Companies; Third-Party Distributors; Third-Party Agents; Joint Ventures.

Foreign Official. Government officials in Angola; employees at a state-owned oil company in an unnamed country in the Middle East; Iraqi Ministry of Oil; employees at Sonatrach, an Algerian state-owned oil company; employees at Albania's National Petroleum Agency; Albanian tax director.

FCPA Statutory Provision.

- **Weatherford International Ltd.** Internal Controls.
- **Weatherford Services, Ltd.** Anti-Bribery.

Other Statutory Provision. None.

Disposition.

- **Weatherford International Ltd.** Deferred Prosecution Agreement.
- **Weatherford Services, Ltd.** Plea Agreement.

Defendant Jurisdictional Basis.

- **Weatherford International Ltd.** Issuer.
- **Weatherford Services, Ltd.** Territorial Jurisdiction.

Defendants' Citizenship. United States.

Total Sanction. $87,178,256.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *SEC v. Weatherford International Ltd.*

Total Combined Sanction. $152,790,616.34.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

ENFORCEMENT

On November 26, 2013, Weatherford entered into a three-year deferred prosecution agreement with the DOJ under which Weatherford agreed to pay an $87.2 million penalty. In addition to the monetary penalty, Weatherford agreed to retain an independent corporate compliance monitor for eighteen months, with self-reporting to follow for the remaining duration of the deferred prosecution agreement.

Also on November 26, 2013, WSL pleaded guilty to violating the anti-bribery provisions of the FCPA and agreed to pay a fine of $420,000.

In a related civil settlement with the SEC, Weatherford International agreed to pay disgorgement and prejudgment interest of approximately $95.4 million, and a penalty of $1.85 million. The disgorgement amount was offset by the $31,646,907 fine Weatherford paid pursuant to a DPA with the U.S. Attorney's Office.

In a separate matter, Weatherford and four of its subsidiaries agreed to pay a combined $100 million to resolve criminal charges relating to violations of export controls.

See SEC Digest Number D-123.
See Ongoing Investigation Number F-2.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

145. UNITED STATES V. DIEBOLD, INC. (N.D. OHIO 2013)

NATURE OF THE BUSINESS

Diebold, Inc., an Ohio company, is a global provider of automated teller machines and bank security systems.

INFLUENCE TO BE OBTAINED

According to the criminal Information filed by the DOJ, Diebold repeatedly provided payments, gifts, and non-business travel for employees of state-owned and controlled banks in China and Indonesia to secure and retain business with those banks. Diebold attempted to disguise the payments and benefits through various means, including by making payments through third parties designated by the banks and by inaccurately recording leisure trips for bank employees as "training."

Diebold also created and entered into false contracts with a distributor in Russia for services that the distributor was not performing. The distributor, in turn, used the funds to pay bribes to employees of Diebold's privately-owned bank customers in Russia to obtain and retain contracts with those customers.

ENFORCEMENT

On October 22, 2013, Diebold entered into a three-year deferred prosecution agreement with the DOJ under which it agreed to pay a $25.2 million penalty for violations of the anti-bribery and books-and-records provisions of the FCPA. In addition to the monetary penalty, Diebold agreed to retain a compliance monitor for at least 18 months, with self-reporting to follow for the remaining duration of the deferred prosecution agreement.

See SEC Digest Number D-121.

KEY FACTS

Citation. *United States v. Diebold, Inc.*, No. 5:13-cr-00464 (N.D. Ohio 2013).

Date Filed. October 22, 2013.

Country. China; Russia.

Date of Conduct. 2005 – 2009.

Amount of the Value. Approximately $1.75 million.

Amount of Business Related to the Payment. $281 million.

Intermediary. Third Parties Designated by State-Owned Banks; Distributors.

Foreign Official. Employees and officials of state-owned banks in China and Indonesia (also employees of private bank customers in Russia).

FCPA Statutory Provision. Conspiracy (Anti-Bribery & Books-and-Records); Books-and-Records.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $25,200,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *SEC v. Diebold, Inc.*

Total Combined Sanction. $48,172,942.20.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

144. UNITED STATES V. ALAIN RIEDO (S.D. CAL. 2013)

NATURE OF THE BUSINESS

Maxwell Technologies S.A., incorporated and headquartered in Switzerland, manufactures and sells high-voltage/high-tension capacitors in several countries. It is a wholly-owned subsidiary of Maxwell Technologies, Inc., a U.S. corporation. Alain Riedo, a Swiss citizen, was Maxwell S.A.'s Vice President and General Manager and was also Senior Vice President of Maxwell Inc.

INFLUENCE TO BE OBTAINED

According to the indictment filed by the DOJ, Riedo conspired from about 2002 to about 2009 with certain other Maxwell managers, senior officers, and third-party agents to bribe officials at Pinggao Group Co. Ltd, Xi-an XD High Voltage Apparatus Co., Ltd., and New Northeast Electric Shenyang HV Switchgear Co., Ltd., which were Chinese government agencies. The alleged bribes were paid in exchange for the officials' assistance in securing contracts for the sale of Maxwell's high voltage capacitor products to state-owned manufacturers of electrical-utility infrastructure. Riedo allegedly engaged third-party agents to market and sell Maxwell's capacitors to Chinese consumers and ensured that the quotes procured from Maxwell S.A. contained a secret mark-up of approximately 20 percent. The mark-up money was characterized as a "special arrangement" or "consulting fee" in the agents' invoices to Maxwell S.A. and then used to bribe employees at the Chinese government agencies. Riedo allegedly allowed these false characterizations to be recorded in Maxwell's books and financial statements and filings, and hampered efforts by other Maxwell executives to learn the truth about operations and finances at Maxwell S.A.'s operations.

ENFORCEMENT

On October 15, 2013, the DOJ obtained an indictment against Alain Riedo, and the court issued a warrant for his arrest. As of December 31, 2013, Riedo is considered a fugitive.

In 2011, Maxwell Technologies resolved DOJ and SEC parallel actions concerning its business conduct in China by agreeing to pay approximately $14 million in penalties and disgorgement.

See DOJ Digest Number B-116.
See SEC Digest Number D-91.

KEY FACTS

Citation. *United States v. Riedo*, No. 3:13-cr-3789 (S.D. Cal. 2013).

Date Filed. October 15, 2013.

Country. China.

Date of Conduct. 2002 – 2009.

Amount of the Value. $2.8 million.

Amount of Business Related to the Payment. $15 million.

Intermediary. Sales Agents; Consultants.

Foreign Official. Officials at state-owned and controlled electric-utility infrastructure agencies of the Chinese government.

FCPA Statutory Provision. Conspiracy; Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Fugitive.

Defendant Jurisdictional Basis. Employee of Issuer.

Defendant's Citizenship. Switzerland.

Total Sanction. Pending.

Related Enforcement Actions. *United States v. Maxwell Technologies, Inc.*; *SEC v. Maxwell Technologies, Inc.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

143. UNITED STATES V. TOTAL S.A. (E.D. VA. 2013)

NATURE OF THE BUSINESS

Total S.A. is a French corporation that explores for and develops oil and gas resources worldwide. Its American Depositary Shares are registered with the SEC and listed on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

In 1995, to secure a contract with NIOC to develop oil and gas fields in Iranian territorial waters, Total met with an Iranian official to discuss unlawful payments to an intermediary whom the official designated. Total then entered into an agreement with the intermediary, which provided that the parties would execute "Consulting Service Requests," which were to detail Total's bribe payments at the direction of the Iranian official. Total paid approximately $16 million to the intermediary in connection with the scheme.

In 1997, in connection with the development of another gas field in Iran, Total entered into a second consulting agreement, this time with a second intermediary, who was also designated by the Iranian official. In September 1997, NIOC granted Total a 40% interest in developing the field and, over the next seven years, Total paid approximately $44 million at the Iranian official's direction to accounts designated by the second intermediary. Total characterized these payments as "business development expenses."

ENFORCEMENT

On May 29, 2013, the DOJ filed a criminal information charging Total with conspiracy to violate the FCPA and with violations of the books and records and internal controls provisions of the FCPA. On the same day, Total entered into a deferred prosecution agreement with the DOJ, pursuant to which the company paid a $245.2 million penalty and agreed to appoint an independent compliance monitor for three years.

In a related settlement with the SEC, Total was ordered to pay disgorgement of $153 million. French officials have also announced charges against Total for violations of French laws.

See SEC Digest Number D-120.
See Ongoing Investigation Numbers F-3 and F-2.

KEY FACTS

Citation. *United States v. Total S.A.*, No. 1:13-cr-239 (E.D. Va. 2013).

Date Filed. May 29, 2013.

Country. Iran.

Date of Conduct. 1995 – 2004.

Amount of the Value. Approximately $60 million.

Amount of Business Related to the Payment. $147 million.

Intermediary. Unnamed Third-Parties Designated by Foreign Official.

Foreign Official. Official for a subsidiary of the National Iranian Oil Company and for an engineering company majority-owned and controlled by the Iranian government.

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer; Conspiracy.

Defendant's Citizenship. France.

Total Sanction. $245,200,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *In the Matter of Total, S.A.*

Total Combined Sanction. $398,200,000.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

142. UNITED STATES V. TOMAS ALBERTO CLARKE BETHANCOURT (S.D.N.Y. 2013)
UNITED STATES V. JOSE ALEJANDRO HURTADO (S.D.N.Y. 2013)
UNITED STATES V. MARIA DE LOS ANGELES GONZALEZ DE HERNANDEZ (S.D.N.Y. 2013)
UNITED STATES V. ERNESTO LUJAN (S.D.N.Y. 2013)
UNITED STATES V. BENITO CHINEA AND JOSEPH DEMENESES (S.D.N.Y. 2014)

NATURE OF THE BUSINESS

U.S. employees of Direct Access Partners LLC ("DAP"), a New York broker-dealer, were charged with paying bribes to a senior government official in Venezuela's state-owned economic development bank, Banco de Desarrollo Económico y Social de Venezuela ("BANDES"), to obtain business for the broker-dealer. Tomas Alberto Clarke Bethancourt ("Clarke") is a U.S. citizen and, beginning in or around 2008, was the Senior Vice President in the Global Markets Group of DAP. Clarke was listed as the account opening salesman for the BANDES account. Jose Alejandro Hurtado, a U.S. citizen, was an employee of DAP. Ernesto Lujan, also a U.S. citizen, was the Managing Partner of the Global Markets Group of DAP and ran its Miami office beginning in approximately 2008. Benito Chinea and Joseph DeMeneses were both senior executives at DAP's New York headquarters.

INFLUENCE TO BE OBTAINED

From at least December 2008 to October 2010, the DOJ alleges that Lujan, Clarke, and Hurtado paid bribes to Gonzalez. According to the criminal Complaint and subsequent criminal Informations, the parties allegedly attempted to conceal the payments by passing them through a number of intermediary corporations and accounts in Switzerland. At least $9.5 million was allegedly transferred from DAP to a Swiss bank account controlled by Clarke, who in turn transferred at least $6.5 million to a Swiss bank account controlled by Lujan. Lujan allegedly transferred at least $1.5 million of that money to a Swiss bank account controlled by Gonzales. Both Chinea and DeMeneses, senior executives at DAP, were aware of the scheme and allegedly authorized the payments.

The court filings also allege that Clarke, Hurtado, Lujan, Chinea, and DeMeneses conspired to transfer the money to accounts outside of the U.S. to conceal the payments and route them to Hernandez and that the parties violated the Travel Act.

ENFORCEMENT

The criminal complaint against Clarke, Hurtado, and Gonzalez was filed in March 2013, but it was unsealed only after the three were arrested in Miami on May 3, 2013. Ernesto Lujan was charged and arrested in June 2013.

On August 30, 2013, Clarke, Hurtado, and Lujan pleaded guilty to conspiring to violate the FCPA, to violate the Travel Act, and to commit money laundering, as well as substantive counts of these offenses. Lujan and Clark were sentenced to two years imprisonment on December 4, and December 8, 2015, and were ordered to forfeit $18.5 million and $5.8 million, respectively. Hurtado was sentenced on December 15, 2015, to three years in prison and ordered to forfeit $11.9 million.

On November 18, Gonzalez pleaded guilty to two counts of money laundering and violating the Travel Act, as well as conspiracy and is currently awaiting

KEY FACTS

Citation. *United States v. Clarke*, No. 1:13-cr-00670 (S.D.N.Y. 2013); *United States v. Hurtado*, No. 1:13-cr-00673 (S.D.N.Y. 2013); *United States v. Gonzalez*, No. 1:13-cr-00901 (S.D.N.Y. 2013); *United States v. Lujan*, No. 1:13 cr-00671 (S.D.N.Y. 2013); *United States v. Chinea*, No. 1:14 cr 00240 (S.D.N.Y. 2014).

Date Filed. May 7, 2013 (Clarke; Hurtado; Gonzalez); June 12, 2013 (Lujan); April 10, 2014 (Chinea; DeMeneses).

Country. Venezuela.

Date of Conduct. 2008 – 2011.

Amount of the Value. $3.6 million.

Amount of Business Related to the Payment. $60 million.

Intermediary. Shell Entity.

Foreign Official. Maria de los Angeles Gonzalez de Hernandez ("Gonzalez"), a senior official at BANDES.

FCPA Statutory Provision.

- **Tomas Clarke Bethancourt**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Jose Hurtado**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Ernesto Lujan**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Benito Chinea**. Anti-Bribery.
- **Joseph DeMeneses**. Anti-Bribery.

Other Statutory Provision.

- **Tomas Clarke Bethancourt**. Conspiracy (Money Laundering); Money Laundering; Conspiracy (Travel Act); Travel Act.
- **Jose Hurtado**. Conspiracy (Money Laundering); Money Laundering; Conspiracy (Travel Act); Travel Act.
- **Maria de los Angeles Gonzales de Hernandez**. Conspiracy (Money Laundering); Money Laundering; Conspiracy (Travel Act); Travel Act.
- **Ernesto Lujan**. Conspiracy (Money

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

sentencing. On January 19, 2016, Gonzalez was sentenced to time served and ordered to forfeit more than $8 million in ill-gotten gains.

In April 2014, separate charges were filed against Chinea and DeMeneses, who surrendered to authorities. Both Chinea and DeMeneses later pleaded guilty to one count of violating the FCPA in December 2014 and were sentenced on March 31, 2015. Both Chinea and DeMeneses were sentenced to 48 months in prison followed by three years of supervised release, and were each ordered to pay a $40,000 criminal fine. In addition, Chinea was ordered to forfeit $3,636,432 while DeMeneses was ordered to forfeit $2,670,612.

Parallel SEC proceedings were commenced against Clarke, Hurtado, Lujan, Chinea, and DeMeneses for securities fraud. Parallel SEC proceedings were commenced against Clarke, Hurtado, Lujan, Chinea, and DeMeneses for securities fraud.

See SEC Digest Number D-119.

Laundering); Money Laundering; Conspiracy (Travel Act); Travel Act.

Disposition.

- **Tomas Clarke Bethancourt**. Plea Agreement.
- **Jose Hurtado**. Plea Agreement.
- **Maria de los Angeles Gonzales de Hernandez**. Plea Agreement.
- **Ernesto Lujan**. Plea Agreement.
- **Benito Chinea**. Plea Agreement.
- **Joseph DeMeneses**. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern (Clarke; Hurtado; Lujan; Chinea; DeMeneses).

Defendant's Citizenship. United States (Clarke; Hurtado; Lujan; Chinea; DeMeneses); Venezuela (Gonzalez).

Total Sanction.

- **Tomas Clarke Bethancourt**. Two-Years Imprisonment; Forfeiture of $5.8 million.
- **Jose Hurtado**. Three-Years Imprisonment; Forfeiture of $11.9 million.
- **Maria de los Angeles Gonzales de Hernandez**. Time Served; Forfeiture of $8.3 million.
- **Ernesto Lujan**. Two-Years Imprisonment; Forfeiture of $18.5 million.
- **Benito Chinea**. 48-Months Imprisonment; Forfeiture of $3.6 million.
- **Joseph DeMeneses**. 48-Months Imprisonment; Forfeiture of $2.7 million.

Related Enforcement Actions. *SEC v. Clarke, et al.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

141. IN RE RALPH LAUREN CORPORATION (2013)

NATURE OF THE BUSINESS

Ralph Lauren Corporation ("RLC"), a Delaware corporation headquartered in New York, is in the business of design, marketing, and distribution of apparel, accessories, and other consumer products around the world.

INFLUENCE TO BE OBTAINED

From 2006 to 2009, the Argentine subsidiary of RLC paid bribes and gifts to Argentine customs officials to assist in improperly obtaining paperwork necessary for its products to clear customs, permit clearance of items without the necessary paperwork, permit clearance of prohibited goods, and avoid inspection of products by Argentine customs officials. The payments were made through a customs broker, who passed the bribes on to customs officials. The gifts, which were given directly to Argentine government officials to secure the importation of RLC's goods into Argentina, included perfume, dresses, and handbags valued at between $400 and $14,000 each.

ENFORCEMENT

On April 22, 2013, RLC entered into a two-year non-prosecution agreement with the DOJ, pursuant to which it admitted to the alleged conduct and agreed to pay an $882,000 penalty. RLC has since ceased its operations in Argentina.

Also on April 22, 2013, RLC entered into a parallel two-year non-prosecution agreement with the SEC, pursuant to which it agreed to pay approximately $735,000 in disgorgement and prejudgment interest.

See SEC Digest Number D-118.

KEY FACTS

Citation. *In re Ralph Lauren Corp*. (2013).

Date Filed. April 22, 2013.

Country. Argentina.

Date of Conduct. 2005 – 2009.

Amount of the Value. $538,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Customs Broker.

Foreign Official. Argentine Customs Officials and Other Government Officials.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $882,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In re Ralph Lauren Corporation* (non-prosecution agreement).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

140. UNITED STATES V. FREDERIC CILINS (S.D.N.Y. 2013)

NATURE OF THE BUSINESS

Press reports describe Cilins as an "agent" of the Beny Steinmetz Group Resources ("BSGR"), who allegedly paid witnesses to obstruct an ongoing FCPA investigation into BSGR's operations in Guinea. BSGR is a Guernsey-based mining and resource extraction company operating around the world and is owned by Israeli businessman Beny Steinmetz.

INFLUENCE TO BE OBTAINED

According to the complaint and indictment, a federal grand jury was investigating possible violations of the FCPA and anti-money laundering statutes by a mining company in connection with mining concessions in Guinea. During the investigation, investigators began working with the former wife (the "cooperating witness") of a now-deceased Guinean government official suspected of receiving bribes in exchange for the award of the valuable mining concession. As alleged in the complaint, the cooperating witness revealed that while her husband was in office, both were visited by several individuals from an unnamed company, including the defendant Frederic Cilins. During these meetings, these individuals offered bribes to the cooperating witness and various other government officials to secure valuable mining rights in Guinea.

In March 2013, investigators learned that Cilins contacted the cooperating witness in an effort to destroy any record of the alleged bribes. Through a series of recorded phone calls and face-to-face meetings, Cilins allegedly agreed to pay the cooperating witness approximately $1 million in exchange for the relevant documents, and sought to induce the cooperating witness to sign an affidavit containing false statements. Throughout these conversations, the complaint alleges that Cilins made multiple statements which suggested his actions were at the direction of a superior within the unnamed company.

ENFORCEMENT

On April 14, 2013, Cilins was arrested by federal officials in Jacksonville, Florida. Thereafter, on April 25, 2013, Cilins was indicted by a grand jury sitting in the Southern District of New York on five counts of obstruction of justice related charges including tampering with a witness and destroying records in a federal investigation. On March 10, 2014 Cilins pleaded guilty to one count of obstruction of justice through a plea agreement and was subsequently sentenced to two years in prison on July 25, 2014.

See Ongoing Investigation Number F-38.
See Parallel Litigation Digest Number H-C29 and H-E7.

KEY FACTS

Citation. *United States v. Cilins*, No. 1:13–cr–315 (S.D.N.Y. 2013).

Date Filed. April 19, 2013.

Country. Guinea.

Date of Conduct. 2013.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Agent; Consultant.

Foreign Official. Guinean government official with authority to influence the award of mining concessions.

FCPA Statutory Provision. None.

Other Statutory Provision. Obstruction of Justice.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Not Applicable.

Defendant's Citizenship. France.

Total Sanction. Two-Years Imprisonment.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

139. UNITED STATES V. PARKER DRILLING COMPANY (E.D. VA. 2013)

NATURE OF THE BUSINESS

Parker Drilling Company is a publicly listed drilling-services company headquartered in Houston, Texas, with subsidiaries operating throughout the world, including Parker Drilling (Nigeria) Limited, a wholly-owned subsidiary incorporated in Cayman Islands.

INFLUENCE TO BE OBTAINED

According to the criminal Information filed by the DOJ, in 2001 and 2002 Parker Drilling failed to pay certain tariffs and duties associated with Nigeria's Customs & Excise Management Act of 1958. When the Nigerian government formed a panel to investigate companies' compliance to the Act, it found that Parker Drilling had violated Nigeria's laws and assessed a fine of $3.8 million against the company. During these proceedings, Parker Drilling allegedly retained a Nigerian agent to help resolve the customs issues. Parker Drilling authorized payments to this Nigerian agent totaling $1.25 million, most of which were paid through Parker Drilling's U.S. law firm. The Nigerian agent used those funds, in part, to entertain Nigerian government officials involved with the customs issues. Subsequently, Parker Drilling's fine was reduced to $750,000—a reduction of $3.05 million, or approximately 80 percent.

ENFORCEMENT

On April 16, 2013, the DOJ filed a criminal information against Parker Drilling, charging the company with violating the anti-bribery provision of the FCPA. On the same day, the DOJ entered into a three-year deferred prosecution agreement, under which Parker Drilling agreed to pay a monetary penalty of $11,760,000.

In a related settlement with the SEC, Parker Drilling agreed to pay approximately $4.1 million in disgorgement and prejudgment interest.

See SEC Digest Number D-117.
See Parallel Litigation Digest Number H-F14.

KEY FACTS

Citation. *United States v. Parker Drilling Co.*, No. 1:13-cr-00176 (E.D. Va. 2013).

Date Filed. April 16, 2013.

Country. Nigeria.

Date of Conduct. 2001 – 2004.

Amount of the Value. $1.25 million.

Amount of Business Related to the Payment. $3.05 million in fines.

Intermediary. Nigerian agent, U.S. law firm.

Foreign Official. Officials and employees of the Nigerian Minister of Finance, Nigeria State Security Service, Nigeria Customs Service; Nigerian President-appointed "Panel of Inquiry for the Investigation of All Cases of Temporary Import Permits."

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $11,760,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *SEC v. Parker Drilling Co.*

Total Combined Sanction. $15,850,818.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

138. UNITED STATES V. PETER DUBOIS (N.D. OK. 2011)
UNITED STATES V. JALD JENSEN (N.D. OK. 2012)
UNITED STATES V. BERND KOWALEWSKI (N.D. OK. 2012)
UNITED STATES V. NEAL UHL (N.D. OK. 2011)

NATURE OF THE BUSINESS

BizJet International Sales and Support, Inc. is a provider of aircraft maintenance, repair and overhaul services based in Tulsa, Oklahoma. It is a subsidiary of Lufthansa Technik AG, a German provider of aircraft-related services.

INFLUENCE TO BE OBTAINED

According to court documents, four BizJet executives, Peter Dubois (former vice president), Jald Jensen (former sales manager), Bernd Kowalewski (former CEO), and Neal Uhl (former vice president), engaged in a scheme to bribe various officials from Mexico, Panama, and Brazil from 2004 to March 2010. The DOJ alleged that the four executives arranged for illicit check and wire transfers, often referred to as "commissions," to be made to a group of foreign officials in exchange for lucrative aircraft services contracts. According to the DOJ's charges, while it was often the case that the bribes were paid directly to the foreign officials, occasionally, the payments were funneled through a shell company that was owned and operated by Jensen.

ENFORCEMENT

On April 5, 2013, the DOJ unsealed four indictments filed in 2011 and 2012 against DuBois, Kowalewski, Jensen, and Uhl. At the time of the announcement, both DuBois and Uhl pleaded guilty to multiple charges and were sentenced to probation plus eight months home detention. The sentences were reduced on account of DuBois' and Uhl's cooperation with authorities.

In March 2014, Kowalewski was arrested in Amsterdam and subsequently pleaded guilty to one count of conspiracy to violate the FCPA and one substantive count of violating the FCPA. On November 18, 2014, Kowalewski was sentenced to time served and ordered to pay a $15,000 criminal fine. The fourth BizJet executive, Jensen, remains a fugitive.

See DOJ Digest Number D-129.

KEY FACTS

Citation. *United States v. DuBois*, No. 11-cr-183 (N.D. Ok. 2011); *United States v. Jensen*, No. 12-cr-06 (N.D. Ok. 2012); *United States v. Kowalewski*, No. 12-cr-07 (N.D. Ok. 2012); *United States. v. Uhl*, No. 11-cr-184 (N.D. Ok. 2011).

Date Filed. December 27, 2011 (DuBois); December 28, 2011 (Uhl); January 5, 2012 (Jensen; Kowalewski).

Date Unsealed. April 5, 2013.

Country. Mexico; Panama; Brazil.

Date of Conduct. 2005 – 2010.

Amount of the Value. Approximately $565,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Shell Company.

Foreign Official. Officials and employees of the Mexican Policia Federal Preventiva, Mexican Coordinacion General de Transportes Aereos Presidenciales, Gobierno del Estado de Sinaloa, and the Republica de Panama Autoridad Aeronautica Civil.

FCPA Statutory Provision.

- **Peter DuBois**. Conspiracy; Anti-Bribery.
- **Jald Jensen**. Conspiracy; Anti-Bribery.
- **Bernd Kowalewski**. Conspiracy; Anti-Bribery.
- **Neal Uhl**. Conspiracy.

Other Statutory Provision.

- **Peter DuBois**. None.
- **Jald Jensen**. Conspiracy (Money Laundering); Money Laundering.
- **Bernd Kowalewski**. Conspiracy (Money Laundering); Money Laundering.
- **Neal Uhl**. None.

Disposition.

- **Peter DuBois**. Plea Agreement.
- **Jald Jensen**. Fugitive.
- **Bernd Kowalewski**. Plea Agreement.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

	• **Neal Uhl**. Plea Agreement. **Defendant Jurisdictional Basis**. Domestic Concern (DuBois; Jensen; Uhl); Agent of Domestic Concern (Kowalewski). **Defendant's Citizenship**. United States (DuBois; Jensen; Uhl); Not Stated (Kowalewski). **Total Sanction**. • **Peter DuBois**. Probation plus 8-months Home Detention. • **Jald Jensen**. Pending. • **Bernd Kowalewski**. Time Served; $15,000 Criminal Fine. • **Neal Uhl**. Probation plus 8-months Home Detention **Related Enforcement Actions**. *United States v. BizJet International Sales*; *In re Lufthansa Technik AG*.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

137. UNITED STATES V. FREDERIC PIERUCCI (D. CONN. 2012)
UNITED STATES V. LAWRENCE HOSKINS AND WILLIAM POMPONI (SECOND SUPERSEDING INDICTMENT, FILED JULY 2013)
UNITED STATES V. DAVID ROTHSCHILD (D. CONN. 2012)

NATURE OF THE BUSINESS

Alstom SA (identified in the pleadings only as a "French power and transportation company") provides power generation and transportation-related services around the world. Its shares were listed on the NYSE until August 2004. Alstom has several subsidiaries, including subsidiaries in Connecticut, Switzerland, and Indonesia. Lawrence Hoskins was a Senior Vice-President for the Asia region at Alstom. William Pomponi was the Vice-President of regional sales at Alstom Connecticut. Frederic Pierucci held executive level positions at Alstom Connecticut and other Alstom related entities, including Vice-President of Global Sales. David Rothschild was formerly a vice-president of regional sales at Alstom Connecticut.

INFLUENCE TO BE OBTAINED

Pierucci, Pomponi, Hoskins, and Rothschild allegedly paid bribes to Indonesian officials in exchange for their assistance in securing a contract for Alstom to provide power-related services for Indonesian citizens (called the Tarahan Project). One of the PLN officials was a high-ranking member of the evaluation committee for the Tarahan Project, and the other had broad decision making authority and influence over the award of contracts by PLN, including on the Tarahan Project. The Member of Parliament was also a "key legislator" and "Vice Chairman of the Parliament Commission dedicated for Power and Energy" who had "easy direct access personally to PLN Board."

The defendants retained two consultants purportedly to provide legitimate consulting services, but actually to use them to pay bribes to Indonesian officials. Defendants were responsible for approving the selection of, and authorizing payments to the consultants, knowing that a portion of these payments was intended for the Indonesian officials.

The first consultant, retained in 2002, was to receive a commission (three percent of the Tarahan Project contract value) from which he was expected to pay bribes. The consultant allegedly received hundreds of thousands of dollars into his Maryland bank account to be used to bribe the Indonesian Member of Parliament and then transferred the bribe money to a bank account in Indonesia for the official's benefit. In 2003, the consulting agreement was amended to restrict the consultant's responsibilities to paying bribes only to the Indonesian Member of Parliament, and accordingly his commission rate was reduced to one percent. Between 2005 and 2009, Alstom Connecticut made four separate payments to the first consultant's bank account in Maryland.

In April 2004, Alstom, its subsidiaries, and its Consortium Partner retained a second consultant in connection with the Tarahan Project. The charges also allege that Alstom deviated from its usual Terms of Payment (whereby it paid consultants on a pro-rata basis) to make a much larger-up-front payment to the second consultant so that the consultant could "get the right influence."

In May 2005, Alstom, its subsidiaries and its Consortium Partner secured the Tarahan Project.

KEY FACTS

Citation. *United States v. Pierucci*, No. 3:12-cr-00238 (D. Conn. 2012); *United States v. Hoskins & Pomponi*, No. 3:12-cr-00238 (D. Conn. 2013); *United States v. Rothschild*, No. 3:12-cr-00223 (D. Conn. 2012).

Date Filed. November 27, 2011 (Pierucci); November 2, 2012 (Rothschild); April 30, 2013 (Pomponi; Hoskins).

Date Unsealed. April 16, 2013 (Pierucci; Rothschild).

Country. Indonesia.

Date of Conduct. 2002 – 2009.

Amount of the Value. Approximately $2.3 million.

Amount of Business Related to the Payment. $118 million.

Intermediary. Two Indonesia Consultants.

Foreign Official. An Indonesian Member of Parliament; High-ranking members of Perusahaan Listrik Negara ("PLN"), the state-owned and state-controlled electricity company in Indonesia.

FCPA Statutory Provision.

- **Frederic Pierucci**. Conspiracy; Anti-Bribery.
- **William Pomponi**. Conspiracy.
- **Lawrence Hoskins**. Conspiracy; Anti-Bribery.
- **David Rothschild**. Conspiracy.

Other Statutory Provision.

- **Lawrence Hoskins**. Conspiracy (Money Laundering); Money Laundering

Disposition.

- **Frederic Pierucci**. Plea Agreement.
- **William Pomponi**. Plea Agreement.
- **Lawrence Hoskins**. Pending.
- **David Rothschild**. Plea Agreement.

Defendant Jurisdictional Basis. Agent of Domestic Concern (Pierucci; Hoskins); Domestic Concern (Pomponi; Rothschild).

Defendant's Citizenship. United States (Pomponi; Rothschild); France (Pierucci); Not Stated (Hoskins).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

ENFORCEMENT

Lawrence Hoskins was charged as a co-defendant with William Pomponi in a second superseding indictment filed by the DOJ on July 30, 2013. On May 19, 2014, Hoskins pleaded not guilty to the charges and plans to challenge the charges against him. As of December 2016, the case against Hoskins remains pending.

On July 17, 2014, Pomponi pleaded guilty to conspiracy to violate the FCPA. On May 24, 2016 Pomponi died before his sentencing.

Pierucci, a French national, was arrested at the New York JFK International Airport on April 14, 2013 and was charged on April 30, 2014. On July 29, 2013, Pierucci pleaded guilty to one count of conspiring to violate the FCPA and one count of violating the FCPA. David Rothschild pleaded guilty to a charge of conspiring to violate the FCPA on November 2, 2012, but the plea was unsealed on April 16, 2013.

See DOJ Digest Number D151, D-157, and D-158.

Total Sanction.

- **Frederic Pierucci**. Pending.
- **William Pomponi**. Died Pending Sentencing.
- **Lawrence Hoskins**. Pending.
- **David Rothschild**. Pending.

Related Enforcement Actions. *United States v. Alstom S.A.*; *United States v. Alstom NetworkSchweiz AG*; *United States v. Alstom Grid, Inc.*; *United States v. Alstom Power, Inc.*; *United States v. Marubeni*.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

136. IN RE TYCO INTERNATIONAL, LTD. (2012)
UNITED STATES V. TYCO VALVES & CONTROLS MIDDLE EAST, INC. (E.D. VA. 2012)

NATURE OF THE BUSINESS

Tyco International, Ltd., a Swiss company, manufactures and sells products related to security, fire protection, and energy. Tyco Valves & Controls Middle East, Inc. ("TVC ME") is an indirect, wholly-owned subsidiary of Tyco that sold and marketed valves and other industrial equipment throughout the Middle East for the oil, gas, petrochemical, commercial construction, water treatment, and desalination industries.

INFLUENCE TO BE OBTAINED

Between 2003 and 2006, TVC ME, with others, intentionally bribed employees of end-customers in Saudi Arabia, the UAE, and Iran, including employees at Aramco, ENOC, Vopak, and NIGC, to obtain or retain business. TVC ME also paid bribes to employees of foreign government customers to remove TVC manufacturing plants from various Aramco "blacklists" or "holds," to win specific bids, and obtain specific product approval.

TVC ME improperly recorded the bribes in company books, records, and accounts, falsely describing the payments as "consultancy costs," "commissions," or "equipment costs." TVC ME also made payments through a Local Sponsor [a company in Saudi Arabia that acted as a distributor for TVC ME in Saudi Arabia]. The Local Sponsor provided TVC ME with false documentation, such as fictitious invoices for consultancy costs, bills for fictitious commissions, or "unanticipated costs for equipment," to justify payments to the Local Sponsor that were intended to be used for bribes. The Local Sponsor received commissions for all contracts that they secured for TVC ME in Saudi Arabia.

ENFORCEMENT

On September 20, 2012, Tyco International entered into a non-prosecution agreement with the DOJ under which it agreed to pay a $13.68 million penalty for falsifying books and records in connection with corrupt payments by its subsidiaries (including TVC ME) to foreign government officials. On September 24, 2012, TVC ME pleaded guilty to one count of conspiring to violate the anti-bribery provisions of the FCPA. TVC ME was sentenced to a $2.1 million fine, which was included as part of Tyco International's $13.68 million penalty.

See SEC Digest Number D-113.

KEY FACTS

Citation. *In re Tyco Int'l, Ltd*. (2012); *United States v. Tyco Valves & Controls Middle East, Inc*., No. 1:12-cr-00418 (E.D. Va. 2012).

Date Filed. September 24, 2012.

Country. Iran; Saudi Arabia; United Arab Emirates.

Date of Conduct. 2003 – 2006.

Amount of the Value. Approximately $488,479.

Amount of Business Related to the Payment. $1,153,500.

Intermediary. Joint Venture; Sales Agents and Consultants; Subsidiaries.

Foreign Official. Employees of government customers in China, Croatia, India, Libya, Saudi Arabia, Serbia, Syria, Turkey, Malaysia, and the UAE; Officials of Saudi Aramco ("Aramco"), a Saudi Arabian oil and gas company that was wholly owned, controlled, and managed by the government; Officials of Emirates National Oil Company ("ENOC"), a state-owned entity in Dubai; Officials of Vopak Horizon Fujairah ("Vopak"), a subsidiary of ENOC based in the U.A.E.; Officials of National Iranian Gas Company ("NIGC"), a state-owned entity in Iran.

FCPA Statutory Provision.

- **Tyco International**. Books-and-Records.
- **Tyco Valves & Controls**. Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition.

- **Tyco International**. Non-Prosecution Agreement.
- **Tyco Valves & Controls**. Plea Agreement.

Defendant Jurisdictional Basis.

- **Tyco International**. Issuer.
- **Tyco Valves & Controls**. Domestic Concern.

Defendant's Citizenship. United States (Tyco International; Tyco Valves & Controls).

Total Sanction. $13,680,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *SEC v. Tyco Int'l Ltd*.

Total Combined Sanction. $26,811,509.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

135. UNITED STATES V. PFIZER H.C.P. CORPORATION (D.D.C. 2012)

NATURE OF THE BUSINESS

Pfizer Inc. is a global pharmaceutical, animal health, and consumer products company incorporated in Delaware. Pfizer H.C.P. Corporation is an indirect wholly-owned subsidiary of Pfizer Inc.

INFLUENCE TO BE OBTAINED

Employees at Pfizer HCP and Pfizer Inc.'s Russian subsidiary made and authorized payments of cash and other things of value to government officials (including doctors employed by state-owned hospitals) for the purpose of improperly influencing their decisions regarding regulatory and formulary approvals, purchase decisions, prescription decisions, and customs clearance. Funds for these payments were often generated by Pfizer HCP employees through the use of collusive vendors to create fraudulent invoices. The payments were falsely recorded in Pfizer's books and records, as "Travel and Entertainment," "Convention and Trade Meetings and Conference," "Distribution Freight," "Clinical Grants/Clinical Trials," "Gifts," and "Professional Services - Non Consultant."

In Bulgaria, Pfizer HCP employees gave doctors employed in Bulgarian public hospitals a specific target for prescriptions and provided support for international travel on the basis of promises to prescribe Pfizer products by the doctors. Managers referred to the bribes as "sponsorships" and instructed sales staff to "very precisely state the grounds for recommending the sponsorship, and also what the doctor in question is expected to do or has already done."

In Croatia, Pfizer HCP employees entered into a bogus "consulting agreement" with a Croatian government official to secure the registration of Pfizer products. Pfizer HCP's Croatian employees entered into agreements with doctors employed at public hospitals, who promised purchases of a Pfizer product in exchange for travel benefits and bonuses based on a percentage of sales.

In Kazakhstan, Pfizer HCP entered into an exclusive distribution contract for a Pfizer product with a Kazakh company, believing that all or part of the value of the contract would be provided to a high-level Kazakh government official to corruptly obtain approval for the registration of a Pfizer product in Kazakhstan.

In Russia, Pfizer Russia employees used conference attendance and travel as a corrupt inducement for healthcare providers to prescribe or purchase Pfizer products. Pfizer Russia employees also used purported sales initiatives to make corrupt payments. The sales initiative, known as the "Hospital Program," appeared to be a mechanism for Pfizer Russia to provide the equivalent of indirect price discounts or in-kind benefits to government hospitals in connection with their purchases of Pfizer products. In practice, however, the Hospital Program was used to make cash payments to individual healthcare professionals to corruptly influence purchases.

ENFORCEMENT

On August 7, 2012, the Pfizer HCP entered into a two-year deferred prosecution agreement with the DOJ under which Pfizer HCP agreed to pay a fine of $15 million, implement an "enhanced" corporate compliance program, and engage in regular reporting to the DOJ regarding the status of its

KEY FACTS

Citation. *United States v. Pfizer H.C.P. Corp.*, No. 1:12-cr-00169 (D.D.C. 2012).

Date Filed. August 7, 2012.

Country. Bulgaria; Croatia; Kazakhstan; Russia.

Date of Conduct. 1997 – 2006.

Amount of the Value. $2 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Sales Agents; Consultants; Subsidiaries.

Foreign Official. Unspecified Croatian official and professor; Russian medical doctors employed at public hospitals; High-ranking Russian government officials.

FCPA Statutory Provision. Conspiracy (Anti-Bribery & Books-and-Records); Anti-Bribery.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. $15,000,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *SEC v. Pfizer Inc.; SEC v. Wyeth LLC*.

Total Combined Sanction. $26,811,509.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

remediation and implementation of the enhanced compliance measures. In a related civil settlement with the SEC, Pfizer HCP's parent company, Pfizer Inc., agreed to pay disgorgement and prejudgment interest of approximately $26.3 million.

See SEC Digest Number D-110.
See Parallel Litigation Digest Number H-C25 and H-C14.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

134. IN RE NORDAM GROUP, INC. (2012)[59]

NATURE OF THE BUSINESS

The NORDAM Group Inc., a Delaware corporation based in Tulsa, Oklahoma, manufactures aircraft parts and provides aircraft maintenance, repair and overhaul ("MRO") services. NORDAM Singapore Pte Ltd. ("NSPL") is a wholly-owned subsidiary of NORDAM.

INFLUENCE TO BE OBTAINED

Between 1999 and 2008, employees of NORDAM allegedly paid bribes totaling $1.5 million to employees of airlines controlled and owned by the People's Republic of China to secure contracts to perform MRO services for those airlines.

The bribes paid both directly and indirectly to airline employees were referred to internally as "commissions" or "facilitator fees." These facilitator fees were paid to "facilitators," who were the actual employees of NORDAM's customers. In an effort to disguise the bribes, three employees of NORDAM's affiliate entered into sales representation agreements with fictitious entities and then used the money paid by NORDAM to those entities to pay bribes to the airline employees.

Although many of the bribe payments were paid out of NORDAM's gross profits, in some instances NORDAM and its affiliates artificially inflated the customer invoice to offset the bribes paid to those customers' employees. As a result, in these instances, NORDAM's customers were unknowingly reimbursing NORDAM for the bribes that NORDAM paid to customer employees to secure the projects.

ENFORCEMENT

On July 17, 2012, NORDAM entered into a three-year non-prosecution agreement with the DOJ. As part of that agreement, NORDAM is required to cease and desist from further violating the books and records and internal controls provisions of the FCPA and pay a penalty of $2 million. In addition to the monetary penalty, NORDAM must adhere to rigorous compliance, bookkeeping, and internal controls standards and cooperate fully with the DOJ. The NPA notes that the DOJ agreed to a fine below the standard range because NORDAM demonstrated that a fine exceeding $2 million would jeopardize its continued viability.

KEY FACTS

Citation. *In re NORDAM Group* (2012).

Date Filed. July 17, 2012.

Country. China.

Date of Conduct. 1999 – 2008.

Amount of the Value. $1.5 million.

Amount of Business Related to the Payment. Over $2.8 million in Profits.

Intermediary. Subsidiary.

Foreign Official. Employees of airlines controlled and owned by the Chinese government.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. $2,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

[59] Matter resolved through non-prosecution agreement (July 2012).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

133. UNITED STATES V. ORTHOFIX INTERNATIONAL, N.V. (E.D. TEX. 2012)

NATURE OF THE BUSINESS

Orthofix International, N.V. is a multinational corporation involved in the design, development, manufacture, marketing, and distribution of medical devices. Although incorporated in Curaçao, it is based in Lewisville, Texas, and operates in multiple countries around the world including the U.S., the U.K., Italy, and Mexico. Orthofix is publicly traded on the NASDAQ stock exchange.

INFLUENCE TO BE OBTAINED

According to the criminal information, Orthofix and its Mexican subsidiary Promeca, S.A de C.V. ("Promeca") sought to secure agreements from Mexican officials employed by state-owned hospitals as well as the IMSS that guaranteed the sale of Orthofix products. In return for the agreements, the Mexican officials would receive a percentage of the collected revenue generated as a result of the sales in addition to various other gifts which Orthofix officials commonly referred to as "chocolates." The Orthofix official overseeing Promeca was aware of the conduct but failed to stop or report the scheme to Orthofix. These payments were disguised as "promotional expenses" on Promeca's books and records.

ENFORCEMENT

On July 10, 2012, the DOJ filed a criminal information alleging that Orthofix violated the FCPA's internal control provisions by failing to maintain an effective anti-corruption compliance program and adequate financial controls. As an example, the DOJ cited Orthofix's failure to translate its anti-corruption policy into Spanish and its failure to train both Orthofix and Promeca employees on these anti-corruption policies. Orthofix settled the DOJ's charges through a deferred prosecution agreement where it agreed to pay $2.22 million in monetary penalties, undertake various improvements in its anti-corruption compliance program, and perform an "independent review" as part of a self-monitoring requirement.

In a related civil settlement with the SEC, Orthofix agreed to pay approximately $5.2 million in disgorgement and prejudgment interest.

See SEC Digest Number D-109 and 170.

KEY FACTS

Citation. *United States v. Orthofix Int'l, N.V.*, No. 4:12-cr-150 (E.D. Tex. 2012).

Date Filed. July 10, 2012.

Country. Mexico.

Date of Conduct. 2003 – 2010.

Amount of the Value. Approximately $300,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Subsidiary.

Foreign Official. Employees of state-owned hospitals; officials employed by the Mexican state social-services agency, the Instituto Mexicano del Seguro Social ("IMSS").

FCPA Statutory Provision. Internal Controls.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $2,220,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *In the Matter of Orthofix International N.V.; SEC v. Orthofix Int'l N.V.*.

Total Combined Sanction. $7,445,701.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

132. UNITED STATES V. DATA SYSTEMS & SOLUTIONS LLC (E.D. VA. 2012)

NATURE OF THE BUSINESS

Data Systems & Solutions LLC ("DS&S"), a U.S. limited liability company incorporated in Delaware and headquartered in Reston, Virginia, provides design, installation, maintenance, and other services to nuclear power and fossil fuel plants.

INFLUENCE TO BE OBTAINED

Starting in 1999 and through June 2004, DS&S directly and through third-party subcontractors paid bribes and other things of value to officials at Ignalina Nuclear Power Plant in exchange for multi-million instrumentation and controls contracts. These bribes were funneled through third-party subcontractors located in the United States and abroad. The subcontractors, in turn, made repeated payments to high-level officials at Ignalina Nuclear Power Plant via check or wire transfer. The payments were often disguised through fictitious scopes of work and payment of above-market rates to employees of the subcontractors. DS&S also provided gifts, entertainment, and payment of domestic and international travel to employees of Ignalina Nuclear Power Plant in exchange for those employees' agreements to secure contracts for DS&S.

ENFORCEMENT

On June 18, 2012, Data Systems & Solutions entered into a two-year deferred prosecution agreement under which DS&S agreed to pay a fine of $8.82 million, to take remedial actions to implement and correct deficiencies in its compliance program, and to make periodic reports to the DOJ regarding its remedial efforts. The DOJ noted that entry into the DPA was supported by DS&S's extraordinary cooperation and extensive remediation that it had undertaken during and after an internal investigation.

KEY FACTS

Citation. *United States v. Data Sys. & Solutions, LLC*, No. 12-cr-00262 (E.D. Va. 2012).

Date Filed. June 18, 2012.

Country. China.

Date of Conduct. 1999 – 2004.

Amount of the Value. Approximately $485,000.

Amount of Business Related to the Payment. $32.4 million.

Intermediary. Subcontractor.

Foreign Official. Officials at the Ignalina Nuclear Power Plant, a state-owned nuclear power plant in Lithuania.

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. $8,820,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

131. UNITED STATES V. GARTH PETERSON (E.D.N.Y. 2012)

NATURE OF THE BUSINESS

Garth Peterson, an American citizen, was a managing director in charge of Morgan Stanley's Real Estate Group's ("MSRE") Shanghai office. Morgan Stanley is a global financial services firm listed on the New York Stock Exchange. Morgan Stanley, through MSRE, created and managed real estate funds for institutional investors and high-net-worth investors.

INFLUENCE TO BE OBTAINED

In the fall of 2004, a Chinese official at Yongye helped to facilitate Morgan Stanley's purchase of a building. To consummate the purchase, MSRE required the consent of the Chinese Official. MSRE obtained this consent, and the Chinese Official further helped MSRE to obtain governmental approvals. In exchange for this assistance, Peterson conspired to circumvent Morgan Stanley's internal controls to transfer a multi-million dollar interest in the Shanghai tower to compensate the Chinese Official. Peterson falsely represented to Morgan Stanley that Yongye was purchasing a real estate interest in the tower, when in fact the interest would be conveyed to a shell company controlled by him, the Chinese Official, and a Canadian lawyer. After Peterson and his co-conspirators falsely represented to Morgan Stanley that Yongye owned the shell company, Morgan Stanley sold the real estate interest in 2006 to the shell company at a discount. In 2006, the real estate interest appreciated significantly, and, as a result, the Chinese Official realized an immediate paper profit of approximately $2.8 million.

ENFORCEMENT

On April 25, 2012, Peterson pleaded guilty to a one-count criminal information charging him with conspiring to evade Morgan Stanley's internal controls. Peterson's employer, Morgan Stanley, was not subject to civil or criminal charges. The DOJ noted in its information Morgan Stanley's strong compliance program and the lengths to which Morgan Stanley went to train and remind Peterson of FCPA compliance.

On August 16, 2012, Peterson was sentenced to nine months of incarceration and three-years of supervised release. This sentence was significantly shorter than the 57-71 month range recommended by the Sentencing Guidelines and the 57 months sought by the prosecutors. A civil fine was not imposed because, in a separate civil action, Peterson was ordered to disgorge approximately $3.82 million. In a separately filed statement, Judge Jack B. Weinstein explained that the sentence reflected the seriousness of the crime and was sufficient, but not greater than necessary, to comply with the purposes of sentencing. Judge Weinstein took into account Peterson's harsh upbringing and then opined that white collar criminals are more easily deterred because they are more likely to weigh the risks against the probability of any gain. Lastly, Judge Weinstein noted that the sentence would send a message that any bribery of foreign officials will result in a substantial prison sentence and significant financial penalties.

See SEC Digest Number D-108.

KEY FACTS

Citation. *United States v. Peterson*, No. 12-cr-00224 (E.D.N.Y. 2012).

Date Filed. October 15, 2013.

Country. China.

Date of Conduct. 2004 – 2007.

Amount of the Value. Approximately $2.8 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Shell Entity.

Foreign Official. Executive at Shanghai Yongye Enterprise (Group) Co. Ltd. ("Yongye"), a state-owned, limited liability corporation incorporated by the Luwan District government, to operate as the Luwan District government's real estate development arm.

FCPA Statutory Provision. Internal Controls.

Other Statutory Provision. None.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Employee of Issuer.

Defendant's Citizenship. United States.

Total Sanction. 9-months Imprisonment; $3.82 million in Disgorgement.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

130. UNITED STATES V. BIOMET, INC. (D.D.C. 2012)

NATURE OF THE BUSINESS

Biomet, Inc. is a manufacturer of orthopedic medical devices. Biomet is incorporated in Indiana and has its principal place of business in Warsaw, Indiana.

INFLUENCE TO BE OBTAINED

From approximately 2000 to 2008, Biomet, its subsidiaries, employees, and agents made various improper payments to health care providers employed at publicly owned and operated hospitals in Argentina, Brazil, and China to secure lucrative business for sales of Biomet products to hospitals. Biomet conducted business in these countries through subsidiaries, including Biomet Argentina SA, Biomet International Corporation, Biomet China, and Scandimed AB.

In Argentina, Biomet employees paid doctors kickbacks of between 15 and 20 percent of each sale. Phony invoices were used to justify the payments, and the bribes were recorded as "consulting fees" or "commissions" in Biomet's books and records. Executives and internal auditors at Biomet's Indiana headquarters were aware of the payments as early as 2000, but failed to stop them.

In Brazil, Biomet employees used a Brazilian distributor to bribe doctors in Brazil by paying them between 10 and 20 percent of the value of their medical device purchases. The distributor, Biomet International employees, and Biomet's executives and internal auditors in the United States openly discussed the payments in communications.

In China, Biomet employees paid bribes through a Chinese distributor who provided doctors with money and travel in exchange for their purchases of Biomet products. These allegations include payments of "consulting fees" of between 5 and 20 percent of sales, with one surgeon receiving 25 percent upon completion of a surgery. Additionally, Biomet provided a dinner for a doctor, followed by a possible trip to Switzerland to visit his daughter and organized a trip for 20 surgeons to Spain for training, where a substantial portion of the trip was devoted to sightseeing and entertainment at Biomet's expense.

ENFORCEMENT

The DOJ filed a criminal information against Biomet on March 26, 2012, charging Biomet with one count of conspiracy to violate the anti-bribery provisions of the FCPA, three counts of violations of the anti-bribery provisions of the FCPA, and one count of violating the books and records provisions of the FCPA. On the same day, Biomet entered into a three-year deferred prosecution agreement under which Biomet agreed to pay a monetary penalty of $17.28 million. Additionally, Biomet agreed to retain an independent corporate compliance monitor for a minimum period of 18 months and to self-monitor and report for the remainder of the DPA period.

On March 26, 2012, the SEC filed a civil complaint against Biomet. Biomet consented to the entry of a court order permanently enjoining it from any future FCPA violations and agreed to pay disgorgement and prejudgment interest totaling $5.57 million. The SEC ordered Biomet to retain an

KEY FACTS

Citation. *United States v. Biomet*, Inc., No. 1:12–cr–00080 (D.D.C. 2012).

Date Filed. March 26, 2012.

Country. Argentina; Brazil; China.

Date of Conduct. 2000 – 2008.

Amount of the Value. $1,536,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Subsidiaries; Third-Party Distributors.

Foreign Official. Health care providers employed by publicly-owned and operated hospitals in Argentina, Brazil, and China.

FCPA Statutory Provision. Conspiracy; Anti-Bribery; Books-and-Records.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $17,280,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *United States v. Zimmer Biomet Holdings, Inc.*; *United States v. Jerds Luxembourg Holding S.ÀR.L.*; *SEC v. Biomet, Inc.*; *In the Matter of Biomet, Inc.*

Total Combined Sanction. $22,855,731.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

independent corporate compliance monitor for a period of 18 months. *See* DOJ Digest Number B-182. *See* SEC Digest Number D-107 and 168. *See* Ongoing Investigation Numbers F-56.	

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

129. UNITED STATES V. BIZJET INTERNATIONAL SALES AND SUPPORT, INC. (N.D. OK. 2012) IN RE LUFTHANSA TECHNIK AG (2012)[60]

NATURE OF THE BUSINESS

BizJet International Sales and Support, Inc. is a provider of aircraft maintenance, repair and overhaul services based in Tulsa, Oklahoma. It is a subsidiary of Lufthansa Technik AG, a German provider of aircraft-related services.

INFLUENCE TO BE OBTAINED

According to court documents, from 2004 to about March 2010, BizJet engaged in a conspiracy to violate the FCPA by bribing government officials in Mexico and Panama to secure contracts to perform aircraft MRO services for government agencies.

BizJet paid bribes to officials employed by the Mexican Policia Federal Preventiva (the Mexican federal police), the Mexican Coordinacion General de Transportes Aereos Presidenciales (the Mexican president's fleet), the air fleet for the Gobierno del Estado de Sinaloa (the Mexican State of Sinaloa), the air fleet for the Gobierno del Estado de Sonora (the Mexican State of Sonora), and the Republica de Panama Autoridad Aeronautica Civil (the Panamanian aviation authority). In many instances, BizJet paid the bribes directly to the foreign officials. In other instances, BizJet funneled the bribes through a shell company owned and operated by a BizJet sales manager. BizJet executives orchestrated, authorized, and approved the unlawful payments.

ENFORCEMENT

On March 12, 2012, BizJet entered into a three-year deferred prosecution agreement with the DOJ under which it agreed to pay a monetary penalty of $11.8 million. BizJet also agreed to report periodically to the DOJ regarding its compliance programs. BizJet's parent company, Lufthansa Technik, entered into a non-prosecution agreement for related conduct but was not subject to a monetary penalty.

See DOJ Digest Number D-138.

KEY FACTS

Citation. *United States v. Bizjet Int'l Sales and Support, Inc.*, No. 4:12–cr–00061 (N.D. Ok. 2012); *In re Lufthansa Technik AG* (2011).

Date Filed. March 14, 2012.

Country. Mexico; Panama.

Date of Conduct. 2004 – 2010.

Amount of the Value. Approximately $565,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Shell Company.

Foreign Official. Officials and employees of the Mexican Policia Federal Preventiva, Mexican Coordinacion General de Transportes Aereos Presidenciales, Gobierno del Estado de Sinaloa, and the Republica de Panama Autoridad Aeronautica Civil.

FCPA Statutory Provision.

- **BizJet Int'l**. Conspiracy (Anti-Bribery).
- **Lufthansa**. Anti-Bribery.

Other Statutory Provision. None.

Disposition.

- **BizJet Int'l**. Deferred Prosecution Agreement.
- **Lufthansa**. Non-Prosecution Agreement.

Defendant Jurisdictional Basis.

- **BizJet Int'l**. Domestic Concern.
- **Lufthansa**. Domestic Concern; Territorial Jurisdiction.

Defendant's Citizenship. United States (BizJet Int'l); Germany (Lufthansa).

Total Sanction. $11,800,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements (BizJet Int'l).

Related Enforcement Actions. None.

[60] Matter resolved through non-prosecution agreement (December 2011).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

128. UNITED STATES V. SMITH & NEPHEW, INC. (D.D.C. 2012)

NATURE OF THE BUSINESS

Smith & Nephew plc is a global medical company incorporated in England and Wales. It issued and maintained a class of publicly-traded securities which traded on the New York Stock Exchange. Smith & Nephew Inc. ("S&N Inc.") was a wholly-owned subsidiary of Smith & Nephew, plc, and was a global manufacturer and supplier of orthopedic medical devices. S&N Inc. was incorporated in Delaware and headquartered in Memphis, Tennessee.

INFLUENCE TO BE OBTAINED

From about 1998 to about 2008, Smith & Nephew, through certain executives, employees, and affiliates, funded an offshore slush fund by selling products at full list price to a Greek distributor based in Athens and then paying the "distributor discount" to an offshore shell company controlled by the distributor. The distributor then paid cash incentives and other things of value to publicly-employed Greek health care providers to induce the purchase of medical devices manufactured by Smith & Nephew. The funds were recorded as "marketing services" to conceal the true nature of the payments in the consolidated books and records of Smith & Nephew and its subsidiaries.

ENFORCEMENT

On February 6, 2012, the DOJ filed a criminal information against S&N Inc., charging S&N Inc. with violations of the FCPA's anti-bribery and books-and-records provisions and aiding and abetting the books and records provisions of the FCPA. On the same day, the DOJ entered into a three-year deferred prosecution agreement with S&N Inc. under which S&N Inc. agreed to pay a monetary penalty of $16.8 million. Additionally, the agreement calls for a monitorship term of 18 months and self-monitoring and reporting for the remainder of the DPA period.

In a related settlement with the SEC, parent company Smith & Nephew plc agreed to pay approximately $5.4 million in disgorgement and prejudgment interest.

See SEC Digest Number D-105.

KEY FACTS

Citation. *United States v. Smith & Nephew, Inc.*, No. 1:12-cr-00030 (D.D.C. 2012).

Date Filed. February 6, 2012.

Country. Greece.

Date of Conduct. 1998 – 2008.

Amount of the Value. $9.4 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Shell Companies; Subsidiary Companies.

Foreign Official. Publicly-employed doctors and healthcare providers in Greece.

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Anti-Bribery; Books-and-Records.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United Kingdom.[61]

Total Sanction. $16,800,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *SEC v. Smith & Nephew PLC.*

Total Combined Sanction. $22,226,799.

[61] Defendant Smith & Nephew, Inc. is a Delaware corporation headquartered in Memphis. Smith & Nephew Inc. is a wholly owned subsidiary of Smith & Nephew plc, a company incorporated in England and Wales and headquartered in the United Kingdom.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

127. UNITED STATES V. MARUBENI CORPORATION (S.D. TEX. 2012)

NATURE OF THE BUSINESS

Marubeni Corporation, a foreign trading company organized under the laws of Japan, was an agent of the four-company joint venture formed in 1990 for bidding on a series of contracts to design and build a liquefied natural gas plant and several expansions in Bonny Island, Nigeria. The joint venture consisted of Technip S.A., Snamprogetti Netherlands B.V., Kellogg, Brown & Root, Inc., and JGC Corporation (collectively, "TSKJ").

INFLUENCE TO BE OBTAINED

According to court documents, Marubeni was hired to pay bribes to lower-level Nigerian officials in connection with the Bonny Island project. On two occasions, an employee of Marubeni allegedly met with successive holders of a top-level Nigerian office to ask the office holder to designate a representative with whom TSKJ should negotiate bribes to Nigerian government officials.

TSKJ transferred $51 million to Marubeni's bank account in Japan during the course of the bribery scheme, intending these funds to be used, in part, to bribe Nigerian officials. Marubeni's alleged co-conspirators transferred another $132 million to bank accounts controlled by Jeffrey Tesler, another agent of the joint venture, for Tesler to use to bribe Nigerian government officials.

ENFORCEMENT

On January 17, 2012, the DOJ and Marubeni Corporation entered into a deferred prosecution agreement under which Marubeni agreed to pay a $54.6 million penalty. Marubeni also implemented and agreed to continue complying with a compliance and ethics program designed to prevent and detect violations of the FCPA, the anti-corruption provisions of Japanese law, and other applicable anti-corruption laws. Marubeni further agreed to engage an independent corporate compliance consultant to evaluate Marubeni's corporate compliance program with respect to the FCPA and Japanese anti-corruption laws.

See DOJ Digest Numbers B-101, B-100, B-82, B-80, and B-70.
See SEC Digest Numbers D-74, D-72, D-57, and D-54.
See Parallel Litigation Digest Number H-F10.

KEY FACTS

Citation. *United States v. Marubeni Corp*., No. 4:12-cr-00022 (S.D. Tex. 2012).

Date Filed. January 17, 2012.

Country. Nigeria.

Date of Conduct. 1994 – 2004.

Amount of the Value. Approximately $51 million transferred to Marubeni's bank account in Japan during the course of the bribery scheme, to be used, in part, to bribe Nigerian officials.

Amount of Business Related to the Payment. Approximately $6 billion.

Intermediary. Sales Agent.

Foreign Official. Nigerian government officials.

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Aiding and Abetting (Anti-Bribery).

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Conspirator; Aider and Abettor.

Defendant's Citizenship. Japan.

Total Sanction. $54,600,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

126. UNITED STATES V. MAGYAR TELEKOM, PLC. (E.D. VA. 2011) IN RE DEUTSCHE TELEKOM AG (2011)

NATURE OF THE BUSINESS

Magyar Telekom is the largest telecommunications company in Hungary. During the relevant time period, Deutsche Telekom, a private stock corporation organized under the laws of Germany, owns a controlling interest in Magyar Telekom. During the relevant period, both companies were issuers in the United States.

INFLUENCE TO BE OBTAINED

According to the criminal Information, Magyar Telekom's scheme in Macedonia stemmed from potential legal changes being made to the telecommunications market in that country. In early 2005, the Macedonian government tried to liberalize the Macedonian telecommunications market in a way that Magyar Telekom deemed detrimental to its Macedonian subsidiary. Magyar Telekom eventually entered into a secret agreement (the "Protocol of Cooperation") with certain high-ranking Macedonian government officials to resolve its concerns about the legal changes. Macedonian government officials agreed to delay the entrance of a third mobile license into the Macedonian telecommunications market, as well as other regulatory benefits. Magyar Telekom executives signed two copies of the Protocol of Cooperation, each with high-ranking officials of the different ruling parties of Macedonia. The Magyar Telekom executives then kept the only executed copies outside of Magyar Telekom's company records.

Pursuant to the Protocol of Cooperation, Magyar Telekom executives allegedly engaged in a course of conduct with consultants, intermediaries and other third parties, including through sham consultancy contracts with entities owned and controlled by a Greek intermediary, to make payments under circumstances in which they knew, or were aware of a high probability that circumstances existed in which, all or part of such payment would be passed on to Macedonian officials. The sham contracts were recorded as legitimate on the books and records of Magyar Telekom's subsidiary, which were then consolidated into Magyar Telekom's financials. Deutsche Telekom, Magyar Telekom's parent company, reported the results of Magyar Telekom's operations in its consolidated financial statements.

ENFORCEMENT

On December 29, 2011, the DOJ filed a criminal information against Magyar Telecom, charging Magyar Telekom with violations of the anti-bribery and books and records provisions of the FCPA. On the same day, the DOJ entered into a two-year deferred prosecution agreement with Magyar Telekom, under which Magyar Telekom agreed to pay a monetary penalty of $59.6 million. The DOJ also entered into a non-prosecution agreement with Deutsche Telekom, under which Deutsche Telekom agreed to pay $4.36 million for failure to keep books and records that accurately detailed the activities of Magyar Telekom.

Also on December 29, 2011, the SEC filed a civil complaint against Magyar Telekom and Deutsche Telekom. Magyar Telekom, without admitting or denying the allegations against it, consented to a court order permanently enjoining it from any future FCPA violations. The company further agreed to pay $31.2 million in disgorgement and prejudgment interest.

See SEC Digest Number D-104.

KEY FACTS

Citation. *United States v. Magyar Telekom, Plc.*, No. 11-cr-597 (E.D. Va. 2011); *In re Deutsche Telekom AG* (2011).

Date Filed. December 29, 2011.

Country. Macedonia; Montenegro.

Date of Conduct. 2005 – 2006.

Amount of the Value. €12,225,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Shell Companies; Third-Party Intermediaries.

Foreign Official. Macedonian and Montenegrin government officials.

FCPA Statutory Provision.

- **Magyar Telekom**. Anti-Bribery; Books-and-Records.
- **Deutsche Telekom**. Books-and-Records.

Other Statutory Provision. None.

Disposition.

- **Magyar Telekom**. Deferred Prosecution Agreement.
- **Deutsche Telekom**. Non-Prosecution Agreement.

Defendant Jurisdictional Basis.

- **Magyar Telekom**. Issuer.
- **Deutsche Telekom**. Issuer.

Defendant's Citizenship. Hungary (Magyar Telekom); Germany (Deutsche Telekom).

Total Sanction.

- **Magyar Telekom**. $59,600,000.
- **Deutsche Telekom**. $4,360,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *SEC v. Magyar Telekom, Plc.*

Total Combined Sanction. $95,171,491.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

125. IN RE AON CORPORATION (2011)

NATURE OF THE BUSINESS

Reinsurance contracts for Aon Limited, a U.K. subsidiary of Aon Corporation ("Aon"). Aon, a Delaware corporation headquartered in Chicago, is one of the largest insurance brokerage firms in the world. The company's primary business activities involve risk management services, insurance, and reinsurance brokerage.

INFLUENCE TO BE OBTAINED

In 1997, Aon Limited acquired the British insurance brokerage firm Alexander Howden and took over management of a "training and education" fund set up by Alexander Howden in connection with its reinsurance business with INS. The purported purpose of the fund was to provide education and training for INS officials. Beginning in 1997, Aon Limited contributed to this fund by allocating a portion of the brokerage commission on its INS account to the fund each year. By 2002, approximately $215,000 was deposited in the funds. Beginning in 1999, at INS's request, Aon Limited also managed a second "training account" that was funded by contributions from other reinsurers of 3% of the premiums paid under reinsurance contracts with INS.

Between 1997 and 2005, Aon Limited used nearly all of the money contributed to these funds to reimburse INS officials for non-training related activity, including travel with spouses to overseas tourist destinations. Although some of these trips were in connection with conferences and seminars, many of the invoices and other records for trips taken by INS officials did not provide any business purpose for the expenditures, or showed that the expenses were clearly not related to a legitimate business purpose. A majority of the money paid from the funds was disbursed to a Costa Rican tourism company for which the director of the INS reinsurance department served on the board of directors.

According to the non-prosecution agreement, Aon also disclosed facts relating to improper payments in Bangladesh, Bulgaria, Egypt, Indonesia, Myanmar, Panama, the United Arab Emirates, and Vietnam.

ENFORCEMENT

Aon entered a two-year non-prosecution agreement on December 20, 2011. As part of that agreement, Aon admitted that Aon Limited's accounting books and records related to the funds were inaccurate and that it failed to devise and maintain an adequate system of internal accounting controls with respect to foreign sales activities sufficient to ensure compliance with the FCPA. Aon agreed to pay a $1.764 million penalty to resolve violations of the FCPA. In addition to the monetary penalty, Aon Corporation must adhere to rigorous compliance, bookkeeping, and internal controls standards and cooperate fully with the DOJ.

In December 2009, Aon Limited was fined £5.25 million under a settlement with the U.K.'s Financial Services Authority ("FSA") for failure to establish internal controls sufficient to detect potentially corrupt payments made to third parties in Bahrain, Bangladesh, Bulgaria, Burma, Indonesia, and Vietnam. The DOJ noted that the financial penalty already paid to the U.K. FSA by Aon Limited for improper conduct in some of these countries, and the FSA's continued supervision of AON Limited, contributed to the DOJ's decision to enter the non-prosecution agreement with Aon.

See SEC Digest Number D-103.

KEY FACTS

Citation. *In re Aon Corp.* (2011).

Date Filed. December 20, 2011.

Country. Costa Rica; Bangladesh; Bulgaria; Egypt; Indonesia; Myanmar; Panama; United Arab Emirates; Vietnam.

Date of Conduct. 1997 – 2005.

Amount of the Value. $865,000.

Amount of Business Related to the Payment. $1,840,200.

Intermediary. A tourism company associated with a government official.

Foreign Official. Officials at the Instituto Nacional De Seguros ("INS"), Costa Rica's state-owned insurance company.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $1,764,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *SEC v. Aon Corp.*

Total Combined Sanction. $16,309,020.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

124. UNITED STATES V. URIEL SHAREF, HERBERT STEFFEN, ANDRES TRUPPEL, ULRICH BOCK, EBERHARD REICHERT, STEPHAN SIGNER, CARLOS SERGI, AND MIGUEL CZYSCH (S.D.N.Y. 2011)[62]

NATURE OF THE BUSINESS

Siemens AG is an engineering company headquartered in Munich, Germany. Siemens Business Services GmbH & Co. ("SBS") and Siemens S.A. ("Siemens Argentina") are both subsidiaries of Siemens AG. All allegations in this case are related to a project to develop a new national identity card in Argentina.

All of the defendants are non-U.S. citizens. Uriel Sharef, a dual citizen of Germany and Israel, was a member of Siemens AG's Managing Board. Herbert Steffen, a citizen of Germany, was group president of Siemens AG's transportation systems operating group, and was previously CEO of Siemens Argentina. Andres Truppel, a dual citizen of Germany and Argentina, was a consultant to Siemens, and previously CFO of Siemens Argentina. Ulrich Bock, a citizen of Germany, was a consultant to Siemens, and previously commercial head of SBS's Major Projects subdivision. Eberhard Reichert, a citizen of Germany, was technical head of SBS's Major Projects subdivision. Stephan Signer, a citizen of Germany, worked for SBS as a commercial director. Carlos Sergi, a citizen of Argentina, was a businessman with extensive high-level government contracts in Argentina. Miguel Czysch, a citizen of Argentina, was a business associate of Carlos Sergi.

INFLUENCE TO BE OBTAINED

In 1994, the Government of Argentina issued a tender for bids to replace an existing system of manually created national identity booklets with state-of-the-art national identity cards (the "DNI Project"). According to the Indictment, the defendants paid and promised to pay bribes to Argentine government officials to obtain the contract, which was eventually awarded to Siemens. The defendants worked to conceal the illicit payments through various means, including sham contracts and shell companies associated with Sergi, Czysch and other intermediaries. In May 1999, however, the Argentine government suspended the DNI project. When a new government took power in Argentine, and in the hopes of getting the DNI project resumed, the defendants allegedly paid additional bribes to the incoming officials. When the project was terminated in May 2001, the defendants allegedly responded with a multi-faceted strategy to overcome the termination. According to the Indictment, the defendants sought to recover the anticipated proceeds of the DNI project, notwithstanding the termination, by causing Siemens AG to file a fraudulent arbitration claim against the Republic of Argentina. Defendants allegedly caused Siemens to actively hide from the arbitral tribunal the fact that the DNI contract had been secured through bribery and corruption. A separate arbitration was initiated in Switzerland to enforce a sham contract between SBS and Mfast Consulting, a shell company controlled by intermediaries Sergi and Czysch. The Indictment also alleges that the defendants continued the bribery scheme until August 2009, to prevent disclosure of the bribery in the arbitration and to ensure Siemens's ability to secure future government contracts in Argentina.

KEY FACTS

Citation. *United States v. Sharef, et al.*, No. 1:11-cr-01056 (S.D.N.Y. 2011).

Date Filed. December 13, 2011.

Country. Argentina.

Date of Conduct. 1996 – 2009.

Amount of the Value. Approximately $100 million.

Amount of Business Related to the Payment. Approximately $1 billion.

Intermediary. Consultants; Agents; Shell Companies.

Foreign Official. Argentine government officials and Argentine candidates for office.

FCPA Statutory Provision. Conspiracy.

Other Statutory Provision. Conspiracy (Money Laundering); Wire Fraud; Criminal Forfeiture.

Disposition.

- **Uriel Sharef**. Fugitive.
- **Herbert Steffen**. Fugitive.
- **Andres Truppel**. Plea Agreement.
- **Ulrich Bock**. Fugitive.
- **Eberhard Reichert**. Plea Agreement.
- **Stephan Singer**. Fugitive.
- **Carlos Sergi**. Fugitive.
- **Miguel Czysch**. Fugitive.

Defendant Jurisdictional Basis. Conspirator; Agent of Issuer.

Defendant's Citizenship.

- **Uriel Sharef**. Germany; Israel.
- **Herbert Steffen**. Germany.
- **Andres Truppel**. Argentina; Germany.
- **Ulrich Bock**. Germany.
- **Eberhard Reichert**. Germany.
- **Stephan Singer**. Germany.

[62] *U.S. v. Sharef, et al.*, No. 11-cr-01056 (S.D.N.Y. 2011).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

ENFORCEMENT

On December 13, 2011, the DOJ filed a criminal indictment against the defendants, alleging conspiracy to violate the anti-bribery and books and records provisions of the FCPA, conspiracy to commit money laundering, and conspiracy to commit wire fraud. The DOJ also brought substantive wire fraud allegations. On December 15, 2011, the government sent a letter to the court stating that the defendants all reside overseas and that none of the defendants were currently in custody.

In September 2015, Andras Truppel appeared before the district court and pleaded guilty to one count of conspiracy to violate the FCPA. Truppel is scheduled to be sentenced in April 2017. Truppel was scheduled to be sentenced in April 2017, but sentencing was postponed due to a medical condition. There are no publicly available docket entries indicating whether sentencing has occurred.

On December 22, 2017, Eberhard Reichert appeared before the S.D.N.Y. and pleaded not guilty to the DOJ's charges against him. Reichert was arrested in Croatia in September 2017 and agreed to be extradited to the United States. In March 2018, he pleaded guilty to one count of conspiracy to violate the FCPA's anti-bribery, internal controls, and books-and-records provisions. His sentencing is currently pending. The remaining six co-defendants remain at large.

In a parallel enforcement action, the SEC filed a civil complaint on December 13, 2011, alleging similar facts against many of the defendants in the DOJ case, excluding Eberhard Reichert and Miguel Czysch, but including Bernd Regendantz. Regendantz was the only defendant to settle with the SEC when the civil complaint and criminal indictment were filed, and he is the only SEC defendant that is not included in the DOJ Indictment.

Previous DOJ and SEC actions against Siemens AG and its subsidiaries were filed and settled in 2008, in part based on the alleged conduct in Argentina. In the criminal action, all corporate defendants pleaded guilty (Siemens Argentina to conspiring to falsify Siemens AG's books; Siemens AG to wire fraud, books and records, and internal controls; Siemens Bangladesh and Siemens Venezuela to FCPA bribery charges), and agreed to pay criminal fines totaling $450 million. In the parallel SEC action against the corporate defendants, Siemens AG agreed to disgorge more than $350 million in ill-gotten profits. Siemens also settled with German authorities, agreeing to pay a total of €596 million in penalties.

See DOJ Digest Numbers B-78.
See SEC Digest Numbers D-102 and D-56.
See Parallel Litigation Digest Numbers H-A11, H-C24, and H-H1.

- **Carlos Sergi**. Argentina.
- **Miguel Czysch**. Germany.

Total Sanction.

- **Uriel Sharef**. Pending.
- **Herbert Steffen**. Pending.
- **Andres Truppel**. Pending.
- **Ulrich Bock**. Pending.
- **Eberhard Reichert**. Pending.
- **Stephan Singer**. Pending.
- **Carlos Sergi**. Pending.
- **Miguel Czysch**. Pending.

Related Enforcement Actions. *SEC v. Sharef, et al.*; *United States v. Siemens Aktiengesellschaft*; *United States v. Siemens Bangladesh, Ltd.*; *United States v. Siemens, S.A.* (Venezuela); *United States v. Siemens S.A.* (Argentina); *SEC v. Siemens Aktiengesellschaft.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

123. UNITED STATES V. BRIDGESTONE CORPORATION (S.D. TEX. 2011)

NATURE OF THE BUSINESS

Sale of marine hose in Mexico and other Latin American countries by Bridgestone International Products of America Inc. ("BIPA"), a wholly-owned subsidiary of Bridgestone Corporation ("Bridgestone"). Bridgestone is a Japanese corporation that manufactures and sells diversified industrial, chemical, and electronic products. BIPA has offices in Nashville, Tennessee and Houston, Texas and sells Bridgestone's industrial products in North, Central, and South America.

INFLUENCE TO BE OBTAINED

From January 1999 through May 2007, Bridgestone authorized and approved corrupt payments to be made through BIPA's local sales agents to foreign government officials at state-owned entities in Latin America. The purpose of these payments was to secure contracts for its industrial products, including marine hose. BIPA's local sales agents would gather information about potential projects for Bridgestone and pay government officials a percentage of the total value of the proposed contracts for those projects.

The proposed marine hose deals, including the corrupt payments, were approved by personnel at the International Engineering Products Department ("IEPD") at Bridgestone. Once IEPD approved the deal and corrupt payments, BIPA would place the bid through the local sales agents. When BIPA secured the project, it paid the local sales agent a "commission" inflated by the amount of the corrupt payments to be made to employees of the state-owned customer. The local sales agent was then responsible for making the agreed-upon corrupt payment to the employee of the state-owned customer.

ENFORCEMENT

On September 15, 2011, Bridgestone pleaded guilty to a two-count criminal information and agreed to pay a criminal fine of $28 million. The information asserted one count for conspiracy to violate the Sherman Act, alleging that Bridgestone engaged in a bid-rigging and price-fixing conspiracy among major marine hose manufacturers from 1999 to 2007. The information also alleged a second count for conspiracy to violate the anti-bribery provisions of the FCPA.

Previously, Hioki, a General Manager at IEPD, pleaded guilty to one count of conspiracy to violate the Sherman Act and another count of conspiracy to violate the FCPA in connection with the offenses alleged against Bridgestone, and was sentenced to 24 months in prison and ordered to pay an $80,000 criminal penalty.

The DOJ cited Bridgestone's extraordinary cooperation and its extensive remediation efforts as mitigating factors under the plea agreement. On October 7, 2011, the Court approved the plea agreement and sentenced Bridgestone to a $28 million criminal penalty.

See DOJ Digest Numbers B-77.

KEY FACTS

Citation. *United States v. Bridgestone Corp.*, No. 4:11–cr-00651 (S.D. Tex. 2011).

Date Filed. September 15, 2011.

Country. Mexico; Unspecified Countries in Latin America.

Date of Conduct. 1999 – 2007.

Amount of the Value. More than $2 million.

Amount of Business Related to the Payment. $17,103,694.

Intermediary. Sales Agents.

Foreign Official. Government officials employed at unidentified state-owned entities.

FCPA Statutory Provision. Conspiracy (Anti-Bribery).

Other Statutory Provision. Conspiracy (Antitrust).

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Territorial Jurisdiction.

Defendant's Citizenship. Japan.

Total Sanction. $28,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

122. IN RE TENARIS, S.A. (2011)

NATURE OF THE BUSINESS

Tenaris, S.A. ("Tenaris") is a corporation organized under the laws of Luxembourg. Tenaris is a global manufacturer and supplier of steel pipe products and related services to the oil and gas industry throughout the world. Tenaris's operations include supplying steel pipe and related services in the Caspian Sea region, including Uzbekistan, through Tenaris's offices in Azerbaijan and Kazakhstan.

INFLUENCE TO BE OBTAINED

During 2006 and 2007, Tenaris utilized the services of an agent to bid on a series of contracts with OJSC O'ztashqineftgaz ("OAO"). In or around February 2007, Tenaris entered into an agreement to pay the agent a commission of 3.5% for access to confidential bid information. Using the confidential bid information, Tenaris was awarded the contract and OAO agreed to pay Tenaris $2,719,720 for pipe used in oil and gas development in Uzbekistan. In or around April and May 2007, Tenaris entered into an agreement to pay the agent a commission of 3% for bid information related to three additional OAO contracts. By using confidential bid information Tenaris was awarded the three contracts. Tenaris's then-regional sales personnel understood that a portion of the commissions paid to the agent would be used to pay OAO officials.

Tenaris's then-regional sales personnel also agreed to make payments to the Uzbek government agency, Uzbekexpertiza JSC ("Uzbekexpertiza"), to encourage Uzbekexpertiza not to investigate the bidding process. However, evidence of such payment was not found. According to the SEC, in or around 2007, Tenaris also failed to accurately account for these transactions with the agent and payments to OAO officials on their books and records. Tenaris's system of internal controls also allegedly failed to detect or prevent payments to OAO officials, including a failure to ensure that proper due diligence was conducted on the agent.

ENFORCEMENT

On May 17, 2011, the DOJ and Tenaris entered into a two-year non-prosecution agreement, under which Tenaris agreed to pay a monetary penalty in the amount of $3.5 million, implement rigorous compliance measures, toll the statute of limitations, adhere to enhanced reporting obligations, disclose required information, and cooperate fully with all law enforcement agencies. The non-prosecution agreement also required Tenaris to admit to the relevant facts.

On May 17, 2011, Tenaris also entered into a deferred prosecution agreement with the SEC, under which Tenaris agreed to pay disgorgement and prejudgment interest of $5.4 million, implement compliance measures, cooperate with the ongoing investigation, toll the statute of limitations, and observe and enhance reporting obligations. Tenaris is the first company to ever enter into a deferred prosecution agreement with the SEC.

See SEC Digest Number D-98.

KEY FACTS

Citation. *In re Tenaris, S.A.* (2011).

Date Filed. May 17, 2011.

Country. Uzbekistan.

Date of Conduct. 2006 – 2009.

Amount of the Value. More than $32,140.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Agent.

Foreign Official. Officials at OJSC O'ztashqineftgaz ("OAO"), a subsidiary of Uzbekneftegaz, the state-owned holding company of Uzbekistan's oil and gas industry.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Luxembourg.

Total Sanction. $3,500,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *SEC v. Tenaris, S.A.*

Total Combined Sanction. $8,928,338.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

121. IN RE ARMOR HOLDINGS INC. (2011)[63]

NATURE OF THE BUSINESS

Manufacture and sales of military, law enforcement, and personal safety equipment by Armor Holdings Inc. ("Armor Holdings"), a Delaware corporation. On July 31, 2007, after the conduct described in the complaint occurred, Armor Holdings was acquired by BAE Systems Inc., an indirect wholly-owned U.S. subsidiary of Britain's BAE Systems PLC.

INFLUENCE TO BE OBTAINED

From September 2001 through 2006, certain agents of Armor Holdings made corrupt payments to an U.N. procurement official to induce that official to provide non-public, inside information to an Armor Holdings subsidiary and to cause the U.N. to award body armor contracts to that subsidiary. Armor Holdings made more than $200,000 in commissions payments to an independent sales agent, a portion of which was forwarded to the U.N. procurement official. Armor Holdings employees falsely recorded the nature and purpose of these improper payments in Armor Holdings' books and records.

An Armor Holdings subsidiary also allegedly employed a separate accounting practice that disguised additional commissions paid to third-party intermediaries who brokered the sale of goods to foreign governments. Even after being warned by internal and external accountants that this practice violated U.S. Generally Accepted Accounting Principles, Armor Holdings' subsidiary continued the improper accounting practice. As a result, approximately $4.4 million in commissions was not properly disclosed in the books and records of the company.

ENFORCEMENT

On July 13, 2011, Armor Holdings entered into a non-prosecution agreement with the DOJ, under which it agreed to pay a monetary penalty of $10,290,000.

Separately, in an agreement with the SEC, Armor Holdings consented to entry of a permanent injunction against further violations and agreed to pay $1,552,306 in disgorgement, $458,438 in prejudgment interest, and a civil money penalty of $3,680,000.

See DOJ Digest Number B-96.
See SEC Digest Number D-99.

KEY FACTS

Citation. *In re Armor Holdings Inc.* (2011).

Date Filed. July 13, 2011.

Country. Indonesia; Iraq.

Date of Conduct. 2001 – 2006.

Amount of the Value. Approximately $4.6 million.

Amount of Business Related to the Payment. Approximately $6,000,000.

Intermediary. Agent; Consultant.

Foreign Official. Officials at the United Nations and other unspecified government customers.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $10,290,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *SEC v. Armor Holdings, Inc.*

Total Combined Sanction. $15,980,744.

[63] Matter resolved through non-prosecution agreement (July 2011).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

120. UNITED STATES V. DEPUY, INC. (D.D.C. 2011)

NATURE OF THE BUSINESS

Sale of medical devices and pharmaceuticals manufactured by DePuy, Inc. ("DePuy") and DePuy International, both wholly-owned subsidiaries of Johnson & Johnson, a U.S. based manufacturer and seller of health care products. Other subsidiaries, employees, and agents of Johnson & Johnson paid bribes to publicly-employed health care providers in Poland and Romania and paid kickbacks to the former government of Iraq in connection with the U.N. Oil for Food Program.

INFLUENCE TO BE OBTAINED

From at least 1998 to 2006, DePuy and DePuy International paid bribes to public doctors in Greece who selected Johnson & Johnson surgical implants for use in various medical procedures. The scheme was perpetrated via a complicated web of transactions through distributors and agents (including a Greek distributor which DePuy International later acquired) who paid bribes recorded as commissions. The scheme was furthered by a high-level executive. In total, DePuy and its subsidiaries and employees authorized approximately $16.4 million in payments, a significant portion of which they knew would be used to pay cash incentives to publicly-employed Greek healthcare providers to induce them to purchase DePuy products.

In addition, from 2000 to 2006, Johnson & Johnson's Polish subsidiary made improper payments and provided things of value, including travel sponsorships, to publicly-employed doctors and hospital administrators in Poland to induce them to use Johnson & Johnson medical devices and award medical device tenders.

From 2005 to 2008, a Romanian Johnson & Johnson subsidiary also authorized approximately $140,000 in cash and travel payments to publicly-employed doctors and pharmacists in Romania to induce them to prescribe Johnson & Johnson products.

Between February 2001 and June 2004, two other Johnson & Johnson subsidiaries, Cilag AG International and Janssen Pharmaceutica N.V., paid 10% kickbacks, totaling approximately $857,387, to the former government of Iraq under the U.N. Oil for Food Program to secure contracts to provide humanitarian supplies worth $9.9 million.

ENFORCEMENT

On January 14, 2011, Johnson & Johnson, together with its subsidiaries (including DePuy) and its operating companies, entered into a three-year deferred prosecution agreement, under which Johnson & Johnson acknowledged responsibility for the underlying conduct and agreed to pay a $21,400,000 criminal penalty. Pursuant to that agreement, the DOJ filed a criminal information against DePuy on April 8, 2011, charging it with conspiracy, aiding and abetting, and substantive violations of the FCPA. The deferred prosecution agreement expressly reduces Johnson & Johnson's monetary penalty on the basis of the company's self-disclosure, self-investigation, and ongoing compliance measures. Although the settlement does not require that Johnson & Johnson employ a corporate monitor, it must report to the DOJ on compliance efforts bi-yearly for the duration of the agreement.

KEY FACTS

Citation. *United States v. DePuy, Inc.*, No. 1:11 cr-00099 (D.D.C. 2011).

Date Filed. April 8, 2011.

Country. Greece; Iraq; Poland; Romania.

Date of Conduct. 1998 – 2006.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Greek Distributor.

Foreign Official. Publicly-employed doctors in Greece; publicly-employed doctors and hospital administrators in Poland; publicly-employed doctors and pharmacists in Romania; top Ministry of Health officials in Iraq.

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. $21,400,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *SEC v. Johnson & Johnson Servs., Inc.*

Total Combined Sanction. $70,066,316.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

In a related settlement with the SEC, Johnson & Johnson agreed to pay $38,227,826 in disgorgement and $10,438,490 in prejudgment interest.

See SEC Digest Number D-96.
See Ongoing Investigations Digest Number F-2.
See Parallel Litigation Digest Numbers H-F21 and H-F24.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

119. IN RE COMVERSE TECHNOLOGY INC. (2011)[64]

NATURE OF THE BUSINESS

Purchase orders between a telecommunications company partially-owned by the Greek government and Comverse Ltd., an Israeli operating subsidiary of Comverse Technology, Inc. Comverse is a provider of software systems and information applications that is incorporated in New York.

INFLUENCE TO BE OBTAINED

Between 2000 and 2006, Comverse Ltd. paid a third-party agent commissions on purchase orders, 85% of which was used to make improper payments to customers, including employees of a Greek government-owned telecommunications company. In turn, these customers secured purchase orders for Comverse Ltd. In addition, between 2003 and 2006, Comverse Ltd. made cash payments to potential and existing customers through a shell company in Cyprus organized by the third-party agent. A Comverse Ltd. employee would withdraw the payment amount and deliver it, either directly or through an intermediary, to customers, who in turn secured purchase orders for Comverse Ltd. Employees of Comverse Ltd. then falsely recorded these payments as commissions, and these falsified records were incorporated into Comverse's books and records.

ENFORCEMENT

On April 6, 2011, the DOJ and Comverse entered into a non-prosecution agreement wherein the DOJ agreed not to prosecute Comverse or its subsidiaries for violations of the books and records provisions of the FCPA based on the above-mentioned facts. The DOJ cited Comverse's "timely, voluntary, and complete" disclosure as well as "remedial efforts already undertaken and to be undertaken by Comverse" as reasons not to pursue prosecution in the matter. Under the terms of the non-prosecution agreement, Comverse agreed to pay a penalty of $1,200,000. Comverse also admitted to the underlying conduct and agreed to continue to improve its internal controls. The terms of the agreement further require that for two years from the date of the agreement, Comverse will commit no crimes, cooperate with DOJ requests for information, and bring to the DOJ's attention criminal activities or criminal investigations of Comverse or its employees or administrative or civil proceedings against Comverse that include allegations of fraud.

See SEC Digest Number D-95.

KEY FACTS

Citation. *In re Comverse Technology, Inc.* (2011).

Date Filed. April 6, 2011.

Country. Greece.

Date of Conduct. 2000 – 2006.

Amount of the Value. $536,000.

Amount of Business Related to the Payment. $1,250,000.

Intermediary. Third-Party Agent; Shell Entity.

Foreign Official. Employees of Hellenic Telecommunications Organisation S.A., which is partially owned by the Greek government.

FCPA Statutory Provision. Books-and-Records.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $1,200,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *SEC v. Comverse Technology, Inc.*

Total Combined Sanction. $2,808,501.

[64] Matter resolved through non-prosecution agreement (April 2011).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

118. UNITED STATES V. JGC CORPORATION (S.D. TEX. 2011)

NATURE OF THE BUSINESS

Engineering, procurement, and construction ("EPC") contracts to design and build a liquefied natural gas ("LNG") plant and several expansions on Bonny Island, Nigeria. JGC Corporation ("JGC"), a Japanese company, was part of a four-company joint venture formed in 1990 for bidding on a series of these contracts. The joint venture consisted of Technip S.A., Snamprogetti Netherlands B.V., Kellogg, Brown & Root, Inc., and JGC (collectively, "TSKJ"). TSKJ was awarded four EPC contracts for the Bonny Island Project between 1995 and 2004.

INFLUENCE TO BE OBTAINED

From August 1994 until June 2004, senior executives, employees, and agents of JGC and its partners in the joint venture authorized, promised, and paid bribes to Nigerian government officials—including officials in the executive branch, employees of the government-owned Nigerian National Petroleum Corporation, and employees of government-controlled Nigeria LNG Limited—to win and retain Bonny Island EPC contracts. The joint venture ultimately obtained four contracts worth $6 billion. Employees and agents of TSKJ held "cultural meetings" with Nigerian officials to discuss how to pay bribes. To conceal the bribes, the joint venture entered into sham consulting or services agreements through which bribes were negotiated and paid to Nigerian officials. JGC, along with its joint venture partners, conspired to transfer $182 million to consultants to be used, in part, for bribes to Nigerian officials.

ENFORCEMENT

On April 6, 2011, JGC agreed to pay a $218.8 million criminal penalty as part of a two-year deferred prosecution agreement. The other companies in the TSKJ joint venture and three related agents and employees were subjected to previous DOJ criminal and SEC civil actions. Collectively, these defendants have paid approximately $1.5 billion in civil and criminal fines for bribery and related violations associated with the Bonny Island Project in Nigeria.

This case also illustrates the widening jurisdictional scope of the FCPA. JGC is the first Japanese company prosecuted under the FCPA, and is neither a domestic concern nor an issuer. Jurisdiction was based on JGC's role in conspiring to execute the bribery scheme with co-conspirators who are domestic concerns or issuers, and causing allegedly corrupt U.S. dollar payments to be wire transferred via correspondent bank accounts in New York.

See DOJ Digest Numbers B-126, B-101, B-100, B-82, B-80, and B-70.
See SEC Digest Numbers D-74, D-72, D-57, and D-54.
See Parallel Litigation Digest Number H-F10.

KEY FACTS

Citation. *United States v. JGC Corp*., No. 4:11-cr-00260 (S.D. Tex. 2011).

Date Filed. April 6, 2011.

Country. Nigeria.

Date of Conduct. 1994 – 2004.

Amount of the Value. Approximately $182 million.

Amount of Business Related to the Payment. More than $6 billion.

Intermediary. Consultant; Japanese Trading Company; Agents.

Foreign Official. Officials of Nigeria's executive branch; Officials of the government-owned company responsible for developing and regulating Nigeria's oil and gas industry (Nigerian National Petroleum Company); Officials of Nigeria LNG Limited, the government-controlled company formed to develop the Bonny Island Project.

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Aiding and Abetting (Anti-Bribery).

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Conspiracy; Aider and Abettor.

Defendant's Citizenship. Japan.

Total Sanction. $218,800,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

117. UNITED STATES V. TYSON FOODS, INC. (D.D.C. 2011)

NATURE OF THE BUSINESS

Tyson Foods, Inc. ("Tyson"), a Delaware corporation, produces protein-based and prepared food products. Tyson de Mexico, Tyson's wholly-owned subsidiary, operates three meat-processing facilities in Mexico and processes prepared foods for sale in Mexico and abroad.

INFLUENCE TO BE OBTAINED

From 1994 to 2004, Tyson de Mexico, with the knowledge of some of Tyson's employees at its Arkansas headquarters, placed the wives of Mexican government-employed veterinarians on Tyson de Mexico's payroll, even though the wives did not perform any services, to obtain certification of Tyson de Mexico products for export under a federally-administered inspection program. Payments made directly or indirectly to the veterinarians through their wives during this period totaled $260,000. Between July 2004 and November 2006, Tyson representatives terminated the salaries of the veterinarians' wives and instead paid $90,000 (the equivalent amounts previously paid to the veterinarians' wives) to the veterinarians' directly, based on invoices received for "professional honoraria."

ENFORCEMENT

On February 10, 2011, Tyson signed a deferred prosecution agreement that requires Tyson to pay a $4 million penalty, implement rigorous internal controls, and cooperate fully with the DOJ. In a related matter brought by the SEC, Tyson agreed to pay more than $1.2 million in disgorgement of profits and prejudgment interest.

See SEC Digest Number D-92.

KEY FACTS

Citation. *United States v. Tyson Foods, Inc.*, No. 1:11-cr-00037 (D.D.C. 2011).

Date Filed. February 10, 2011.

Country. Mexico.

Date of Conduct. 2004 – 2006.

Amount of the Value. Approximately $350,000.

Amount of Business Related to the Payment. Net profits of more than $880,000.

Intermediary. The Wives of Two Mexican Government-Employed Veterinarians.

Foreign Official. Veterinarians responsible for certifying meat exports under a federal inspection program in Mexico.

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer; Conspiracy.

Defendant's Citizenship. United States.

Total Sanction. $4,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *SEC v. Tyson Foods, Inc.*

Total Combined Sanction. $5,214,477.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

116. UNITED STATES V. MAXWELL TECHNOLOGIES, INC. (S.D. CAL. 2011)

NATURE OF THE BUSINESS

Marketing and sales of high-voltage capacitors to Chinese state-owned entities by Maxwell S.A., a wholly-owned Swiss subsidiary of Maxwell Technologies, Inc. ("Maxwell"). Maxwell is a Delaware corporation that manufactures energy storage and power delivery products.

INFLUENCE TO BE OBTAINED

From at least July 2002 through May 2009, Maxwell S.A. paid more than $2,789,131 to a third-party sales agent in China to secure sales contracts for high-voltage capacitors with Chinese state-owned manufacturers of electrical-utility infrastructure. The agent accomplished these payments by inflating purchase orders by 20%, then distributing the extra amount to officials at the state-owned entities and accounting for these fees as commission expenses in Maxwell's books and records. Maxwell's U.S. management discovered the bribery scheme in late 2002. However, payments to the agent only increased upon discovery. Maxwell S.A. paid its Chinese agent approximately $165,000 in 2002 and increased the payments to the agent to nearly $1.1 million in 2008.

ENFORCEMENT

On January 31, 2011, Maxwell entered into a three-year deferred prosecution agreement under which Maxwell agreed to pay an $8 million penalty and accept responsibility for violations of the FCPA's anti-bribery and books and records provisions. In addition, Maxwell agreed to adopt an enhanced compliance program and internal controls to prevent future violations, to cooperate with the DOJ in ongoing investigations, and to report periodically to the DOJ concerning its compliance efforts. Maxwell also entered into a consent judgment in a related SEC action pursuant to which it agreed to pay $5.654 million in disgorgement of profits and $696,314 in prejudgment interest.

See DOJ Digest Number B-144.
See SEC Digest Number D-91.

KEY FACTS

Citation. *United States v. Maxwell Techs., Inc.*, No. 3:11-cr-00329 (S.D. Cal. 2011).

Date Filed. January 31, 2011.

Country. China.

Date of Conduct. 2002 – 2009.

Amount of the Value. At least $2,789,131.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Sales Agent; Consultant.

Foreign Official. Officials at Chinese state-owned entities.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $8,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

115. UNITED STATES V. ALCATEL-LUCENT, S.A. (S.D. FLA. 2010) UNITED STATES V. ALCATEL-LUCENT FRANCE, S.A., ALCATEL-LUCENT TRADE INT'L, A.G., AND ALCATEL CENTROAMERICA, S.A (S.D. FLA. 2010)

NATURE OF THE BUSINESS

Alcatel-Lucent, S.A. ("Alcatel-Lucent") is a French-based provider of telecommunications equipment and services and other technology products. It was created after the merger of Alcatel, S.A. (a French corporation) and Lucent Technologies, Inc. (a U.S. corporation) in 2006. Alcatel-Lucent France, S.A. is a wholly-owned subsidiary of Alcatel-Lucent, incorporated in France; Alcatel-Lucent Trade International, A.G. is a wholly-owned subsidiary of Alcatel-Lucent, incorporated in Switzerland; and Alcatel Centroamerica, S.A. is a wholly-owned subsidiary of Alcatel-Lucent, incorporated in Costa Rica. The charged conduct took place prior to the merger, during which time each of these companies was a subsidiary of Alcatel, S.A.

INFLUENCE TO BE OBTAINED

Between 2001 and 2006, Alcatel, S.A. and its subsidiaries (collectively, "Alcatel") made payments to government officials and state-owned company executives, through local consultants, to obtain lucrative telecommunications contracts. In Costa Rica, Honduras, Malaysia, and Taiwan, Alcatel hired unqualified, but well-connected, consultants; paid for gifts and non-business travel for government officials; and made improper payments in exchange for nonpublic information regarding tenders. Alcatel also paid inflated consultant commission rates and approved consultant payments for little to no work, with the understanding that part or all of the funds would go to government officials. Through these illicit payments and gifts, Alcatel was able to procure and retain several major contracts, reaping more than $28,873,300 in profits.

Alcatel also entered into several suspicious consulting agreements, with a high probability that some or all of the fees would be passed on to government officials, in Kenya, Nigeria, Bangladesh, Ecuador, Nicaragua, Angola, Ivory Coast, Uganda, and Mali.

ENFORCEMENT

On December 27, 2010, the government filed a criminal information charging Alcatel-Lucent with one count of violating the internal control provisions of the FCPA and one count of violating the books-and-records provisions of the FCPA. On the same day, the government filed a criminal information charging Alcatel-Lucent France, S.A., Alcatel-Lucent Trade International, A.G., and Alcatel Centroamerica, S.A. with conspiring to violate the anti-bribery, books-and-records, and internal controls provisions of the FCPA. Each of the three subsidiaries entered into plea agreements under which each entity agreed to pay a fine of $500,000 and a special assessment fee of $400, commit no further crimes and work with Alcatel-Lucent in fulfilling compliance obligations. Under a three-year deferred prosecution agreement, signed on December 20, 2010, Alcatel-Lucent agreed to pay a $92 million penalty (with a deduction for the fines imposed on its wholly-owned subsidiaries), continue to implement a compliance and ethics program, review its internal controls, policies and procedures, and retain a compliance monitor for a three-year term.

On December 29, 2010, Alcatel-Lucent settled related charges with the SEC.

On May 9, 2011, the Instituto Costarricense de Electricidad ("ICE") filed in the

KEY FACTS

Citation. *United States v. Alcatel-Lucent, S.A.*, No. 10-cr-20907 (S.D. Fla. 2010); *United States v. Alcatel-Lucent France, S.A.*, et al., No. 10-cr-20906 (S.D. Fla. 2010).

Date Filed. December 27, 2010.

Country. Costa Rica, Honduras, Malaysia, Taiwan, Kenya, Nigeria, Bangladesh, Ecuador, Nicaragua, Angola, Ivory Coast, Uganda, and Mali.

Date of Conduct. 2001 – 2006.

Amount of the Value. Over $9.8 million.

Amount of Business Related to the Payment. Over $454.7 million.

Intermediary. Consultants; Local Subsidiaries.

Foreign Official. Officials of state-owned entities and government agencies including, but not limited to, Instituto Costarricense de Electricidad S.A. (Costa Rica); Empresa Hondureña de Telecomunicaciones (Honduras); Comisión Nacional de Telecomunicaciones (Honduras); Telekom Malaysia Berhad (Malaysia); and Taiwan Railway Administration (Taiwan). Taiwanese legislators.

FCPA Statutory Provision.

- **Alcatel-Lucent, S.A.** Books-and-Records; Internal Controls.
- **Alcatel-Lucent France, S.A.** Conspiracy.
- **Alcatel-Lucent Trade Int'l, A.G.** Conspiracy.
- **Alcatel Centroamerica, S.A.** Conspiracy.

Other Statutory Provision. None.

Disposition.

- **Alcatel-Lucent, S.A.** Deferred Prosecution Agreement.
- **Alcatel-Lucent France, S.A.** Plea Agreement.
- **Alcatel-Lucent Trade Int'l, A.G.** Plea Agreement.
- **Alcatel Centroamerica, S.A.** Plea Agreement.

Defendant Jurisdictional Basis.

- **Alcatel-Lucent, S.A.** Issuer.
- **Alcatel-Lucent France, S.A.** Territorial Jurisdiction; Conspiracy.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

United States District Court for the Southern District of Florida a request to find the company a victim of the criminal conduct alleged by the DOJ, to reject the plea agreements and the Deferred Prosecution Agreements, to order restitution as part of the sentence against Alcatel-Lucent and its subsidiaries, and to enter a sentence that is commensurate with and reflective of the severity of the criminal activities of Alcatel-Lucent and its subsidiaries.

On June 6, 2011, the Court rejected the claim by ICE, and accepted the settlement between the DOJ and Alcatel-Lucent.

Subsequently, ICE appealed through a writ of mandamus to the 11th Circuit, but the appeal was dismissed for lack of jurisdiction. On December 10, 2012, the United States Supreme Court denied ICE's petition for writ of certiorari.

See DOJ Digest Numbers B-58 and B-46.
See SEC Digest Numbers D-89 and D-46.

- **Alcatel-Lucent Trade Int'l, A.G.** Territorial Jurisdiction; Conspiracy.
- **Alcatel Centroamerica, S.A.** Territorial Jurisdiction; Conspiracy.

Defendant's Citizenship.

- **Alcatel-Lucent, S.A.** France.
- **Alcatel-Lucent France, S.A.** France.
- **Alcatel-Lucent Trade Int'l, A.G.** Switzerland.
- **Alcatel Centroamerica, S.A.** Costa Rica.

Total Sanction. $93,501,200.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *SEC v. Alcatel-Lucent, S.A.*

Total Combined Sanction. $138,873,200.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

114. UNITED STATES V. JUAN PABLO VASQUEZ (S.D. FLA. 2010)
UNITED STATES V. JORGE GRANADOS AND MANUEL CACERES (S.D. FLA. 2010)
UNITED STATES V. MANUEL SALVOCH (S.D. FLA. 2010)

NATURE OF THE BUSINESS

Reduced rates under an exclusive long-distance services contract between Empresa Hondureña de Telecomunicaciones ("Hondutel"), the state-owned telecommunications authority in Honduras, and Latin Node Inc. ("LatiNode"), a Florida corporation that provided international telecommunications services using voice over internet protocol technology.

LatiNode was a privately held U.S. corporation until eLandia International, Inc. acquired it in 2007. From 1999 to 2007, Jorge Granados was the founder, CEO, and chairman of the board. Manuel Caceres was the company's vice president of business development from September 2004 to 2007. Juan Pablo Vasquez was a senior commercial executive and CCO from November 2000 to 2007. Manuel Salvoch was the Chief Financial Officer from March 2005 to 2007.

INFLUENCE TO BE OBTAINED

From April 2006 through October 2007, Vasquez, Granados, Caceres and Salvoch allegedly conspired to pay over $500,000 in bribes on behalf of LatiNode to officials of Hondutel in exchange for maintaining an interconnection agreement with Hondutel as well as receiving reduced rates and other economic benefits. The interconnection agreement permitted Latin Node to use Hondutel's telecommunication lines to provide long distance service between the United States and Honduras. According to the court documents, Caceres's principal role was to negotiate the payment of bribes with Hondutel officials in exchange for these benefits; Granados's principal role was to authorize and direct the bribe payments; and Vasquez's and Salvoch's principal roles were to facilitate the payment of bribes to Hondutel officials. The payments were allegedly concealed by passing through Latin Node subsidiaries in Guatemala and Honduran accounts controlled by Honduran government officials.

In contemplation of LatiNode's anticipated 2007 acquisition by eLandia, the defendants allegedly discussed the need to create sham consulting agreements to disguise the bribes and instructed Hondutel and LatiNode employees to take actions to disguise or hide the payments.

In September 2007, eLandia disclosed that, after it acquired LatiNode, it discovered improper payments in the course of reviewing LatiNode's internal controls and procedures. eLandia conducted an internal investigation, terminated the improperly obtained agreements, and voluntarily disclosed the unlawful conduct to the DOJ and the SEC. eLandia has written off its investment and sued Granados and LatiNode's parent company for misrepresentation.

ENFORCEMENT

On December 14, 2010, a federal grand jury returned a 19-count indictment against Granados and Caceres. The charges include conspiracy, money laundering, and numerous violations of the FCPA. On December 17, 2010, the DOJ filed a criminal information against Salvoch and Vasquez, alleging that they conspired to violate the FCPA. Granados and Caceres were arrested on

KEY FACTS

Citation. *U.S. v. Vasquez*, No. 1:10-cr-20894 (S.D. Fla. 2010); *United States v. Granados, et al.*, No. 1:10-cr-20881 (S.D. Fla. 2010); *United States v. Salvoch*, No. 1:10-cr-20893 (S.D. Fla. 2010).

Date Filed. December 14, 2010 (Granados; Caceres); January 12, 2011 (Salvoch); January 21, 2011 (Vasquez).

Date Unsealed. December 20, 2010 (Granados; Caceres).

Country. Honduras.

Date of Conduct. 2006 – 2007.

Amount of the Value. $545,039.

Amount of Business Related to the Payment. Approximately $0.07-$0.11 per minute in long-distance time sold.

Intermediary. Third-party consultant Servicios IP, S.A., a Guatemalan company created at the direction of LatiNode, allegedly entered into sham agreements to facilitate payments to officials in Honduras; LN Comunicaciones, a Guatemalan subsidiary of LatiNode, allegedly served as an intermediary for the transfer of bribe payments.

Foreign Official. Officials at Hondutel, the Honduran state-owned telecommunications company.

FCPA Statutory Provision.

- **Vasquez**. Conspiracy (Anti-Bribery).
- **Granados**. Conspiracy.
- **Caceres**. Conspiracy.
- **Salvoch**. Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition.

- **Vasquez**. Plea Agreement.
- **Granados**. Plea Agreement.
- **Caceres**. Plea Agreement.
- **Salvoch**. Plea Agreement.

Defendant Jurisdictional Basis.

- **Vasquez**. Domestic Concern.
- **Granados**. Domestic Concern.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

December 20, 2010 in Miami and made initial appearances in U.S. District Court for the Southern District of Florida on that date.

The four LatiNode executives, Juan Pablo Vasquez, Manuel Salvoch, Jorge Granados, and Manuel Caceres, pled guilty to conspiracy to violate the FCPA on January 21, 2011, January 12, 2011, May 19, 2011, and May 18, 2011 respectively. On September 8, 2011, Granados was sentenced to 46 months in prison. Caceres was sentenced on April 19, 2012 to 23 months in prison. On April 25, 2012, Vasquez was sentenced to three years' probation and a $7,500 fine. On June 5, 2012, Salvoch was sentenced to 10 months in prison and three years' supervised release.

Previously, on March 23, 2009, the DOJ filed related charges against LatiNode. On April 3, 2009, LatiNode pleaded guilty to one count of violating the anti-bribery provisions of the FCPA and agreed to pay a $2,000,000 fine.

See DOJ Digest Number B-83.
See Parallel Litigation Digest Number H-C21.

- **Caceres**. Domestic Concern.
- **Salvoch**. Domestic Concern.

Defendant's Citizenship.

- **Vasquez**. United States.
- **Granados**. United States.
- **Caceres**. Honduras.[65]
- **Salvoch**. United States.

Total Sanction.

- **Vasquez**. 3-Years Imprisonment.
- **Granados**. 46-Months Imprisonment.
- **Caceres**. 23-Months Imprisonment.
- **Salvoch**. 10-Months Imprisonment.

Related Enforcement Actions. *United States v. Latin Node, Inc.*

[65] Manuel Caceres was a lawful permanent resident of the United States.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

113. IN RE RAE SYSTEMS INC. (2010)[66]

NATURE OF THE BUSINESS

RAE Systems Inc. ("RAE") is a Delaware corporation based in San Jose, California that develops and manufactures chemical and radiation detection monitors and networks. Between 2005 and 2008, it operated in China through two second-tier subsidiaries organized as joint ventures: RAE-KLH (Beijing) Co., Limited ("RAE-KLH"), which is 96% owned by RAE, and RAE Coal Mine Safety Instruments (Fushun) Co., Ltd. ("RAE-Fushun"), which is 70% owned by RAE.

INFLUENCE TO BE OBTAINED

In 2004, RAE carried out due diligence prior to the formation of the RAE-KLH joint venture, through which it uncovered evidence of bribery. According to an RAE due diligence report, the KLH sales structure lacked internal controls, allowing salespeople to pay cash commissions that were in turn reported in a way that distorted the company's financial statements. Another due diligence report predicted that it would "be a challenge to change [KLH's] business operational mode"—that relied on a "commission/incentive structure [of] under table greasing to get deals"—to "be more transparent." The report concluded that correcting the sales practices through an effective compliance program could hurt sales. RAE did not perform due diligence prior to entering the RAE-Fushun joint venture in 2006, although multiple factors indicated due diligence concerning corruption risks was warranted.

After acquiring its interest in KLH in 2004, RAE instructed RAE-KLH personnel to stop paying bribes, but it did not institute sufficient internal controls or discontinue the system of cash-advance reimbursements which facilitated the bribery practices into 2008 at both RAE-KLH and RAE-Fushun. The joint ventures improperly recorded cash advances connected to bribes as business fees and travel and entertainment expenses, false information that was integrated into RAE's consolidated financials.

In addition to cash bribes, both companies provided luxury gifts to employees of state-owned entities, such as notebook computers, jade, fur coats, appliances, suits, and expensive liquor. In 2006 and 2007, RAE-KLH made two improper payments totaling nearly $350,000 to a consultant who funneled money to employees of the state-owned Dagang Oil Field and other government officials in exchange for business contracts.

ENFORCEMENT

On December 10, 2010, RAE entered a non-prosecution agreement with the DOJ. According to the terms of the agreement, RAE will pay a monetary penalty of $1,700,000; strengthen its compliance, bookkeeping, and internal control standards and procedures; and report periodically to the DOJ on its compliance with the agreement over the course of its three-year term.

See SEC Digest Number D-88.

KEY FACTS

Citation. *In re RAE Systems Inc.* (2010).

Date Filed. December 10, 2010.

Country. China.

Date of Conduct. 2004 – 2008.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Joint-Venture Entities; Third-Party Agent.

Foreign Official. Employees of Chinese state-owned entities including employees of the Dagang Oil Field.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $1,700,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *SEC v. RAE Systems Inc.*

Total Combined Sanction. $4,214,024.

[66] Matter resolved through non-prosecution agreement (December 2010).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

112. UNITED STATES V. PANALPINA WORLD TRANSPORT (HOLDING) LTD. (S.D. TEX. 2010) UNITED STATES V. PANALPINA, INC. (S.D. TEX. 2010)

NATURE OF THE BUSINESS

Panalpina World Transport (Holding) Ltd. is a global freight forwarding and logistics service firm based in Basel, Switzerland. Panalpina, Inc. is its U.S.-based subsidiary, incorporated in New York.

INFLUENCE TO BE OBTAINED

From 2002 to 2007, Panalpina World Transport (Holding) Ltd. ("Panalpina") operated through subsidiaries and affiliates to pay bribes to numerous foreign officials on behalf of many of its customers in the oil and gas industry. It engaged in this scheme to circumvent local rules and regulations relating to the import of goods and materials into numerous foreign jurisdictions. Several of Panalpina's customers also admitted that they approved of or condoned the payment of bribes on their behalf, and falsely recorded the bribe payments made on their behalf as legitimate business expenses in their corporate books, records, and accounts.

Between 2002 and 2007, Panalpina, Inc. engaged in a scheme to pay bribes to Nigerian customs officials on behalf of its customers in the oil and gas industry. Panalpina, Inc. assisted its Nigerian affiliate and agent, Panalpina World Transport (Nigeria) Limited, in making improper payments to Nigerian officials and in concealing the true nature of those payments in the customers' books and records. These payments were used to offer preferential, expedited clearance for Panalpina customers and circumvent local customs laws and processes.

ENFORCEMENT

On November 4, 2010, the DOJ and Panalpina entered into a deferred prosecution agreement, under which Panalpina agreed to pay a penalty of $70,560,000, review and revise its existing internal controls, policies, and procedures as necessary, and provide a yearly report to the DOJ on the remediation and implementation of its compliance program and internal controls, policies, and procedures for a period of three years.

On November 4, 2010, the DOJ and Panalpina, Inc. entered into a plea agreement, under which Panalpina, Inc. pleaded guilty, agreed to pay a penalty of $70,560,000, and to implement a compliance and ethics program designed to detect and prevent violations of the FCPA, other anti-corruption laws, and all applicable foreign bribery laws.

Panalpina, Inc. settled related charges with the SEC on November 4, 2010. Three of Panalpina's customers in the oil exploration and production industry pleaded guilty to and settled related charges with the DOJ and SEC on the same day.

See DOJ Digest Numbers B-111, B-110, B-109, and B-108.
See SEC Digest Numbers D-86, D-85, D-84, D-83, and D-82.

KEY FACTS

Citation. *United States v. Panalpina World Transport (Holding) Ltd.*, No. 4:10-cr-769 (S.D. Tex. 2010); *U.S. v. Panalpina, Inc.*, No. 4:10-cr-765 (S.D. Tex. 2010).

Date Filed. November 4, 2010.

Country. Angola, Azerbaijan, Brazil, Kazakhstan, Nigeria, Russia, Turkmenistan.

Date of Conduct. 2002 – 2007.

Amount of the Value. Approximately $49 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Subsidiary; Agent.

Foreign Official. Customs officials in the Nigerian Customs Service; Angolan customs and immigration officials; Azeri government officials responsible for assessing and collecting duties and tariffs on imported goods; Brazilian government officials responsible for assessing and collecting duties and tariffs on imported goods; Kazakh customs and tax officials; Russian customs officials; Turkmen customs, immigration, tax and labor officials.

FCPA Statutory Provision.

- **Panalpina World Transport**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Panalpina, Inc.** Conspiracy (Books-and-Records); Aiding and Abetting (Books-and-Records).

Other Statutory Provision. None.

Disposition.

- **Panalpina World Transport**. Deferred Prosecution Agreement.
- **Panalpina, Inc.** Plea Agreement.

Defendant Jurisdictional Basis.

- **Panalpina World Transport**. Territorial Jurisdiction; Conspiracy.
- **Panalpina, Inc.** Domestic Concern.

Defendant's Citizenship.

- **Panalpina World Transport**. Switzerland.
- **Panalpina, Inc.** United States.

Total Sanction. $70,560,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *SEC v. Panalpina, Inc.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

	Total Combined Sanction. $81,889,369.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

111. UNITED STATES V. SHELL NIGERIA EXPLORATION AND PRODUCTION COMPANY LTD. (S.D. TEX. 2010)

NATURE OF THE BUSINESS

Shell Nigeria Exploration and Production Company Ltd. ("SNEPCO") is a Nigerian subsidiary of Royal Dutch Shell plc ("Shell"), an English-chartered company headquartered in the Netherlands. SNEPCO endeavored to explore and produce oil in a deepwater project in Nigeria.

INFLUENCE TO BE OBTAINED

Between 2004 and 2006, SNEPCO paid bribes to its subcontractors and agents for customs clearance services with the knowledge and intent that some or all of the money was to reimburse the subcontractors for money paid to Nigerian customs officials to import materials and equipment into Nigeria. While the freight forwarder was not specifically identified in the DOJ's complaint, the complaint alleges that a Swiss based freight forwarder provided a service known as "Pancourier." This was a proprietary service provided by Panalpina World Transport (Holding) Ltd. ("Panalpina") and its subsidiaries.

The bribes were falsely characterized by SNEPCO in its internal books and records as legitimate customs clearance charges which were, in turn, consolidated into Shell's books, records, and accounts.

ENFORCEMENT

On November 4, 2010, the DOJ and SNEPCO entered into a deferred prosecution agreement, under which SNEPCO agreed to pay a penalty of $30 million, review and revise its existing internal controls, policies, and procedures as necessary, and provide a yearly report to the DOJ on the remediation and implementation of its compliance program and internal controls, policies, and procedures for a period of three years.

Shell settled related charges with the SEC on November 4, 2010.

Also on November 4, 2010, Panalpina and its subsidiaries settled related charges with the SEC and DOJ. Two of Panalpina's other customers in the oil exploration and production industry also pleaded guilty to and settled related charges with the DOJ and SEC on the same day.

See DOJ Digest Numbers B-112, B-110, B-109, and B-108.
See SEC Digest Numbers D-86, D-85, D-84, D-83, and D-82.

KEY FACTS

Citation. *United States v. Shell Nigeria Expl. & Prod. Co. Ltd.*, No. 4:10-cr 767 (S.D. Tex. 2010).

Date Filed. November 4, 2010.

Country. Nigeria.

Date of Conduct. 2004 – 2006.

Amount of the Value. Approximately $2 million.

Amount of Business Related to the Payment. Approximately $2 million.

Intermediary. Freight forwarder; Subcontractor; Agent.

Foreign Official. Nigerian Customs Service officials.

FCPA Statutory Provision. Conspiracy (Anti-Bribery & Books-and-Records); Aiding and Abetting (Books-and-Records).

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Territorial Jurisdiction.

Defendant's Citizenship. United States.

Total Sanction. $30,000,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *In the Matter of Roya Dutch Shell, plc.*

Total Combined Sanction. $48,100,000.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

110. UNITED STATES V. TRANSOCEAN INC. (S.D. TEX. 2010)

NATURE OF THE BUSINESS

Transocean Inc. ("Transocean") was a Cayman Islands corporation that is now a wholly-owned subsidiary of Transocean Ltd., a Swiss corporation. Transocean and its affiliates provide offshore drilling services and equipment to oil companies worldwide.

INFLUENCE TO BE OBTAINED

From 2002 to 2007, Transocean paid bribes to Nigerian customs officials through its freight forwarding agents in Nigeria to circumvent Nigerian regulations regarding the import of goods and materials and the import of Transocean's deep-water oil rigs in Nigerian waters. Although Panalpina World Transport (Holding) Ltd. ("Panalpina") was not identified by name in the government's Criminal Information as one of the freight forwarders, a DOJ press release alleges that Panalpina had paid bribes on behalf of Transocean. Transocean admitted that it had approved of Panalpina's payments to the Nigerian government.

ENFORCEMENT

On November 4, 2010, the DOJ and Transocean entered into a deferred prosecution agreement, under which Transocean agreed to pay a penalty of $13.44 million, review and revise its existing internal controls, policies, and procedures as necessary, and provide a yearly report to the DOJ on the remediation and implementation of its compliance program and internal controls, policies, and procedures for a period of three years.

Transocean settled related charges with the SEC on November 4, 2010.

Also on November 4, 2010, Panalpina settled related charges with the SEC and DOJ. Two of Panalpina's other customers in the oil exploration and production industry also pleaded guilty to and settled related charges with the DOJ and SEC on the same day.

See DOJ Digest Numbers B-112, B-111, B-109, and B-108.
See SEC Digest Numbers D-86, D-85, D-84, D-83, and D-82.

KEY FACTS

Citation. *United States v. Transocean Inc.*, No. 4:10-cr-768 (S.D. Tex. 2010).

Date Filed. November 4, 2010.

Country. Nigeria.

Date of Conduct. 2002 – 2007.

Amount of the Value. Approximately $90 million.

Amount of Business Related to the Payment. Approximately $2.17 million.

Intermediary. Freight Forwarder; Agent.

Foreign official. Nigerian Customs Service officials.

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Anti-Bribery; Books-and-Records.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $13,440,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *SEC v. Transocean Inc.*

Total Combined Sanction. $26,500,000.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

109. UNITED STATES V. TIDEWATER MARINE INTERNATIONAL, INC. (S.D. TEX. 2010)

NATURE OF THE BUSINESS

Tidewater Marine International, Inc. ("TMII") is incorporated in the Republic of Panama and is a wholly-owned subsidiary of Tidewater, Inc. ("Tidewater"), a Delaware corporation. Tidewater owns and operates offshore service and supply vessels that are chartered by energy exploration, development, and production companies. TMII provided managerial and administrative oversight for most of Tidewater's international operations.

INFLUENCE TO BE OBTAINED

In 2001, 2003, and 2005, TMII, through its employees and agents, paid bribes amounting to approximately $160,000 to tax inspectors in Azerbaijan. The benefit received and the potential tax liability avoided as a result of those payments was approximately $820,000.

From 2002 to 2007, TMII was aware of and authorized $1.6 million worth of payments made by its Nigerian subsidiary to its freight-forwarding agent, Panalpina World Transport (Holding) Ltd. ("Panalpina"). These payments were reimbursements for bribes paid by Panalpina, on behalf of TMII, to Nigerian customs officials. The bribes were paid to induce the officials to disregard Nigerian regulations, to not impose fines and penalties, and to allow Tidewater vessels to operate in Nigerian waters without valid permits. The benefits TMII received in exchange for these payments totaled approximately $5.8 million.

ENFORCEMENT

On November 4, 2010, the DOJ and TMII entered into a three-year deferred prosecution agreement, under which TMII agreed to pay a penalty of $7.35 million, review and revise its existing internal controls, policies, and procedures as necessary, and provide a yearly report to the DOJ on the remediation and implementation of its compliance program and internal controls, policies, and procedures.

On the same day, Tidewater, Panalpina, and two of Panalpina's other customers in the oil exploration and production industry also pleaded guilty to and settled related charges with the DOJ and SEC.

See DOJ Digest Numbers B-112, B-111, B-110, and B-108.
See SEC Digest Numbers D-86, D-85, D-84, D-83, and D-82.

KEY FACTS

Citation. *United States v. Tidewater Marine Int'l, Inc.*, No. 4:10:cr-770 (S.D. Tex. 2010).

Date Filed. November 4, 2010.

Country. Azerbaijan; Nigeria.

Date of Conduct. 2001 – 2007.

Amount of the Value. Approximately $1.76 million.

Amount of Business Related to the Payment. Approximately $1.76 million.

Intermediary. Freight Forwarder; Agent.

Foreign Official. Officials of the Ministry of Taxes for the Republic of Azerbaijan; Nigerian Customs Service officials.

FCPA Statutory Provision. Conspiracy (Anti-Bribery & Books-and-Records); Aiding and Abetting (Books-and-Records).

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. $7,350,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *SEC v. Tidewater, Inc.*

Total Combined Sanction. $15,650,000.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

108. UNITED STATES V. PRIDE INTERNATIONAL INC. (S.D. TEX. 2010)
UNITED STATES V. PRIDE FORASOL S.A.S. (S.D. TEX. 2010)

NATURE OF THE BUSINESS

Pride International Inc. ("Pride International"), a Delaware corporation, owns and operates numerous oil and gas drilling rigs throughout the world. Pride Forasol S.A.S. ("Pride Forasol") is its French subsidiary.

INFLUENCE TO BE OBTAINED

In 2003, Pride Forasol created and Pride International paid false invoices through which funds were paid into Dubai bank accounts in the names of unidentified third parties with the intent that they would be passed on to judges of the Customs, Excise, and Gold Appellate Tribunal in India, an administrative judicial tribunal. That bribe of $500,000 led to a favorable ruling for Pride's Indian subsidiary relating to a litigation matter involving the payment of customs duties and penalties. The bribe brought about an estimated financial gain of $10 million to Pride Forasol.

In 2004, Pride International agreed to pay approximately $10,000 to a Mexican marketing agent with the intent that the money would be passed to officials in the Mexican customs service, to avoid taxes and penalties for alleged violations of Mexican customs regulations.

From 2003 to 2004, Pride International agreed to pay bribes totaling $294,000 to officials and members of the Board of Directors of Petróleos de Venezuela S.A. through a Venezuelan intermediary who owned a company that provided catering services to Pride's Venezuelan subsidiary. Through these payments, Pride International was able to secure contract extensions, resulting in profits of $3,046,000.

After discovering this conduct during a routine audit, Pride International voluntarily disclosed it to the DOJ and SEC. During the course of its cooperation with the government, Pride International provided information and substantially assisted in the investigation of Panalpina World Transport (Holding) Ltd. ("Panalpina"), an international freight forwarder that has since admitted to paying bribes to foreign officials in at least seven different countries.

ENFORCEMENT

On November 4, 2010, the DOJ and Pride International entered into a deferred prosecution agreement ("DPA"), under which Pride International agreed to pay a penalty of $32.625 million, review and revise its existing internal controls, policies, and procedures as necessary, and provide a yearly report to the DOJ on the remediation and implementation of its compliance program and internal controls, policies, and procedures for a period of three years.

Also on November 4, 2010, Pride Forasol pleaded guilty to a criminal information the government filed the same day, which charged Pride Forasol with conspiring to and violating the anti-bribery provisions of the FCPA; and with conspiring to violate and aiding and abetting the violation of the books-and-records provision of the FCPA. This plea agreement, relating only to the transactions in India, was part of Pride International's DPA, above, and Pride Forasol agreed to pay a penalty of $32.625 million.

KEY FACTS

Citation. *United States v. Pride Int'l, Inc.*, No. 4:10-cr-770 (S.D. Tex. 2010); *United States v. Pride Forasol S.A.S.*, No. 4:10-cr-771 (S.D. Tex. 2010).

Date Filed. November 4, 2010.

Country. India; Mexico; Venezuela.

Date of Conduct. 2003 – 2004.

Amount of the Value. Approximately $800,000.

Amount of Business Related to the Payment. Approximately $13 million.

Intermediary. Subsidiary; Agent.

Foreign Official. Officials and members of the Board of Directors of Petróleos de Venezuela S.A., a Venezuelan state-owned oil company; Judges of the Customs, Excise, and Gold Appellate Tribunal in India, an administrative judicial tribunal; Customs Administrator Operations Assistant for the Mexican customs service.

FCPA Statutory Provision.

- **Pride International**. Conspiracy; Anti-Bribery; Books-and-Records.
- **Pride Forasol**. Conspiracy; Anti-Bribery; Aiding and Abetting (Books-and-Records).

Other Statutory Provision. None.

Disposition.

- **Pride International**. Deferred Prosecution Agreement.
- **Pride Forasol**. Plea Agreement.

Defendant Jurisdictional Basis.

- **Pride International**. Issuer.
- **Pride Forasol**. Territorial Jurisdiction; Conspiracy; Aider and Abettor.

Defendant's Citizenship.

- **Pride International**. United States.
- **Pride Forasol**. France.

Total Sanction. $32,625,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *SEC v. Pride Int'l, Inc.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

Under the plea agreement, Pride Forasol will assist Pride International with providing annual compliance reports to the DOJ. Under the DPA, any amount paid by Pride Forasol will be deducted from the amount imposed on Pride International. Pride International settled related charges with the SEC on November 4, 2010. Also on November 4, 2010, Panalpina settled related charges with the SEC and DOJ. Three of Panalpina's customers in the oil exploration and production industry also pleaded guilty to and settled related charges with the DOJ and SEC on the same day. *See* DOJ Digest Numbers B-112, B-111, B-110, and B-109. *See* SEC Digest Numbers D-86, D-85, D-84, D-83, and D-82.	**Total Combined Sanction.** $56,125,000.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

107. IN RE NOBLE CORP. (2010)[67]

NATURE OF THE BUSINESS

Noble Corporation ("Noble") is an international oil and gas drilling contractor that owns and operates drilling rigs through its subsidiaries and affiliates.

INFLUENCE TO BE OBTAINED

Between January 2003 and May 2007, Noble's Nigerian subsidiary ("Noble-Nigeria") paid a total of approximately $74,000 as "special handling charges" to its Nigerian customs agent. Noble-Nigeria and certain employees of Noble Drilling Services Inc., Noble's U.S. subsidiary, were aware that some or all of the money paid to the Nigerian customs agent would be paid to the Nigeria Customs Service officials for the purpose of illegally obtaining extensions for the temporary import permits for the rigs in Nigerian waters, so as to avoid the need to either permanently import the rigs or export and re-import the rigs to obtain new temporary import permits.

ENFORCEMENT

In June 2007, Noble informed the DOJ that it was conducting an internal investigation of its operations in Nigeria and thereafter disclosed the findings and fully cooperated with the government's investigations. On November 4, 2010, the DOJ and Noble entered into a non-prosecution agreement, under which Noble agreed to pay a penalty of $2,590,000, review and revise its existing internal controls, policies, and procedures as necessary, and provide a yearly report to the DOJ on the remediation and implementation of its compliance program and internal controls, policies, and procedures for a period of three years. In a related proceeding brought by the SEC, Noble, without admitting or denying the allegations, consented to the entry of final judgment, under which Noble would pay a total of $5,576,998 in disgorgement of its profits gained and costs avoided, with prejudgment interest.

See SEC Digest Number D-81.

KEY FACTS

Citation. *In re Noble Corp.* (2010).

Date Filed. November 4, 2010.

Country. Nigeria.

Date of Conduct. 2003 – 2007.

Amount of the Value. Approximately $74,000.

Amount of Business Related to the Payment. Approximately $2,973,000.

Intermediary. Customs Agent.

Foreign Official. Nigerian Customs Service officials.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $2,590,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *SEC v. Noble Corp.*

Total Combined Sanction. $8,090,000.

[67] Matter resolved through non-prosecution agreement (November 2010).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

106. UNITED STATES V. ENRIQUE FAUSTINO AGUILAR NORIEGA, ANGELA MARIA GOMEZ AGUILAR, LINDSEY MANUFACTURING, KEITH E. LINDSEY, AND STEVE K. LEE (C.D. CAL. 2010)

NATURE OF THE BUSINESS

Enrique Aguilar and Angela Aguilar are a husband and wife associated with two companies, incorporated in Panama and based in Mexico City, Grupo Internacional de Asesores S.A. ("Grupo") and Sorvill International S.A. ("Sorvill"). The purported business of both companies is to provide sales representation to companies with business with Comisiòn Federal de Electricidad ("CFE"), a state-owned utility in Mexico. Enrique Aguilar is a director of Grupo and Sorvill and Angela Aguilar is an officer and director of Grupo and managed finances for both companies. He is a Mexican citizen and a lawful permanent resident of the U.S.; she is a citizen of Mexico.

Lindsey Manufacturing Company is a privately held California corporation headquartered in Azusa, California which manufactures emergency restoration systems ("ERSs") and other equipment used by electrical utility companies. Lindsey Manufacturing hired Enrique Aguilar to assist in obtaining contracts with CFE based on his personal relationship with the utility's director of operations. Keith E. Lindsey is the president and majority owner of the company; Steve K. Lee is its Vice President and CEO. Both Lindsey and Lee are U.S. citizens.

INFLUENCE TO BE OBTAINED

Federal prosecutors allege that between 2002 and 2008 Lindsey Manufacturing paid Enrique Aguilar a 30% commission on contracts it obtained with CFE, knowing that a portion or all of the commission money would be used to pay bribes to foreign government officials. Lindsey and Lee would accordingly raise the price of contracts with CFE to account for the commission payments. Enrique Aguilar submitted false invoices to Lindsey Manufacturing, falsely describing the payments as 15% allocated to commission and 15% allocated to "other services."

According to the superseding indictment, between 2002 and 2008, Lindsey Manufacturing wired $5.9 million to the Global Financial brokerage account of Grupo in Texas for the purpose of paying bribes in exchange for the award of CFE contracts to Lindsey Manufacturing. Using funds in Grupo's brokerage account at Global Financial and a Swiss bank account belonging to Sorvill, Enrique and Angela Aguilar paid the credit card bills of the current director of operations, purchased him an 82 foot yacht and a Ferrari sports car, and transferred $45,000 to his family member, a payment they falsely described as a consultant fee. With respect to the former director of operations, the Aguilars wired $600,000 from Grupo to relatives of the official, payments made pursuant to false sales representative agreements with the family members.

ENFORCEMENT

The grand jury indicted the Aguilars on September 15, 2010. (Both defendants were previously the subject of sealed indictments.) In the superseding indictment dated October 21, 2010, a federal grand jury indicted Enrique Aguilar and the three Lindsey defendants on one count of conspiracy to violate the FCPA and five counts of bribery under the FCPA. Enrique and Angela Aguilar were indicted under one count of conspiracy to violate and one count of violating federal anti-money laundering law. Angela Aguilar is not

KEY FACTS

Citation. *United States v. Aguilar, et al.*, No. 10-cr-01031 (C.D. Cal. 2010).

Date Filed. December 19, 2009 (E. Aguilar); August 9, 2010 (A. Aguilar); October 21, 2010 (Lindsey Manufacturing; Lindsey; Lee).

Country. Mexico.

Date of Conduct. 2002 – 2008.

Amount of the Value. $5.9 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Sales Representative.

Foreign Official. Current and former director of operations of Comisión Federal de Electricidad ("CFE"), a state-owned electrical utility in Mexico.

FCPA Statutory Provision.

- **Enrique Aguilar**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Keith Lindsey**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Steven Lee**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Lindsey Manufacturing**. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision.

- **Enrique Aguilar**. Conspiracy (Money Laundering); Criminal Forfeiture.
- **Angela Aguilar**. Conspiracy (Money Laundering); Criminal Forfeiture.
- **Keith Lindsey**. Criminal Forfeiture.
- **Steven Lee**. Criminal Forfeiture.
- **Lindsey Manufacturing**. Criminal Forfeiture.

Disposition.

- **Enrique Aguilar**. Fugitive.
- **Angela Aguilar**. Conviction Vacated.
- **Keith Lindsey**. Conviction Vacated.
- **Steven Lee**. Conviction Vacated.
- **Lindsey Manufacturing**. Conviction Vacated.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

charged with any FCPA violations.

U.S. authorities arrested Angela Aguilar in Houston in August 2002. She pleaded not guilty and was held in custody until trial. The Lindsey defendants also pleaded not guilty. Keith Lindsey and Steve Lee were released pending trial on $50,000 bonds.

On May 10, 2011, a federal jury found Angela Aguilar guilty of conspiracy to launder money and the Lindsey defendants guilty of conspiracy to violate the FCPA and five substantive FCPA violations. On June 3, 2011, Angela Aguilar entered into a post-trial stipulation whereby she agreed to, among other things, (i) a sentence of time served, (ii) waiver of her rights to an appeal of her conviction and sentence, and (iii) a forfeiture in the amount of $2,511,553.

Before sentencing could take place for the other defendants, lawyers for Lindsey Manufacturing, Keith Lindsey, and Steve Lee moved to dismiss the indictments on the basis of intentional prosecutorial misconduct. The defendants alleged that the government allowed an FBI agent to make false statements to the grand jury, obtained search and seizure warrants using affidavits containing false statements, and failed to disclose exculpatory evidence as required under *Brady v. Maryland*. On December 1, 2011, the court granted defendants' motion, citing multiple instances of misconduct by the government. The government filed a notice of appeal to the Ninth Circuit that same day.

The December 1, 2011 order vacated the convictions and dismissed the indictments against the Lindsey defendants with prejudice. On December 9, 2011, the government stipulated that it would not enforce Angela Aguilar's collateral attack waiver if the court's order of dismissal is affirmed. In May 2012, the government withdrew its appeal to the Ninth Circuit.

The conviction of Lindsey Manufacturing was the first-ever conviction of a corporate defendant for violations of the FCPA following a trial. The case is also notable for upholding application of the FCPA to employees of foreign state-owned enterprises. During the course of the trial, defendants challenged the government's position that employees of foreign state-owned enterprises fell within the meaning of "foreign official" under the FCPA, but the court adopted the DOJ's more expansive interpretation.

Defendant Jurisdictional Basis.

- **Enrique Aguilar**. Domestic Concern; Conspiracy; Aider & Abettor.
- **Keith Lindsey**. Domestic Concern; Conspiracy; Aider & Abettor.
- **Steven Lee**. Domestic Concern; Conspiracy; Aider & Abettor.
- **Lindsey Manufacturing**. Domestic Concern; Conspiracy; Aider & Abettor.

Defendant's Citizenship.

- **Enrique Aguilar**. Mexico.[68]
- **Keith Lindsey**. United States.
- **Steven Lee**. United States.
- **Lindsey Manufacturing**. United States.

Total Sanction.

- **Enrique Aguilar**. Pending.
- **Angela Aguilar**. None.
- **Keith Lindsey**. None.
- **Steven Lee**. None.
- **Lindsey Manufacturing**. None.

Related Enforcement Actions. None.

[68] Enrique Aguilar was a permanent resident of the United States.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

105. UNITED STATES V. BOBBY J. ELKIN, JR. (W.D. VA. 2010)

NATURE OF THE BUSINESS

Bobby J. Elkin, a U.S. citizen, was the country manager for Dimon, Inc.'s ("Dimon") Kyrgyzstan subsidiary, a leaf tobacco company. As a result of a 2005 merger with Standard Commercial Corporation, Dimon, Inc. now operates as Alliance One International.

INFLUENCE TO BE OBTAINED

From 1996 to 2004, Elkin paid more than $3 million to government officials in Kyrgyzstan to obtain export licenses, gain access to processing facilities, win contracts to purchase tobacco from local growers, and avoid tax penalties.

ENFORCEMENT

On August 3, 2010, Elkin pleaded guilty to conspiracy to violate the FCPA. On October 21, 2010, he was sentenced to three years' probation and a $5,000 fine. The DOJ asked for a 30 month prison sentence. According to media reports, in sentencing Elkin to probation, the court noted Elkin's cooperation with authorities and pressure put on Elkin by Dimon to make the bribes.

In April 2010, the SEC charged Elkin and three other Dimon employees with violating the anti-bribery provisions of the FCPA and related aiding and abetting violations. Without admitting or denying the charges, the four defendants agreed to injunctive relief. Two of the defendants, but not Elkin, paid financial penalties as well.

In other related proceedings, Alliance One settled FCPA charges with the SEC and two of Alliance One's foreign subsidiaries settled FCPA charges with the DOJ.

See DOJ Digest Numbers B-104 and B-103.
See SEC Digest Numbers D-80, D-79, and D-78.

KEY FACTS

Citation. *United States v. Elkin*, No.4:10-cr-00015 (W.D. Va. 2010).

Date Filed. August 3, 2010.

Country. Kyrgyzstan.

Date of Conduct. 1996 – 2004.

Amount of the Value. More than $3 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign Official. Kyrgyz Tobacco Authority; Local Kyrgyz Government Officials; Kyrgyz Tax Inspection Police.

FCPA Statutory Provision. Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. 3-Years Imprisonment; $5,000 Criminal Fine.

Related Enforcement Actions. *United States v. Alliance One Int'l A.G*; *SEC v. Alliance One Int'l Inc.*; *United States v. Alliance One Tobacco Osh, LLC*; *SEC v. Elkin, et al.*; *United States v. Universal Leaf Tobacos Ltda.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

104. UNITED STATES V. UNIVERSAL LEAF TABACOS LTDA. (E.D. VA. 2010)

NATURE OF THE BUSINESS

Universal Leaf Tabacos, Ltda ("Universal Brazil") is a wholly-owned Brazilian subsidiary of Universal Corporation ("Universal"), a worldwide purchaser and supplier of processed leaf tobacco incorporated in Virginia and headquartered in Richmond, Virginia.

INFLUENCE TO BE OBTAINED

According to the criminal information, from at least March 2000 to July 2004, Universal Brazil engaged in a conspiracy with its competitors to secure the assistance of TTM representatives in obtaining and retaining contracts for the sale of Brazilian leaf tobacco; to falsify books, records, and accounts of Universal and Universal Brazil in connection with corrupt payments; and to make the payments appear as legitimate business expenses when, in fact, they were bribes to Thai government officials to ensure that each company would share in the Thai tobacco market. As part of the conspiracy, Universal Brazil and two subsidiaries of its competitor paid the kickbacks to the TTM officials by adding a specified amount to individual sales prices that would be remitted to their respective sales agents who would then pay the kickbacks directly to the TTM officials. These kickbacks were falsely categorized as "commissions" or "special expenses."

ENFORCEMENT

On August 6, 2010, Universal Brazil pleaded guilty to a two-count criminal information charging it with conspiracy to violate the anti-bribery provisions and books-and-records provisions of the FCPA, and with violating the anti-bribery provisions of the FCPA. Universal entered into a non-prosecution agreement, under which Universal Brazil agreed to pay a $4.4 million criminal fine, and Universal has agreed to retain an independent compliance monitor for a minimum of three years.

On August 24, 2010, Universal also settled a civil complaint filed by the SEC charging it with violating the FCPA's anti-bribery, internal controls, and books-and-records provisions and requiring Universal to disgorge approximately $4.5 million in profits to resolve the civil matter.

In related proceedings, Alliance One International, Inc., a competitor tobacco company, its subsidiaries, and former executives settled related charges with the DOJ and SEC in August 2010.

See DOJ Digest Numbers B-105 and B-103.
See SEC Digest Numbers D-80, D-79, and D-78.

KEY FACTS

Citation. *U.S. v. Universal Leaf Tabacos Ltda.*, No. 3:10-cr-225 (E.D. Va. 2010).

Date Filed. August 6, 2010.

Country. Thailand.

Date of Conduct. 2000 – 2004.

Amount of the Value. Approximately $697,800.

Amount of Business Related to the Payment. Sales orders valued at over $9 million.

Intermediary. Tobacco Sales Agents.

Foreign Official. Officials of the Thailand Tobacco Monopoly ("TTM").

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision. None.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $4,400,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *SEC v. Universal Corp.*

Total Combined Sanction. $8,981,276.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

103. UNITED STATES V. ALLIANCE ONE INTERNATIONAL AG (W.D. VA. 2010) UNITED STATES V. ALLIANCE ONE TOBACCO OSH, LLC (W.D. VA. 2010) IN RE ALLIANCE ONE INTERNATIONAL, INC. (2010)

NATURE OF THE BUSINESS

Alliance One International AG ("AOIAG") is a wholly-owned Swiss subsidiary of Alliance One International, Inc. ("Alliance One"), a Virginia corporation that purchases, processes, and sells tobacco to manufacturers of consumer tobacco products worldwide. It was formed in 2005 as the result of a merger of Dimon Incorporated ("Dimon") and Standard Commercial Corporation ("Standard"). AOIAG provided financial, accounting, and management services to other Alliance One foreign subsidiaries that sold tobacco to Alliance One's customers. Alliance One Tobacco Osh, LLC ("AOTOL") is Alliance One's Kyrgyz subsidiary that was formed in 2005 after Dimon merged with Standard. Prior to the merger, Alliance One Tobacco Osh, LLC was known as "Dimon International Kyrgyzstan" ("DIK").

INFLUENCE TO BE OBTAINED

The criminal information alleges that from 2000 to at least 2004, Dimon and Standard subsidiaries – Dimon International AG ("DIAG") and Standard Brazil ("SB") – and Universal Leaf Tabacos, Ltda – a subsidiary of Universal Corporation ("Universal"), a competitor of Alliance One – retained sales agents in Thailand, and collaborated through those agents to control the sale of Brazilian tobacco to the TTM. Accordingly, the subsidiaries coordinated their sales prices and paid kickbacks to officials of the TTM to ensure that each company would share in the Thai tobacco market. The kickbacks referred to as "special expenses" were allegedly paid to certain TTM representatives based on the number of kilograms of tobacco sold to the TTM.

DIAG and SB, predecessor-subsidiaries of Alliance One, both falsely characterized the payments in their respective books and records as "commissions" paid to their sales agents. DIAG and SB realized profits of $4.3 million and $2.7 million, respectively, as a result of the scheme.

Separately, on September 27, 1996, officers of DIK signed an agreement with the Kyrgyz Tamekisi, the agency that managed and controlled the government-owned shares of the tobacco processing facilities throughout Kyrgyzstan that detailed the manner in which DIK would be allowed to conduct business in Kyrgyzstan. On October 22, 1996, the agreement was amended to issue a license to DIK to process that year's crop and implemented a special arrangement where DIK agreed to pay the Tamekisi $.18 per kilogram and an additional $.05 per kilogram for "financial assistance." The financial assistance payments to the Kyrgyzstan officials were allegedly bribes that DIK used to influence acts or decisions of a Kyrgyz official in his official capacity to secure Dimon's continued access to the tobacco processing facilities controlled by the Tamekisi. DIK also allegedly paid "commissions" to at least 5 Akims—municipal, district, or provincial government heads—to obtain permission to purchase tobacco from the growers in each area. In addition, the DOJ claims that from March 2000 to March 2003, DIK also made approximately nine cash payments to officers of the Kyrgyz Tax Inspection Police to influence their acts and decisions and allow for Dimon's continued ability to conduct its business in Kyrgyzstan.

ENFORCEMENT

KEY FACTS

Citation. *United States v. Alliance One Int'l AG*, No. 4:10-cr-00017 (W.D. Va. 2010); *United States v. Alliance One Tobacco Osh, LLC*, No. 4:10-cr-00016 (W.D. Va. 2010); *In re Alliance One Int'l, Inc.* (2010).

Date Filed. August 6, 2010.

Country. Thailand; Kyrgyzstan.

Date of Conduct. 2000 – 2004.

Amount of the Value. Approximately $1,238,750.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Tobacco Sales Agents.

Foreign Official. Officials of the Thailand Tobacco Monopoly ("TTM"); Kyrgyz provincial government officials.

FCPA Statutory Provision.

- **Alliance One Int'l AG.** Conspiracy (Anti-Bribery); Anti-Bribery; Aiding and Abetting (Books-and-Records).
- **Alliance One Tobacco**. Conspiracy (Anti-Bribery); Anti-Bribery; Aiding and Abetting (Books-and-Records).
- **Alliance One Int'l, Inc.** Anti-Bribery; Books-and-Records.

Other Statutory Provision. None.

- **Alliance One Int'l AG**. Plea Agreement.
- **Alliance One Tobacco**. Plea Agreement.
- **Alliance One Int'l, Inc.** Non-Prosecution Agreement.

Defendant Jurisdictional Basis.

- **Alliance One Int'l AG**. Territorial Jurisdiction; Conspiracy; Aider and Abettor.
- **Alliance One Tobacco**. Territorial Jurisdiction; Conspiracy; Aider and Abettor.
- **Alliance One Int'l, Inc.** Issuer.

Defendant's Citizenship.

- **Alliance One Int'l AG**. Switzerland; United Kingdom.
- **Alliance One Tobacco**. Kyrgyzstan.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

On August 26, 2010, AOIAG pleaded guilty to a three-count criminal information charging it with conspiring to violate the FCPA, violations of the anti-bribery provisions of the FCPA, and violations of the books and records provisions of the FCPA. AOIAG also admitted the factual allegations contained in the information were true and correct. The guilty plea related to conduct that was committed by employees and agents of foreign subsidiaries of both Dimon and Standard prior to their merger.

AOTOL also pleaded guilty to a separate three-count criminal information charging it with conspiracy to violate the FCPA, violations of the anti-bribery provisions of the FCPA, and violations of the books and records provisions of the FCPA relating to bribes paid to government officials in Kyrgyzstan.

On October 21, 2010, the court ordered AOIAG and AOTOL to pay fines of $5,251,200 and $4,200,000 respectively. The DOJ and Alliance One entered into a non-prosecution agreement in which Alliance One agreed to cooperate with an ongoing investigation and to retain an independent compliance monitor for a minimum of three years.

On August 26, 2010, Alliance One settled a related civil complaint filed by the SEC, charging Alliance One with violating the FCPA's anti-bribery, internal controls, and books and records provisions. Alliance One was required to disgorge approximately $10 million in profits to the SEC.

Also in August 2010, Bobby Elkin and three other former senior executives of Dimon International Kyrgyzstan, a then Dimon subsidiary, the predecessor entity of AOTOL, pleaded guilty to and settled related charges brought by the DOJ and SEC. In other related proceedings, Universal also settled related charges with the DOJ and SEC in August 2010.

See DOJ Digest Numbers B-105 and B-104.
See SEC Digest Numbers D-80, D-79, and D-78.

- **Alliance One Int'l, Inc.** United States

Total Sanction. $9,450,000.

Compliance Monitory/Reporting Requirements.

Related Enforcement Actions. *SEC v. Alliance One Int'l, Inc.*

Total Combined Sanction. $19,450,000.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

102. UNITED STATES V. ABB LTD. (S.D. TEX. 2010)
UNITED STATES V. ABB LTD. – JORDAN (S.D. TEX. 2010)
UNITED STATES V. ABB INC. (S.D. TEX. 2010)

NATURE OF THE BUSINESS

ABB Ltd. is a Swiss public corporation which provides power and automation products and services around the globe. Two of its subsidiaries, ABB Inc., a Delaware corporation based in Sugar Land, TX, and ABB Ltd. – Jordan, provide products and services to electrical utilities, including state-owned utilities.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil-for-Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value. The government did not allege bribery of any individual foreign governmental officials.

ABB Ltd. – Jordan paid more than $300,000 in kickbacks to the former Iraqi government in exchange for eleven purchase orders for electrical equipment and services worth more than $5.9 million under the U.N. Oil-for-Food Program. Additionally, ABB Ltd. – Jordan engaged in systematic efforts to conceal the illegal payments and circumvent internal controls by misrepresenting these payments as "consulting fees" in its books and records.

From 1997 to 2004, ABB Inc. paid bribes that totaled approximately $1.9 million to officials at CFE. In exchange for the bribe payments, ABB Inc. received contracts worth more than $81 million in revenue for upgrades and maintenance to Mexico's electrical network system. ABB Inc. admitted that the bribe payments were made through various intermediaries, including a Mexican company that served as ABB Inc.'s sales representative in Mexico for its contracts with CFE.

ENFORCEMENT

ABB Ltd. entered into a three-year deferred prosecution agreement on September 29, 2010, under which it agreed to fully cooperate with investigations of the company's alleged corrupt payments and to adhere to a set of enhanced corporate compliance and reporting obligations, which include the recommendations of an independent compliance consultant. ABB Ltd. also agreed to the filing of a criminal information charging ABB Ltd. – Jordan with one count of conspiracy to commit wire fraud and to violate the books and records provisions of the FCPA. According to the deferred prosecution agreement, ABB agreed to pay criminal penalties totaling $30,420,000 ($28,500,000 on behalf of ABB Inc. and $1,920,000 on behalf of ABB Ltd. – Jordan). Also on September 2010, ABB Inc. pleaded guilty to one count of conspiracy to violate the FCPA and one count of violating the anti-bribery provisions of the FCPA and was sentenced to pay a criminal fine of $17.1 million, which was deducted from the $28.5 million due under the deferred prosecution agreement.

KEY FACTS

Citation. *United States v. ABB Ltd*, No. 4:10-cr-00665. (S.D. Tex. 2010); *United States v. ABB Ltd. – Jordan*, No. 4:10-cr-00665 (S.D. Tex. 2010); *United States v. ABB Inc.*, No. 4:10-cr-00664 (S.D. Tex. 2010)

Date Filed. September 29, 2010.

Country. Iraq: Mexico.

Date of Conduct. 1997 – 2004.

Amount of the Value. Approximately $2.2 million.

Amount of Business Related to the Payment. At least $86.9 million.

Intermediary. Mexican Companies Purporting to Act as Service and Support Providers.

Foreign Official. Officials at Comisión Federal de Electricidad ("CFE"), a Mexican state-owned utility company; Regional Companies of the Iraqi Electricity Commission.

FCPA Statutory Provision.

- **ABB Ltd.** Conspiracy (Anti-Bribery); Anti-Bribery.
- **ABB Ltd. – Jordan**. Conspiracy (Books-and-Records and Wire Fraud).
- **ABB Inc.** Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision. None.

Disposition.

- **ABB Ltd.** Deferred Prosecution Agreement.
- **ABB Ltd. – Jordan**. Deferred Prosecution Agreement.
- **ABB Inc.** Plea Agreement.

Defendant Jurisdictional Basis.

- **ABB Ltd.** Issuer.
- **ABB Ltd. – Jordan**. Conspiracy.
- **ABB Inc.** Domestic Concern; Conspiracy.

Defendant's Citizenship.

- **ABB Ltd.** Switzerland.
- **ABB Ltd. – Jordan**. Jordan.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

At sentencing, Judge Lynn Hughes refused to approve the parties' deferred prosecution agreement and determined that the $30,420,000 agreed upon penalty should be discounted because, according to Judge Hughes, ABB Ltd. was not a recidivist offender. Accordingly, ABB Ltd. was ordered to pay a criminal penalty of $19 million—$17.1 million for ABB Inc. and $1.92 million for ABB Ltd. – Jordan.

On September 29, 2010, ABB Ltd. also settled a related SEC action.

See DOJ Digest Number B-92.
See SEC Digest Numbers D-77 and D-17.

- **ABB Inc.** United States.

Total Sanction. $19,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *SEC v. ABB Ltd*.

Total Combined Sanction. $58,314,262.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

101. UNITED STATES V. SNAMPROGETTI NETHERLANDS B.V. (S.D. TEX. 2010)[69]

NATURE OF THE BUSINESS

Engineering, procurement, and construction ("EPC") contracts for natural gas liquefaction facilities at Bonny Island in Nigeria ("Bonny Island Project") as part of a four-company joint venture. Snamprogetti Netherlands B.V. ("Snamprogetti") is a corporation organized under the laws of the Netherlands and headquartered in Amsterdam. During the conduct at issue, Snamprogetti was a wholly-owned subsidiary of ENI S.p.A. ("ENI"); it is currently a wholly-owned subsidiary of Saipem S.p.A. ("Saipem").

INFLUENCE TO BE OBTAINED

Snamprogetti participated in a joint venture to obtain and perform EPC contracts to build and expand the Bonny Island Project for Nigeria LNG Limited, which is owned in part by the Nigerian National Petroleum Corporation. The joint venture was awarded four EPC contracts for the Bonny Island Project between 1995 and 2004. From August 1994 until June 2004, Snamprogetti and its partners in the joint venture authorized, promised, and paid bribes to Nigerian government officials, including officials in the executive branch, employees of the government-owned Nigerian National Petroleum Corporation, and employees of government-controlled Nigeria LNG Limited, to win and retain the EPC contracts to build the Bonny Island Project. To conceal the bribes, the joint venture entered into sham consulting or services agreements with intermediaries and held "cultural meetings" where the joint venture partners met with their agents to plan how to pay the bribes. One consultant hired to pay bribes to high-level Nigerian government officials received over $132 million for use in bribing the officials. Another consultant, hired to bribe lower-level Nigerian officials, received over $50 million to use for that purpose.

ENFORCEMENT

On July 7, 2010, Snamprogetti, ENI, and Saipem entered into a deferred prosecution agreement with the DOJ. Snamprogetti agreed to pay a $240 million fine and to cooperate with related investigations. ENI and Saipem each agreed to pay the fine if Snamprogetti defaulted and to cooperate with related investigations. In exchange, the DOJ agreed to defer prosecution of the two criminal counts that it brought against Snamprogetti: conspiracy to violate the FCPA and aiding and abetting violations of the FCPA. If Snamprogetti complies with the terms of the deferred prosecution agreement, the DOJ will drop the charges after two years. In a related civil case brought by the SEC, Snamprogetti and ENI jointly agreed to pay $125 million in disgorgement of profits.

See DOJ Digest Numbers B-126, B-118, B-100, B-82, B-80, and B-70.
See SEC Digest Numbers D-74, D-72 D-57, and D-54.
See Parallel Litigation Digest Number H-F10.

KEY FACTS

Citation. *United States. v. Snamprogetti Netherlands B.V.*, No. 1:10-cr-00460 (S.D. Tex. 2010).

Date Filed. July 7, 2010.

Country. Nigeria.

Date of Conduct. 1994 – 2004.

Amount of the Value. Approximately $182 million.

Amount of Business Related to the Payment. Over $6 billion.

Intermediary. Agents.

Foreign Official. Officials in the executive branch of the Nigerian government; Employees of Nigerian National Petroleum Corporation; Employees of Nigeria LNG Limited, controlled by the Nigerian government.

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Aiding and Abetting (Anti-Bribery).

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Conspiracy; Aiding and Abetting

Defendant's Citizenship. Netherlands.

Total Sanction. $240,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *SEC v. ENI, S.p.A., et al.*

Total Combined Sanction. $365,000,000.

[69] *U.S. v. Snamprogetti Netherlands B.V.*, No. 1:10-cr-00460 (S.D. Tex. 2010).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

100. UNITED STATES V. TECHNIP S.A. (S.D. TEX. 2010)[70]

NATURE OF THE BUSINESS

Engineering, procurement, and construction ("EPC") contracts for natural gas liquefaction facilities on Bonny Island in Nigeria ("Bonny Island Project") as part of a four-company joint venture. Technip S.A. ("Technip") is a French corporation headquartered in Paris.

INFLUENCE TO BE OBTAINED

Technip participated in a joint venture to obtain and perform EPC contracts to build and expand the Bonny Island Project for Nigeria LNG Limited, which is owned in part by the Nigerian National Petroleum Corporation. The joint venture was awarded four EPC contracts for the Bonny Island Project between 1995 and 2004. From August 1994 until June 2004, Technip and its partners in the joint venture authorized, promised, and paid bribes to Nigerian government officials, including officials in the executive branch, employees of the government-owned Nigerian National Petroleum Corporation, and employees of government-controlled Nigeria LNG Limited, to win and retain the EPC contracts to build the Bonny Island Project. To conceal the bribes, the joint venture entered into sham consulting or services agreements with intermediaries and held "cultural meetings" where the joint venture partners met with their agents to plan how to pay the bribes. The joint venture used U.K. and Japanese agents to transfer approximately $182 million to Nigerian officials during the relevant time period.

ENFORCEMENT

On June 28, 2010, Technip entered into a two-year deferred prosecution agreement with the DOJ in which it agreed to pay a $240 million penalty and to continue to cooperate with ongoing investigations. Technip also agreed to engage a corporate compliance monitor. In a related civil case brought by the SEC, Technip agreed to pay $98 million in disgorgement of profits.

See DOJ Digest Numbers B-126, B-118, B-101, B-82, B-80, and B-70.
See SEC Digest Numbers D-74, D-72, D-57 and D-54.
See Parallel Litigation Digest Number H-F10.

KEY FACTS

Citation. *United States v. Technip S.A.*, No. 1:10-cr-00439 (S.D. Tex. 2010).

Date Filed. June 28, 2010.

Country. Nigeria.

Date of Conduct. 1994 – 2004.

Amount of the Value. Approximately $182 million.

Amount of Business Related to the Payment. Over $6 billion.

Intermediary. Agents.

Foreign Official. Officials in the executive branch of the Nigerian government; Employees of Nigerian National Petroleum Corporation; Employees of Nigeria LNG Limited, controlled by the Nigerian government.

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Conspiracy; Issuer.

Defendant's Citizenship. France.

Total Sanction. $240,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *SEC v. Technip*.

Total Combined Sanction. $338,000,000.

[70] *U.S. v. Technip S.A.*, No. 1:10-cr-00439 (S.D. Tex. 2010).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

99. UNITED STATES V. DAIMLER AG (D.D.C. 2010)
UNITED STATES V. DAIMLER EXPORT AND TRADE FINANCE GMBH (D.D.C. 2010)
UNITED STATES V. DAIMLERCHRYSLER AUTOMOTIVE RUSSIA SAO (D.D.C. 2010)
UNITED STATES V. DAIMLERCHRYSLER CHINA LTD. (D.D.C. 2010)

NATURE OF THE BUSINESS

Securing numerous contracts with government customers for the purchase of Daimler vehicles. Daimler is a German vehicle manufacturing company with business operations throughout the world.

INFLUENCE TO BE OBTAINED

Between 1998 and 2008, Daimler AG ("Daimler") and its subsidiaries made hundreds of improper payments worth tens of millions of dollars to foreign officials to obtain vehicle contracts in at least 22 countries. The alleged improper payments include:

- "Third-party accounts," maintained as receivable ledger accounts on Daimler's books but controlled by third parties outside the company or by Daimler subsidiaries. Prior to 2002, these accounts enabled cash disbursements from a "cash desk" located at a Daimler facility in Stuttgart, Germany. Daimler employees took the cash and transported it to other countries to pay bribes to foreign officials. Daimler used these accounts to make improper payments by other methods too.
- Daimler subsidiary DaimlerChrysler Automotive Russia SAO ("DCAR") made payments to Russian government officials by over-invoicing the customer and then paying the excess amount back to the government officials. Daimler and DCAR also made payments to third parties in connection with the sale of commercial vehicles to Russian government customers with the understanding that the payments would be passed on to Russian government officials.
- Employees of DaimlerChrysler China Ltd. ("DCCL") and Daimler made improper payments in the form of commissions, delegation travel, and gifts for the benefit of Chinese government officials in connection with the sale of vehicles to Chinese government customers. Daimler and DCCL inflated the sales price of vehicles sold to Chinese government customers, then maintained a special account to track these overpayments and disburse them to and for the benefit of Chinese officials. Daimler and DCCL also made payments to third party agents who passed the payments on to Chinese officials or used them to buy the officials gifts or trips.
- Daimler Export and Trade Finance GmbH ("DETF") paid bribes to Croatian government officials, both directly and via U.S.-based shell companies, to secure the sale of fire trucks to the Croatian government.
- Daimler paid kickbacks to the former Iraqi government to obtain contracts for the sale of vehicles to the government of Iraq under the oil-for-food program. Like other companies that have been prosecuted in oil-for-food cases, Daimler agreed to pay a 10% commission to the Iraqi government by inflating contract prices by 10%. The payments were characterized as "after sales services fees," but no services were

KEY FACTS

Citation. *United States v. Daimler AG*, No. 10-cr-63 (D.D.C. 2010); *United States v. Daimler Export & Trade Finance GmbH*, No. 10-cr-65 (D.D.C. 2010); *United States. v. DaimlerChrysler Automotive Russia SAO*, No. 10-cr-54 (D.D.C. 2010); *United States v. DaimlerChrysler China Ltd.*, No. 10-cr-66 (D.D.C. 2010).

Date Filed. March 22, 2010.

Country. At least 22 countries including China, Croatia, Egypt, Greece, Hungary, Indonesia, Iraq, Ivory Coast, Latvia, Nigeria, Russia, Serbia and Montenegro, Thailand, Turkey, Turkmenistan, Uzbekistan, and Vietnam.

Date of Conduct. 1999 – 2008.

Amount of the Value. Tens of millions.

Amount of Business Related to the Payment. Over $50 million.

Intermediary. Various.

Foreign Official. Various officials involved in the purchase of vehicles around the world.

FCPA Statutory Provision.

- **Daimler AG**. Conspiracy (Books-and-Records); Books-and-Records.
- **Daimler Export and Trade**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Daimler Chrysler Automotive Russia**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Daimler Chrysler China**. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision. None.

Disposition.

- **Daimler AG**. Deferred Prosecution Agreement.
- **Daimler Export and Trade**. Plea Agreement.
- **Daimler Chrysler Automotive Russia**. Plea Agreement.
- **Daimler Chrysler China**. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis.

- **Daimler AG**. Issuer.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

performed. Most of Daimler's oil-for-food contracts involved third-party intermediaries, but Daimler understood its partners would pay the illegal kickbacks to Iraqi ministries.

ENFORCEMENT

On March 22, 2010, Daimler and its Chinese subsidiary, DCCL, entered into deferred prosecution agreements with the DOJ. Daimler admitted to violating the books-and-records provisions of the FCPA and conspiracy to violate the books-and-records provisions of the FCPA. DCCL admitted to violating the anti-bribery provisions of the FCPA and conspiracy to violate the anti-bribery provisions of the FCPA. On the same day, Daimler's Russian subsidiary, DCAR, and Daimler's finance subsidiary, DETF, each pleaded guilty to violating the anti-bribery provisions of the FCPA and conspiracy to violate the anti-bribery provisions of the FCPA.

Under the terms of its agreement with the DOJ, Daimler must hire an independent monitor for three years to oversee the implementation of a robust compliance program. If Daimler complies fully with its agreement for a period of two years and seven days, the DOJ agrees not to bring any other charges based on this underlying conduct or other conduct that Daimler disclosed to the DOJ.

Daimler and its subsidiaries must pay a $93.6 million fine to the DOJ. Separately, to settle civil charges brought by the SEC, Daimler agreed to pay $91.4 million in disgorgement.

See SEC Digest Number D-71.

- **Daimler Export and Trade**. Conspiracy; Territorial Jurisdiction.
- **Daimler Chrysler Automotive Russia**. Conspiracy; Territorial Jurisdiction.
- **Daimler Chrysler China**. Conspiracy; Territorial Jurisdiction.

Defendant's Citizenship.

- **Daimler AG**. Germany.
- **Daimler Export and Trade**. Germany.
- **Daimler Chrysler Automotive Russia**. Russia.
- **Daimler Chrysler China**. China.

Total Sanction. $93,600,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *SEC v. Daimler AG*

Total Combined Sanction. $185,000,000.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

98. UNITED STATES V. INNOSPEC, INC. (D.D.C. 2010)

NATURE OF THE BUSINESS

Manufacture and sale of fuel additives and other specialty chemicals by Innospec, Inc. ("Innospec"), a Delaware corporation based in the United Kingdom.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil-for-Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks from humanitarian goods suppliers.

From 2000 to 2008, Innospec paid, or promised to pay, more than $5,800,000 in kickbacks to the Iraqi government and bribes to Iraqi officials to secure contracts to sell tetraethyl lead ("TEL") to the Iraqi Ministry of Oil. Innospec's Swiss subsidiary, Alcor, obtained contracts in the U.N. Oil-for-Food Program by paying kickbacks to Iraq and Iraqi government officials through an Iraqi agent, Ousama Naaman. After the termination of the U.N. Oil-for-Food Program, Innospec continued to use Naaman to pay bribes to Iraqi officials, including officials at the Iraqi Ministry of Oil, to secure TEL business from Iraq. Innospec also paid for lavish trips for Iraqi officials, including a honeymoon in Thailand for one and "pocket money" for others during the trips.

ENFORCEMENT

On March 18, 2010, Innospec pleaded guilty to violating the anti-bribery and books and records provisions of the FCPA, wire fraud, and conspiracy to commit all three.

The DOJ's sentencing memorandum notes that Innospec initially denied culpability but has been cooperating with the DOJ since early 2008, including conducting an extensive internal investigation that resulted in the identification of additional improper payments to officials in Indonesia. According to the sentencing memorandum, from 2000 until 2005, Innospec paid bribes to Indonesian government officials to induce the purchase of higher levels of TEL than Indonesia required. The sentencing memorandum notes that this conduct is not charged in the United States because Innospec's British subsidiary is pleading guilty to it in the United Kingdom. Payments to the Indonesian officials totaled approximately $2,883,507, and from 2000 to 2005 Innospec's profits from sales to Indonesia were approximately $21,506,610.

Innospec will pay $40.2 million as part of a global settlement with the DOJ, the SEC, the U.K. Serious Fraud Office ("SFO"), and the Office of Foreign Assets Control ("OFAC"). The settlement with OFAC is in connection with the sale of chemicals to Cuban power plants. Innospec agreed to pay a criminal fine of $14.1 million to the DOJ, disgorgement of $11.2 million to the SEC, a criminal fine of $12.7 million to the SFO, and $2.2 million to OFAC. Innospec also agreed to injunctive relief and certain undertakings regarding its FCPA compliance program, including retaining an independent compliance monitor for at least three years.

See DOJ Digest Number B-81.
See SEC Digest Numbers D-76 and D-70.
See Ongoing Investigation Number F-2.

KEY FACTS

Citation. *United States v. Innospec, Inc.*, No. 1:10-cr-00061 (D.D.C. 2010).

Date Filed. March 18, 2010.

Country. Iraq.

Date of Conduct. 2000 – 2008.

Amount of the Value. Over $5,800,000.

Amount of Business Related to the Payment. Approximately $50 million in profits.

Intermediary. Sales Agent/Consultant.

Foreign Official. Iraqi government officials (Ministry of Oil).

FCPA Statutory Provision. Conspiracy (Books-and-Records and Wire Fraud); Anti-Bribery; Books-and-Records.

Other Statutory Provision. Wire Fraud.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United Kingdom.

Total Sanction. $14,104,800.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *SEC v. Innospec, Inc.*

Total Combined Sanction. $25,304,800.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

97. UNITED STATES V. BAE SYSTEMS PLC (D.D.C. 2010)

NATURE OF THE BUSINESS

Defense, security, and aerospace products. BAE Systems PLC, formerly known as British Aerospace, is a multi-national defense contractor with its headquarters in the United Kingdom.

INFLUENCE TO BE OBTAINED

In 2000, BAE made commitments to the U.S. government that it would create and implement policies and procedures to ensure compliance with provisions of the FCPA and relevant provisions of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. According to the DOJ, in May and June 2002 BAE falsely stated to the Department of Defense that it had implemented sufficient mechanisms to ensure compliance with the anti-bribery provisions of the FCPA.

Before and after its commitments to the U.S. government, BAE regularly retained "marketing advisors" to assist in securing sales of defense articles. Substantial payments were made to these advisors without the type of scrutiny and review required by the FCPA or represented by BAE to the U.S. government. BAE used offshore shell companies to conceal its relationships and payments to these advisors.

Specifically, BAE made undisclosed and unscrutinized payments of more than £19,000,000 to entities associated with an unnamed individual, and at least some of these payments were to secure leases of fighter aircraft to the Czech Republic and Hungary. Additionally, BAE provided substantial benefits, including the purchase of travel and accommodations, security services, real estate, automobiles, and personal items, to a Saudi public official, who was in a position of influence regarding the fighter aircraft BAE sold to the U.K. government, which then sold the aircraft to the Kingdom of Saudi Arabia. BAE also agreed to transfer sums totaling more than £10,000,000 and more than $9,000,000 to a bank account in Switzerland controlled by an intermediary while aware there was a high probability that the intermediary would transfer part of these payments to the Saudi public official.

ENFORCEMENT

The DOJ filed a criminal information on February 4, 2010 charging BAE with conspiring to defraud the U.S. and to make false statements to the U.S. government, and with violating the Arms Export Control Act and International Traffic in Arms Regulations by failing to disclose commission payments. On March 1, 2010, BAE pleaded guilty to these charges and agreed to pay a penalty of $400,000,000, implement an effective compliance system, and retain a compliance monitor for a three-year term.

BAE was not charged with FCPA liability. However, according to the statement of offense, BAE made payments to advisors through offshore shell companies even though "there was a high probability that part of the payments would be used to ensure that [BAE] was favored in the foreign government decisions regarding the sales of defense articles." It is likely that debarment consequences were considered; the sentencing memorandum notes "mandatory exclusion under EU debarment regulations is unlikely in light of the nature of the charge" to which BAE is pleading.

KEY FACTS

Citation. *United States v. BAE Sys. PLC*, No. 1:10-cr-00035 (D.D.C. 2010).

Date Filed. February 4, 2010.

Country. Czech Republic; Hungary; Saudi Arabia.

Date of Conduct. 2000 – 2002.

Amount of the Value. More than £135,000,000 plus more than $14,000,000.

Amount of Business Related to the Payment. At least $200 million.

Intermediary. Offshore Shell Companies; Marketing Advisors.

Foreign Official. Saudi Public Official.

FCPA Statutory Provision. None.

Other Statutory Provision. Conspiracy (False Statements); Conspiracy (Arms Export Control Act).

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Not Applicable.

Defendant's Citizenship. United Kingdom.

Total Sanction. $400,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

On February 5, 2010, BAE announced that it had reached settlements with the DOJ and the U.K.'s Serious Fraud Office ("SFO"). To resolve the SFO's investigation, BAE agreed to plead guilty to breach of duty to keep accounting records for payments made to a marketing advisor in Tanzania and pay a penalty of £30 million.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

96. UNITED STATES V. RICHARD T. BISTRONG (D.D.C. 2010)

NATURE OF THE BUSINESS

Military and law enforcement equipment. Richard T. Bistrong, a U.S. citizen, was vice-president for international sales of Armor Holdings, Inc., a protective equipment company headquartered in Jacksonville, Florida.

INFLUENCE TO BE OBTAINED

From 2001 to 2006, Bistrong and others used agents and consultants to make corrupt payments to foreign officials to obtain business for a protective equipment company and then concealed those payments by falsifying invoices. Bistrong made payments through an agent to a U.N. procurement official to obtain non-public information about other bids submitted for a contract to supply U.N. peacekeeping forces with body armor. Bistrong also used a third-party intermediary to make payments based on an invoice for marketing services to a Dutch procurement officer who used his influence to have the National Police Services Agency of the Netherlands issue a tender that could be satisfied only by pepper spray manufactured by Bistrong's employer. Further, Bistrong admitted that he had instructed a colleague to pay a kickback to a company designated by an official with INECN in exchange for INECN's purchase of fingerprint ink pads from Bistrong's employer.

According to media reports, Bistrong is the individual who facilitated introductions between undercover U.S. government agents and the 22 members of the military and law enforcement products industry who were later charged with offering bribes to the Minister of Defense of an unnamed African country (the so-called "SHOT-Show" cases). Jonathan Spiller, former CEO of Armor Holdings, was one of the 22 executives and employees. Armor Holdings became a subsidiary of BAE Systems in 2007 and voluntarily disclosed the unlawful conduct to the DOJ and SEC.

ENFORCEMENT

On January 21, 2010, the DOJ filed a criminal information charging Bistrong with conspiracy to violate the FCPA's anti-bribery provision, its books-and-records provisions, and the Department of Commerce's export license requirements. On September 16, 2010, Bistrong pleaded guilty to one count of conspiracy to violate the FCPA. Prior to his sentencing, the DOJ requested that Bistrong be spared jail based on his "extraordinary cooperation." However, on July 31, 2012, Bistrong was sentenced to 18 months in prison followed by 36 months' probation.

Meanwhile, the SHOT-Show cases were dismissed in their entirety in February 2012.

Separately, Armor Holdings, Inc. entered into a non-prosecution agreement with the DOJ, agreeing to pay a $10.29 million fine. Armor Holdings also signed an agreement with the SEC, consenting to entry of a permanent injunction against further violations and agreeing to pay $1,552,306 in disgorgement, $458,438 in prejudgment interest, and a civil money penalty of $3,680,000.

See DOJ Digest Number B-121 and B-94.
See SEC Digest Number D-98.

KEY FACTS

Citation. *United States v. Bistrong*, No. 1:10-cr-0021 (D.D.C. 2010).

Date Filed. January 21, 2010.

Country. Netherlands; Nigeria.

Date of Conduct. 2001 – 2006.

Amount of the Value. Approximately $4.4 million.

Amount of Business Related to the Payment. At least $8.4 million.

Intermediary. Agents.

Foreign Official. U.N. procurement official, Dutch procurement officer, and an official with the Independent National Election Commission of Nigeria ("INECN").

FCPA Statutory Provision. Conspiracy (Anti-Bribery; Books-and-Records).

Other Statutory Provision. Conspiracy (International Emergency Economic Powers Act; Expert Administration Regulations).

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Agent of Issuer; Conspiracy.

Defendant's Citizenship. United States.

Total Sanction. 18-Months Imprisonment.

Related Enforcement Actions. *United States v. Armor Holdings, Inc.*; *United States v. Alvirez, et al.*; *United States v. Ashiblie*; *United States v. Bigelow*; *United States v. Caldwell*; *United States v. Cohen*; *United States v. Geri*; *United States v. Godsey*; *United States v. Goncalves*; *United States v. Mishkin*; *United States v. Mushriqui*; *United States v. Painter*; *United States v. Patel*; *United States v. Paz*; *United States v. Spiller*; *United States v. Weisler*; *United States v. Wier III*.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

95. IN RE UTSTARCOM, INC. (2009)[71]

NATURE OF THE BUSINESS

Provision of global telecommunications services, including the design, manufacture, and sales of network equipment and handsets by UTStarcom China Co. Ltd., a wholly-owned subsidiary of UTStarcom, Inc. ("UTStarcom"), a Delaware corporation.

INFLUENCE TO BE OBTAINED

Obtaining lucrative telecommunications contracts for UTStarcom China Co. Ltd. between 2002 and 2007, UTStarcom paid for more than 225 overseas "training" trips for employees of Chinese government-owned telecommunications companies. In actuality, the trips were primarily for sightseeing. UTStarcom arranged for the all-expense paid trips to destinations including Hawaii, Las Vegas, and New York to obtain and retain customer contracts and then improperly recorded the trips as training expenses.

In 2006, UTStarcom's audit committee began an internal investigation into the improper payments which eventually uncovered and disclosed the infractions.

ENFORCEMENT

On December 31, 2009, UTStarcom entered into a non-prosecution agreement with the DOJ, agreeing to pay a $1.5 million penalty, implement rigorous internal controls, and cooperate fully going forward.

In a complaint filed December 31, 2009, the SEC alleged corrupt conduct by UTStarcom in addition to the provision of travel detailed in the non-prosecution agreement with the DOJ. On April 13, 2011, without admitting or denying the allegations, UTStarcom consented to entry of final judgment in its matter against the SEC.

See SEC Digest Number D-68.
See Parallel Litigation Digest Number H-A9.

KEY FACTS

Citation. *In re UTStarcom* (2010).

Date Filed. December 31, 2009.

Country. China.

Date of Conduct. 2001 – 2007.

Amount of the Value. $7 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign Official. Employees of Chinese Government-Owned Telecommunications Companies.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $1,500,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *SEC v. UTStarcom Inc.*

Total Combined Sanction. $3,000,000.

[71] Matter resolved through non-prosecution agreement (Dec. 2009).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

94. UNITED STATES V. DANIEL ALVIREZ AND LEE ALLEN TOLLESON (D.D.C. 2009)
UNITED STATES V. HELMIE ASHIBLIE (D.D.C. 2009)
UNITED STATES V. ANDREW BIGELOW (D.D.C. 2009)
UNITED STATES V. R. PATRICK CALDWELL AND STEPHEN GERARD GIORDANELLA (D.D.C. 2009)
UNITED STATES V. YOCHANAN R. COHEN (D.D.C. 2009)
UNITED STATES V. HAIM GERI (D.D.C. 2009)
UNITED STATES V. JOHN GREGORY GODSEY AND MARK FREDERICK MORALES (D.D.C. 2009)
UNITED STATES V. AMARO GONCALVES (D.D.C. 2009)
UNITED STATES V. SAUL MISHKIN (D.D.C. 2009)
UNITED STATES V. JOHN M. MUSHRIQUI AND JEANA MUSHRIQUI (D.D.C. 2009)
UNITED STATES V. DAVID PAINTER AND LEE WARES (D.D.C. 2009)
UNITED STATES V. PANKESH PATEL (D.D.C. 2009)
UNITED STATES V. OFER PAZ (D.D.C. 2009)
UNITED STATES V. JONATHAN M. SPILLER (D.D.C. 2009)
UNITED STATES V. ISRAEL WEISLER AND MICHAEL SACKS (D.D.C. 2009)
UNITED STATES V. JOHN BENSON WEIR III (D.D.C. 2009)

NATURE OF THE BUSINESS

Military and law enforcement equipment.

INFLUENCE TO BE OBTAINED

On January 19, 2010, the DOJ unsealed the indictments of 22 executives and employees of companies in the military and law enforcement equipment industry for engaging in a scheme to bribe foreign government officials. According to the DOJ, it is the largest single investigation and prosecution against individuals in the history of the DOJ's enforcement of the FCPA and the first large-scale use of undercover law enforcement techniques to uncover FCPA violations. FBI agents arrested 21 of the defendants in Las Vegas during an industry conference. The indictments are known as the "SHOT-Show" cases.

According to the DOJ press release, a business associate of the 22 executives and employees facilitated introductions with undercover FBI agents posing as representatives or procurement officers for the Minister of Defense of an unnamed African country. The defendants allegedly agreed to pay a sales agent a 20% commission to obtain a contract to outfit the African country's presidential guard, knowing that half the "commission" would be paid as a bribe to the Minister of Defense and half would be split between the sales agent and the business associate who facilitated the introduction. The DOJ alleges the defendants made "commission" payments to bank accounts in the U.S. as test sales for the purpose of winning the larger contract.

According to media reports, Richard T. Bistrong is the individual, unnamed in the indictments, who facilitated introductions between the undercover FBI agents and the 22 indicted individuals. On January 21, 2010, the DOJ charged Bistrong with conspiracy to violate the FCPA, but with regard to actions unrelated to the "SHOT-Show" sting. Bistrong pleaded guilty on September 16, 2010, and on July 31, 2012, he was sentenced to 18 months in prison followed by 36 months' probation.

ENFORCEMENT

KEY FACTS

Citation. *United States v. Alvirez, et al.*, No. 09-cr-348 (D.D.C. 2009); *United States v. Ashiblie*, No. 09-cr-347 (D.D.C. 2009); *United States v. Bigelow*, No. 09-cr-346 (D.D.C. 2009); *United States v. Caldwell, et al.*, No. 09-cr-345 (D.D.C. 2009); *United States v. Cohen*, No. 09-cr-343 (D.D.C. 2009); *United States v. Geri*, No. 09-cr-342 (D.D.C. 2009); *United States v. Godsey, et al.*, No. 09-cr-349 (D.D.C. 2009); *United States v. Goncalves*, No. 09-cr-335 (D.D.C. 2009); *United States v. Mishkin*, No. 09-cr-344 (D.D.C. 2009); *United States v. Mushriqui*, No. 09-cr-336 (D.D.C. 2009); *United States v. Painter, et al.*, No. 09-cr-337 (D.D.C. 2009); *United States v. Patel*, No. 09-cr-338 (D.D.C. 2009); *United States v. Paz*, No. 09-cr-339 (D.D.C. 2009); *United States v. Spiller*, No. 09-cr-350 (D.D.C. 2009); *United States v. Weisler*, et al., No. 09-cr-340 (D.D.C. 2009); *United States v. Weir*, No. 09-cr-341 (D.D.C. 2009).

Date Filed. December 11, 2009.

Date Unsealed. January 19, 2010.

Country. None (FBI Sting).

Date of Conduct. 2009.

Amount of the Value. Various payments made as part of a 20% commission to sales agents that defendants believed represented a government official.

Amount of Business Related to the Payment. Approximately $15 million.

Intermediary. Sales Agents.

Foreign Official. None (Undercover FBI Sting).

FCPA Statutory Provision. Conspiracy (Anti-

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

On December 11, 2009, the DOJ filed indictments charging the 22 executives and employees with conspiring to violate the FCPA, substantive violations of the FCPA, and conspiring to engage in money laundering. The original indictments did not charge a single conspiracy but a number of separate conspiracies. However, on March 16, 2010, the DOJ filed a superseding indictment replacing the original 16 indictments in the "SHOT-Show" cases with one indictment that alleges a single overarching conspiracy. The 44 count superseding indictment seeks forfeiture of any proceeds traceable to FCPA offenses or money laundering. In support of the conspiracy allegation, the superseding indictment alleges that the defendants attended a dinner in Washington, DC on October 5, 2009 to celebrate the completion of the first phase of the contract with the African company and that they traveled to the "SHOT-Show" conference in Las Vegas in January 2010 in connection with the same business.

Three defendants pleaded guilty to conspiring to violate the FCPA: Daniel Alvirez on March 11, 2011; Jonathan Spiller on March 29, 2011; and Haim Geri on April 28, 2011.

The trials resulted in a series of mistrials and acquittals, and, in February 2012, the court granted the DOJ's motion to dismiss the charges against the remaining defendants. Later that month, charges against Alvirez, Spiller, and Geri were dismissed as well.

See DOJ Digest Number B-96.

Bribery); Anti-Bribery.

Other Statutory Provision. Conspiracy (Money Laundering); Criminal Forfeiture.

Disposition. Charges Dismissed.

Defendant Jurisdictional Basis. Domestic Concern (Goncalves; John Mushriqui; Jeana Mushriqui; Spiller; Weisler; Weir; Geri; Cohen; Mishkin; Caldwell; Giordanella; Bigelow; Ashiblie; Alvirez; Tolleson; Godsey; Morales); Territorial Jurisdiction (Painter; Wares; Patel; Paz; Sacks).

Defendant's Citizenship. United States (Goncalves; John Mushriqui; Jeana Mushriqui; Spiller; Weisler; Weir; Geri; Cohen; Mishkin; Caldwell; Giordanella; Bigelow; Ashiblie; Alvirez; Tolleson; Godsey; Morales); United Kingdom (Painter; Wares; Patel; Sacks); Israel (Paz).

Total Sanction. None.

Related Enforcement Actions. *United States v. Bistrong.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

93. UNITED STATES V. JOEL ESQUENAZI, CARLOS RODRIGUEZ, ROBERT ANTOINE, JEAN RENE DUPERVAL, AND MARGUERITE GRANDISON (S.D. FLA. 2009)
UNITED STATES V. WASHINGTON VASCONEZ CRUZ, CECILIA ZURITA, AMADEUS RICHERS, CINERGY TELECOMMUNICATIONS, INC., PATRICK JOSEPH, JEAN RENE DUPERVAL, AND MARGUERITE GRANDISON
(SECOND SUPERSEDING INDICTMENT, FILED JANUARY 2012)
UNITED STATES V. JEAN FOURCAND (S.D. FLA. 2010)

NATURE OF THE BUSINESS.

Three Miami-Dade County telecommunications companies executed a series of contracts with Telecommunications D'Haiti that allowed the companies' customers to place telephone calls to Haiti. U.S. citizens Joel Esquenazi and Carlos Rodriguez are executives of one of the unnamed Miami-Dade telecommunications companies. Cinergy Telecommunications, Inc. ("Cinergy") is one of the companies alleged to have paid bribes, with Washington Vasconez Cruz (Cinergy's President), his wife Cecilia Zurita (former Vice President of Cinergy), and Amadeus Richers (Cinergy's Director) authorizing the payments. Jean Rene Duperval, Robert Antoine and Patrick Joseph, Haitian citizens, are former Directors of International Relations of Telecommunications D' Haiti, Haiti's state-owned national telecommunications company. Marguerite Grandison, a permanent resident of the U.S. and sister of Duperval, is the President of Telecom Consulting Services Corp., one of the Miami-Dade County telecommunications companies.

INFLUENCE TO BE OBTAINED

Esquenazi, Rodriguez, Grandison, Cinergy, Vasconez, and Richers were charged with making illegal payments to Haitian officials Duperval and Antoine. In exchange, Duperval and Antoine are alleged to have conferred business advantages on the Miami-Dade County companies, including issuing preferred telecommunications rates, reducing the number of minutes for which payment was owed, and giving a variety of credits to owed sums. A shell company, owned by alleged co-conspirator Juan Diaz, and co-defendant Grandison's company were allegedly used to make the payments to Duperval and Antoine.

ENFORCEMENT

On December 4, 2009, the DOJ filed a 21-count indictment charging Esquenazi, Rodriguez, and Grandison with conspiring to violate and violating the anti-bribery provisions of the FCPA, money laundering, and other offenses. Duperval and Antoine, the alleged recipients of the bribes, are charged with money laundering, not FCPA violations. On July 13, 2011, a superseding indictment was filed against Washington Vasconez Cruz, Amadeus Richers, Cinergy Telecommunications, Inc., Patrick Joseph, Jean Rene Duperval and Marguerite Grandison.

A special unit of the Haitian National Police arrested Duperval in Haiti and expelled him to the U.S. to face charges. Antoine pleaded guilty to conspiracy to commit money laundering, and on June 1, 2010, he was sentenced to 48 months in prison. On May 29, 2012, Antoine's sentence was reduced to 18 months upon motion by the DOJ. In April 2009, alleged co-conspirators Diaz and Antonio Perez pleaded guilty to conspiring to violate the FCPA's anti-bribery provision and to commit money laundering.

KEY FACTS

Citation. *United States v. Esquenazi, et al.*, 1:09-cr-21010 (S.D. Fla. 2009); *United States v. Fourcand*, 1:10-cr-20062 (S.D. Fla. 2010).

Date Filed. December 4, 2009 (Esquenazi; Rodriguez; Antoine; Duperval; Grandison); February 1, 2010 (Fourcand); July 13, 2011 (Vasconez; Zurita; Richers; Cinergy; Joseph).

Country. Haiti.

Date of Conduct. 2001 – 2006.

Amount of the Value. $888,818 in illegal money transfers in furtherance of the conspiracy and another $75,000 in bribes.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Shell company and co-defendant Grandison's company.

Foreign Official. Duperval, Antoine, and Joseph, Directors of International Relations of Telecommunications D'Haiti.

FCPA Statutory Provision.

- **Joel Esquenazi**. Conspiracy (Anti-Bribery and Wire Fraud); Anti-Bribery.
- **Carlos Rodriguez**. Conspiracy (Anti-Bribery and Wire Fraud); Anti-Bribery.
- **Marguerite Grandison**. Conspiracy (Anti-Bribery and Wire Fraud); Anti-Bribery.
- **Washington Vasconez Cruz**. Conspiracy (Anti-Bribery and Wire Fraud); Anti-Bribery.
- **Cecila Zurita**. Conspiracy (Anti-Bribery and Wire Fraud); Anti-Bribery.
- **Amadeus Richers**. Conspiracy (Anti-Bribery and Wire Fraud); Anti-Bribery.
- **Cinergy Telecommunications, Inc.** Conspiracy (Anti-Bribery and Wire Fraud); Anti-Bribery.

Other Statutory Provision.

- **Joel Esquenazi**. Conspiracy (Money Laundering); Money Laundering.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

On January 19, 2012, a second superseding indictment was filed against Vasconez, Richers, Cinergy, Joseph, Duperval, and Grandison, with the addition of Vasconez's wife, Cecilia Zurita (former Vice President of Cinergy).

On February 24, 2012, the court issued an order of dismissal as to Cinergy after the government learned that Cinergy was a non-operational entity that effectively exists only on paper. Cinergy then filed a petition for re-hearing on, or in the alternative, clarification of, the order of dismissal. The court denied the motion, and Cinergy filed, and subsequently voluntarily dismissed, an appeal to the Eleventh Circuit.

Duperval's trial began on March 1, 2012. He was found guilty on all counts, and he was sentenced to 108 months' imprisonment and three years of supervised release, along with a $2,100 assessment.

On February 8, 2012, Joseph pleaded guilty to conspiracy to commit money laundering, and was sentenced to 12 months in prison on July 6, 2012.

In February 2012, Grandison entered into an 18-month pretrial diversion agreement with the DOJ. Upon successful completion of the diversion program in August 2013, the charges against Grandison were dismissed on September 24, 2013.

The court denied multiple motions to dismiss filed by Esquenazi, including one motion to dismiss challenging whether Duperval and Antoine are foreign officials within the meaning of the FCPA. On November 25, 2010, as a result of a redacted confession by Duperval, Judge Jose E. Martinez ordered the trial of Esquenazi and Rodriguez severed from the trial of Duperval and Grandison. The trial of Esquenazi and Rodriguez began on July 18, 2011, and both were convicted on all counts on August 5, 2011. On October 13, 2011, the court denied motions for judgment of acquittal and a new trial filed by Esquenazi and Rodriguez. On October 25, 2011, Esquenazi was sentenced to 15 years in prison, the longest sentence imposed to date in a case involving violations of the FCPA. Rodriguez was sentenced to 84 months. The defendants were also ordered to forfeit $3.09 million. After appealing the decision, on May 16, 2014, the Eleventh Circuit affirmed the lower court's convictions and elected to broadly define the meaning of "foreign official" under the FCPA. The U.S. Supreme Court denied Esquenazi's petition for certiorari on October 6, 2014.

Vasconez, Zurita, and Richers are fugitives.

The DOJ acknowledged the substantial assistance of Haitian authorities in the investigation.

RELATED OCASE

U.S. v. Fourcand (S.D. Fla. 2010).

On February 19, 2010, Jean Fourcand, a U.S. citizen, pleaded guilty to money laundering. Fourcand received funds in 2001 and 2002 from U.S. telecommunications companies for the benefit of Robert Antoine. The funds Fourcand received were bribery payments, and Antoine conferred advantages on the three Miami-Dade County telecommunications companies in return. Juan Diaz served as intermediary for the funds Fourcand received. Fourcand agreed to forfeit $18,500. On May 5, 2010, Fourcand was sentenced to six months in prison.

See DOJ Digest Numbers B-85 and B-86.

- **Carlos Rodriguez**. Conspiracy (Money Laundering); Money Laundering.
- **Robert Antoine**. Conspiracy (Money Laundering).
- **Jean Rene Duperval**. Conspiracy (Money Laundering); Money Laundering.
- **Marguerite Grandison**. Conspiracy (Money Laundering); Money Laundering.
- **Washington Vasconez Cruz**. Conspiracy (Money Laundering); Money Laundering.
- **Cecila Zurita**. Conspiracy (Money Laundering); Money Laundering.
- **Amadeus Richers**. Conspiracy (Money Laundering); Money Laundering.
- **Cinergy Telecommunications, Inc.** Conspiracy (Money Laundering); Money Laundering.
- **Patrick Joseph**. Conspiracy (Money Laundering); Money Laundering.
- **Jean Fourcand**. Money Laundering.

Disposition.

- **Joel Esquenazi**. Convicted.
- **Carlos Rodriguez**. Convicted.
- **Robert Antoine**. Plea Agreement.
- **Jean Rene Duperval**. Convicted.
- **Marguerite Grandison**. Charges Dismissed.
- **Washington Vasconez Cruz**. Fugitive.
- **Cecila Zurita**. Fugitive.
- **Amadeus Richers**. Fugitive.
- **Cinergy Telecommunications, Inc.** Charges Dismissed.
- **Patrick Joseph**. Plea Agreement.
- **Jean Fourcand**. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern; Conspiracy (Esquenazi; Rodriguez; Grandison; Vasconez; Zurita; Richers; Cinergy).

Defendant's Citizenship. United States (Esquenazi; Rodriguez; Grandison; Vasconez; Cinergy; Zurita); Haiti (Antoine; Duperval; Joseph) Gernman/Brazil (Richers)

Total Sanction.

- **Joel Esquenazi**. 180-Months Imprisonment; $3,095,919 Criminal Forfeiture.
- **Carlos Rodriguez**. 84-Months Imprisonment;

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

	$3,095,919 Criminal Forfeiture. • **Robert Antoine**. 18-Months; $3,433,081 Criminal Forfeiture. • **Jean Rene Duperval**. 108-Months; $499,341 Criminal Forfeiture. • **Marguerite Grandison**. None. • **Washington Vasconez Cruz**. Pending. • **Cecila Zurita**. Pending. • **Amadeus Richers**. Pending. • **Cinergy Telecommunications, Inc.** None. • **Patrick Joseph**. 12-Months Imprisonment; $955,697 Criminal Forfeiture. • **Jean Fourcand**. 6-Months; $18,500 Criminal Forfeiture. **Related Enforcement Actions.** None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

92. UNITED STATES V. JOHN JOSEPH O'SHEA (S.D. TEX. 2009)
UNITED STATES V. FERNANDO MAYA BASURTO (S.D. TEX. 2009)

NATURE OF THE BUSINESS

John Joseph O'Shea was the general manager of the Texas unit of ABB, a multinational conglomerate headquartered in Switzerland. Fernando Maya Basurto directed a Mexican company that served as a sales representative for ABB in Mexico.

INFLUENCE TO BE OBTAINED

Federal prosecutors allege O'Shea conspired with Basurto to bribe four officials of the CFE to obtain lucrative contracts for upgrading Mexico's electrical network. ABB acquired the Texas unit in 1999, when prosecutors allege the bribery scheme was already underway. CFE officials were allegedly to be paid 10% of the revenues from a contract awarded to ABB known as the Evergreen contract. The officials received over $900,000 in bribes before an internal investigation at ABB halted the transfers. The payments were routed through Mexican shell corporations and a bank account in Germany. Basurto and another co-conspirator received approximately 9% on the value of the contracts in exchange for being a conduit for the bribes and other services. O'Shea also received kickback payments from Basurto and the other co-conspirator under this arrangement. O'Shea was ultimately fired, and after that, he, Basurto, and some of the Mexican officials allegedly tried to cover up the bribery by creating fake, backdated documents. ABB voluntarily disclosed the suspected bribery to U.S. and Mexican authorities in 2005.

ENFORCEMENT

On November 16, 2009, Basurto pleaded guilty to one count of conspiracy to violate the FCPA, money laundering, and falsifying records. Pursuant to his plea, he agreed to forfeit $2,030,076.74. On April 5, 2012, Basurto was sentenced to time served, which amounted to the 22 months he served in jail after his arrest in 2009.

Also on November 16, 2009, the DOJ charged O'Shea with conspiracy, twelve counts of violating the FCPA, four counts of international money laundering violations, and falsifying records in a federal investigation. On December 3, 2009, O'Shea pleaded not guilty to all counts. On January 16, 2012, after a three-day jury trial, U.S. District Judge Lynn N. Hughes granted O'Shea's motion for acquittal on the substantive charges. Judge Hughes commented that the government's principal witness, Basurto, Jr., "knows almost nothing." Additionally, Judge Hughes noted that while the government is not required to "trace a particular dollar to a particular pocket of a particular official," the government is required to show some connection between a payment and a foreign official, which it failed to do in O'Shea's case. On February 9, 2012, upon the government's motion to dismiss, the remaining counts of the indictment were dismissed with prejudice.

See DOJ Digest Number B-102.
See SEC Digest Numbers D-77 and D-17.

KEY FACTS

Citation. *United States v. O'Shea*, No. 09-cr-00629 (S.D. Tex. 2009); *United States v. Basurto*, No. 09-cr-00325 (S.D. Tex. 2009).

Date Filed. November 16, 2009.

Country. Mexico.

Date of Conduct: 1997 – 2005.

Amount of the Value. Over $900,000.

Amount of Business Related to the Payment. $81 million.

Intermediary. Mexican Shell Companies.

Foreign Official. Four top officials with the Comisión Federal de Electricidad ("CFE"), Mexico's national electric grid operator.

FCPA Statutory Provision.

- **John O'Shea**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Fernando Basurto**. Conspiracy.

Other Statutory Provision.

- **John O'Shea**. Money Laundering; Falsification of Record; Criminal Forfeiture.
- **Fernando Basurto**. Conspiracy (Money Laundering); Conspiracy (Falsification of Records); Criminal Forfeiture.

Disposition.

- **John O'Shea**. Acquitted.
- **Fernando Basurto**. Plea Agreement.

Defendant Jurisdictional Basis.

- **John O'Shea**. Domestic Concern.
- **Fernando Basurto**. Agent of Domestic Concern.

Defendant's Citizenship.

- **John O'Shea**. United States.
- **Fernando Basurto**. Mexico.

Total Sanction.

- **John O'Shea**. None.
- **Fernando Basurto**. Time Served (Approx. 22-Months); Forfeiture of $2,030,076.74.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

91. UNITED STATES V. CHARLES PAUL EDWARD JUMET (E.D. VA. 2009)
UNITED STATES V. JOHN W. WARWICK (E.D. VA. 2009)

NATURE OF THE BUSINESS

Maritime contract from the Panamanian government. Charles Paul Edward Jumet, a U.S. citizen, was vice president and later president of the Ports Engineering Consultants Corporation ("PECC"), a Panama company. John Warwick, a U.S. citizen, was president of PECC.

INFLUENCE TO BE OBTAINED

In 1997, PECC was awarded a no-bid, 20-year contract by the Administrator of Panama's National Maritime Ports Authority allowing PECC to collect tariffs from ships that went into the port of Panama, maintain the lighthouse and buoys, and conduct engineering studies. In exchange for the contract, Jumet and Warwick authorized over $200,000 in corrupt payments to the Administrator of Panama's National Maritime Ports Authority and a high-ranking elected executive official of the Republic of Panama. The payments were made in the form of "dividends" to shareholder shell companies belonging to these officials. Jumet claimed a "dividend" check for $18,000 was a donation for the high-ranking official's re-election campaign. The contract was suspended by Panama's Comptroller General in 2000, but after an investigation, payments to PECC by the Panamanian government resumed in 2003.

ENFORCEMENT

On November 10, 2009, the DOJ charged Jumet with conspiracy to bribe foreign officials in violation of the FCPA, as well as making a false statement to the U.S. government that a check was a campaign donation rather than a bribe. Jumet pleaded guilty on November 13, 2009. As part of his plea agreement, Jumet agreed to cooperate with the DOJ in its ongoing investigation. On April 19, 2010, Jumet was sentenced to 87 months of imprisonment, which consists of 60 months for the count of violating the FCPA and 27 months for the count of making a false statement, to be served consecutively. He was also sentenced to three years of supervised release on each count, to run concurrently, and a fine of $15,000 on the count of violating the FCPA.

On December 15, 2009, the DOJ charged Warwick with conspiracy to bribe foreign officials in violation of the FCPA. Warwick pleaded guilty on February 10, 2010. As part of his plea agreement, Warwick agreed to forfeit $331,000, which represents the proceeds of this crime. On June 25, 2010, Warwick was sentenced to 37 months of imprisonment and a supervised release of two years.

Jumet and Warwick may have only been charged with conspiracy to violate the FCPA, rather than substantive violations of the FCPA, because almost all of their corrupt conduct took place outside of the statute of limitations period. The most recent corrupt payment was made in July 2003, falling outside of the five-year statute of limitations period, so the DOJ may have made a request for foreign evidence to toll the statute of limitations.

KEY FACTS

Citation. *United States v. Jumet*, No. 09-cr-00397 (E.D. Va. 2009); *United States v. Warwick*, No. 09-cr-00449 (E.D. Va. 2009).

Date Filed. November 10, 2009 (Jumet); December 15, 2009 (Warwick).

Country. Panama.

Date of Conduct: 1996 – 2003.

Amount of the Value. Over $200,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign Official. Administrator of Panama's National Maritime Ports Authority and a high-ranking elected executive official of the Republic of Panama.

FCPA Statutory Provision.

- **Charles Jumet**. Conspiracy.
- **John Warwick**. Conspiracy.

Other Statutory Provision.

- **Charles Jumet**. False Statement.

Disposition.

- **Charles Jumet**. Plea Agreement.
- **John Warwick**. Plea Agreement.

Defendant Jurisdictional Basis.

- **Charles Jumet**. Domestic Concern.
- **John Warwick**. Domestic Concern.

Defendant's Citizenship.

- **Charles Jumet**. United States.
- **John Warwick**. United States.

Total Sanction.

- **Charles Jumet**. 60-Months Imprisonment; Criminal Fine of $15,000.
- **John Warwick**. 37-Months Imprisonment; Forfeiture of $331,000.

Related Enforcement Actions: None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

90. UNITED STATES V. AGCO LTD. (D.D.C. 2009)

NATURE OF THE BUSINESS

AGCO Ltd. is the U.K. subsidiary of AGCO Corp. ("AGCO"), a U.S. corporation based in Duluth, Georgia that manufactures and sells agricultural machinery and equipment.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil-for-Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value.

Following the creation of the U.N. Oil-for-Food Program in 2000, AGCO Ltd. hired a Jordanian agent to help increase its business with Iraq. From 2001 to 2002, AGCO Ltd. paid approximately $553,000 to the former Iraqi Ministry of Agriculture through its Jordanian agent to secure three contracts for the sale of agricultural equipment. To pay these kickbacks, AGCO Ltd. inflated the price of its contracts by 13 to 21% before submitting the contracts to the U.N. for approval. From 2001 to 2003, AGCO Ltd. falsely described these kickbacks in its books and records as "Ministry Accruals" it paid to its agent. AGCO's legal department failed to review AGCO Ltd.'s contracts, agency agreements, and payment requests submitted to the U.N. in connection with AGCO's Oil-for-Food contracts.

ENFORCEMENT

On September 30, 2009, the DOJ filed a criminal information against AGCO Ltd., charging it with one count of conspiracy to commit wire fraud and to violate the books and records provisions of the FCPA. AGCO acknowledged responsibility for its subsidiaries' actions related to the U.N. Oil-for-Food Program and entered into a three-year deferred prosecution agreement ("DPA") with the DOJ.

Under the DPA, AGCO agreed to pay a penalty of $1.6 million and cooperate with the DOJ in further related investigations. AGCO also agreed to implement an anti-corruption compliance program and review, and modify if necessary, its internal controls. If AGCO abides by the terms of the DPA, the government will dismiss the criminal information filed against AGCO Ltd. at the end of the three-year term of the agreement.

AGCO also settled related civil charges with the SEC and other Oil-for-Food related charges brought by the Danish State Prosecutor for Serious Economic Crimes related to contracts executed by AGCO's Danish subsidiary, AGCO Danmark A/S.

See SEC Digest Number D-66.
See Ongoing Investigation Number F-2.

KEY FACTS

Citation. *United States v. AGCO Ltd.*, No. 1:09-cr-249-RJL (D.D.C. 2009).

Date Filed. September 30, 2009.

Country. Iraq.

Date of Conduct. 2000 – 2003.

Amount of the Value. Approximately $553,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Jordanian Agent.

Foreign Official. Former Iraqi Ministry of Agriculture.

FCPA Statutory Provision. Conspiracy (Books-and-Records).

Other Statutory Provision. Conspiracy (Wire Fraud).

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. United Kingdom.

Total Sanction. $1,600,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *SEC v. AGCO Corp.*

Total Combined Sanction. $19,907,393.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

89. IN RE HELMERICH & PAYNE, INC. (2009)[72]

NATURE OF THE BUSINESS

Helmerich & Payne, Inc. ("H&P"), a U.S. corporation, engages in the contract drilling of oil and gas wells in the United States and internationally.

INFLUENCE TO BE OBTAINED

Between 2003 and 2008, H&P's Argentine and Venezuelan subsidiaries made approximately $173,000 in improper payments through their customs brokers to customs officials in Argentina and Venezuela to allow and to expedite the importation and exportation of equipment and materials that were not in compliance with the regulations of those countries. Those improper payments enabled the subsidiaries to avoid approximately $204,000 in expenses they would have incurred had they properly imported and exported the equipment and materials. The subsidiaries also made approximately $10,000 in facilitation payments. The customs brokers disguised the improper payments and the facilitation payments on their invoices to the subsidiaries.

ENFORCEMENT

On July 29, 2009, the DOJ and H&P entered into a 2-year non-prosecution agreement, under which H&P agreed to pay a fine of $1 million, to take remedial actions, and to make periodic reports to the DOJ regarding its compliance with the NPA. H&P also settled a related action with the SEC, consenting to a disgorgement of $375,681 including prejudgment interest.

See SEC Digest Number D-64.

KEY FACTS

Citation. *In re Helmerich & Payne, Inc.* (2009).

Date Filed. July 29, 2009.

Country. Argentina; Venezuela.

Date of Conduct. 2003 – 2008.

Amount of the Value. Approximately $173,000.

Amount of Business Related to the Payment. The Avoidance of Approximately $204,000 in Customs-Related Costs.

Intermediary. Customs Brokers.

Foreign Official. Argentine and Venezuelan Customs Officials.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $1,000,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *In the Matter of Helmerich & Payne, Inc.*

Total Combined Sanction. $1,375,681.22.

[72] Matter resolved through non-prosecution agreement (July 2009).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

88. UNITED STATES V. CONTROL COMPONENTS, INC. (C.D. CAL. 2009)

NATURE OF THE BUSINESS

Control Components, Inc. ("CCI"), a Delaware corporation based in Rancho Santa Margarita, California, designs and manufactures severe service control valves used in the nuclear, oil and gas, and power generation industries. CCI is a wholly-owned subsidiary of British engineering company, IMI plc ("IMI").

INFLUENCE TO BE OBTAINED

From 2003 through 2007, CCI senior executives approved, and in some cases personally made, payments totaling approximately $4.9 million to officers and employees of numerous state-owned customers for the purpose of influencing the award of contracts and project technical specifications. From these payments, CCI derived approximately $31.7 million in net profits.

During the same period, CCI made corrupt payments of approximately $1.95 million to employees of privately owned companies. In total, CCI made approximately 236 corrupt payments in more than 30 countries.

CCI executives also rewarded customers' employees for the award of contracts with expensive gifts and extravagant overseas holidays to destinations including Disneyland, Las Vegas, and Hawaii under the guise of training and inspection trips. In addition, CCI paid the college tuition of the children of at least two executives of CCI's customers.

In 2004, CCI employees provided false and misleading information in connection with an internal audit of CCI commission payments carried out by IMI and created false invoices to cover up illicit payments. In 2007, many of the same employees continued to provide false and misleading information and destroyed documents to mislead internal investigators.

ENFORCEMENT

On July 22, 2009, federal prosecutors filed a criminal information against CCI alleging one count of conspiracy to violate the anti-bribery provisions of the FCPA and the Travel Act (through commercial bribery in violation of California state law). CCI was also charged with two counts of violation of the anti-bribery provisions of the FCPA based on payments to employees of China National Offshore Oil Company, totaling approximately $58,500, and Korea Hydro and Nuclear Power, totaling approximately $57,173. On the same day, CCI and the DOJ entered an agreement under which CCI pleaded guilty to the three count indictment. CCI agreed to: pay a criminal fine of $18,200,000 and a special assessment of $1,200, create and adopt an anti-corruption compliance code, and enter a three-year term of organizational probation during which time it will retain an independent corporate compliance monitor. The fine agreed upon is below the applicable sentencing guideline range in recognition of CCI's disclosure of evidence and termination of CCI officers and employees primarily involved in the illegal conduct, among other factors. The district court entered judgment and commitment against CCI, in accordance with the terms of the plea agreement, on July 31, 2009.

In related matters, the DOJ obtained indictments against eight former CCI executives related to the same conduct—as of the end of 2013, seven have pleaded guilty and have been sentenced. The remaining defendant, Han Yong Kim, is considered a fugitive after his failed motion for leave to file a

KEY FACTS

Citation. *United States v. Control Components, Inc.*, No. 09-00162 (C.D. Cal. 2009).

Date Filed. July 22, 2009.

Country. China; South Korea; Malaysia; United Arab Emirates.

Date of Conduct. 2003 – 2007.

Amount of the Value. $4,900,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Consultants.

Foreign Official. Employees of various state-owned entities, including, but not limited to: employees of Jiangsu Nuclear Power Corporation, Guohua Electric Power, China Petroleum Materials and Equipment Corporation, PetroChina, Dongfang Electric Corporation, and China National Offshore Oil Company (China); Korea Hydro Nuclear Power (South Korea); Petronas (Malaysia); and National Petroleum Construction Company (United Arab Emirates).

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision. None.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. $18,200,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *United States v. Carson, et al.*; *United States v. Covino.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

special appearance, and U.S. officials continue to seek his extradition. Kim filed a renewed motion for leave to file a special appearance in May 2013.

See DOJ Digest Numbers B-84, B-79, and B-73.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

87. UNITED STATES V. NOVO NORDISK A/S (D.D.C. 2009)

NATURE OF THE BUSINESS

Novo Nordisk A/S is an international manufacturer of insulin, medicines, and other pharmaceutical supplies headquartered in Denmark.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil-for-Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value.

Novo Nordisk paid illegal kickbacks to the former government of Iraq to secure contracts to provide insulin and other medical supplies to Iraq under the U.N. Oil-for-Food Program. Novo Nordisk agents and employees in Greece and Jordan handled the sales to Iraq. Novo Nordisk inflated the price of contracts by 10% before submitting them to the United Nations for approval and then used the extra funds to make illegal payments to the Iraqi Ministry of Health through a Jordanian intermediary. Novo Nordisk inaccurately recorded the payments as "commissions" in its books and records.

The government did not allege bribery of any individual foreign governmental officials.

ENFORCEMENT

Federal prosecutors filed a criminal information against Novo Nordisk on May 11, 2009 charging conspiracy to commit wire fraud and violate the books and records provisions of the FCPA. Pursuant to a deferred prosecution agreement, Novo Nordisk agreed to pay a $9 million fine.

In a related settlement with the SEC, Novo Nordisk agreed to pay $3,025,066 in civil penalties and $6,005,079 in disgorgement and prejudgment interest.

See SEC Digest Number D-59.
See Ongoing Investigation Number F-2.

KEY FACTS

Citation. *United States v. Novo Nordisk A/S*, No. 09-cr-00126 (D.D.C. 2009).

Date Filed. May 11, 2009.

Country. Iraq.

Date of Conduct. 2001 – 2003.

Amount of the Value. $1.4 million.

Amount of Business Related to the Payment. €22 million.

Intermediary. Agent.

Foreign Official. Kimadia, a state-owned company which was part of the Iraqi Ministry of Health.

FCPA Statutory Provision. Conspiracy (Books-and-Records).

Other Statutory Provision. Conspiracy (Wire Fraud).

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Denmark.

Total Sanction. $9,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *SEC v. Novo Nordisk A/S*.

Total Combined Sanction. $18,030,145.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

86. UNITED STATES V. JUAN DIAZ (S.D. FLA. 2009)

NATURE OF THE BUSINESS

Three Miami-Dade County telecommunications companies executed a series of contracts with Telecommunications D'Haiti that allowed the companies' customers to place telephone calls to Haiti. Juan Diaz, a U.S. citizen, owned a shell company used by the Miami-Dade County telecommunications companies to make payments to government officials in Haiti.

INFLUENCE TO BE OBTAINED

Diaz and a co-conspirator, Antonio Perez, a former controller for one of the Miami-Dade County telecommunications companies, admitted they conspired with the Miami-Dade County companies to make "side payments" through a shell company, owned by Diaz, to the then-Director of International Relations and the then-Director General of Telecommunications D'Haiti from 2001 to 2003. In exchange, the foreign officials are alleged to have conferred business advantages on the Miami-Dade County companies, including issuing preferred telecommunications rates, reducing the number of minutes for which payment was owed, and giving a variety of credits to owed sums. Diaz helped conceal the payments by writing in nonexistent invoice numbers in the memo section of checks.

ENFORCEMENT

On April 22, 2009, the DOJ filed a one-count indictment against Diaz. On May 15, 2009, Diaz pleaded guilty to conspiring to violate the FCPA's anti-bribery provision and to commit money laundering. On July 30, 2010, Diaz was sentenced to 57 months in prison and ordered to pay $73,824 in restitution. Diaz also forfeited his right, title, and interest in assets totaling $1,028,852.

On January 24, 2011, Diaz's co-conspirator, Antonio Perez, was sentenced to 24 months in prison and 2 years of supervised release. He was ordered to pay $36,375, representing the amount of the proceeds of the conspiracy traceable to Perez's personal account.

On December 4, 2009, three executives of the Miami-Dade County companies allegedly involved in the scheme and two Haitian officials were indicted on related charges. On July 13, 2011, a superseding indictment was filed against one of the companies allegedly involved, two of the company's executives, and an additional Haitian official. On January 19, 2012, a second superseding indictment was filed, naming one additional defendant (another executive of the company, who was the wife of the company's CEO). Two executives have been convicted so far, with one sentenced to 15 years in prison, the longest sentence ever imposed in a case involving violations of the FCPA. Both are appealing their convictions. One of the officials has pleaded guilty, and was sentenced to 12 months in prison. Another official was convicted on all counts, and he was sentenced to 108 months imprisonment and three years' supervised release. He is appealing his sentence.

The DOJ acknowledged the substantial assistance of Haitian authorities in the investigation.

See DOJ Digest Numbers B-85 and B-93.

KEY FACTS

Citation. *United States v. Diaz*, No. 1:09-cr-20346 (S.D. Fla. 2009).

Date Filed. April 22, 2009.

Country. Haiti.

Date of Conduct. 2001 – 2003.

Amount of the Value. Diaz kept $73,824 as commissions and paid $955,028 in bribes to two Haitian officials.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Shell Company.

Foreign Official. Then-Director of International Relations and then-Director General of Telecommunications D'Haiti, the state-owned telecommunications company.

FCPA Statutory Provision. Conspiracy (Anti-Bribery).

Other Statutory Provision. Conspiracy (Money Laundering).

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. 20-Months Imprisonment; $73,824 in Restitution.

Related Enforcement Actions. *United States v. Esquenazi, et al.*; *United States v. Vasconez, et al.*; *United States v. Fourcand.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

85. UNITED STATES V. ANTONIO PEREZ (S.D. FLA. 2009)

NATURE OF THE BUSINESS

Three Miami-Dade County telecommunications companies executed a series of contracts with Telecommunications D'Haiti that allowed the companies' customers to place telephone calls to Haiti. Antonio Perez, a U.S. citizen, was a controller for Telecom Consulting Services Corp., one of the Miami-Dade County telecommunications companies.

INFLUENCE TO BE OBTAINED

Perez and a co-conspirator, Juan Diaz, admitted they conspired with the three Miami-Dade County companies to make "side payments" through a shell company owned by Diaz to the then-Director of International Relations at Telecommunications D'Haiti from 2001 to 2003. In exchange, the foreign officials are alleged to have conferred business advantages on the Miami-Dade County companies, including issuing preferred telecommunications rates, reducing the number of minutes for which payment was owed, and giving a variety of credits to owed sums. Perez admitted that from November 2001 through January 2002, he offered to pay and assisted with the processing of the "side payments" to the then-Director of International Relations for Telecommunications D'Haiti and that he helped conceal the payments through the use of a shell company and by recording the payments as "consulting services."

ENFORCEMENT

On April 22, 2009, the DOJ filed a one-count indictment against Perez. On April 27, 2009, Perez pleaded guilty to conspiring to violate the FCPA's anti-bribery provision and to commit money laundering. On January 24, 2011, Perez was sentenced to 24 months in prison and 2 years of supervised release. He also agreed to forfeit $36,375, which is the amount of the proceeds traceable to his personal conduct. Later, on December 28, 2011, Perez's sentence was reduced to 10 months imprisonment.

On May 15, 2009, Perez's co-conspirator Diaz pleaded guilty to conspiring to violate the FCPA's anti-bribery provision and to commit money laundering. On July 30, 2010, Diaz was sentenced to 57 months in prison and ordered to pay $73,824 in restitution (later amended to 20 months in prison).

On December 4, 2009, three executives of the Miami-Dade County companies allegedly involved in the scheme and two Haitian officials were indicted on related charges. On July 13, 2011, a superseding indictment was filed against one of the companies allegedly involved, two of the company's executives, and an additional Haitian official. On January 19, 2012, a second superseding indictment was filed, naming one additional defendant (another executive of the company, who was the wife of the company's CEO). Two executives have been convicted so far, with one sentenced to 15 years in prison, the longest sentence ever imposed in a case involving violations of the FCPA. Both are appealing their convictions. One of the officials has pleaded guilty, and was sentenced to 12 months in prison. Another official was convicted on all counts, and he was sentenced to 108 months' imprisonment and three years of supervised release. He is appealing his sentence. The DOJ acknowledged the substantial assistance of Haitian authorities in the investigation.

See DOJ Digest Numbers B-86 and B-93.

KEY FACTS

Citation. *United States v. Perez*, No. 1:09-cr-20347 (S.D. Fla. 2009).

Date Filed. April 22, 2009.

Country. Haiti.

Date of Conduct. 2001 – 2003.

Amount of the Value. During the course of the conspiracy, Perez's employer paid approximately $674,193 in bribes to former Haitian government officials; Perez personally assisted in making $36,375 in side payments.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Shell Company.

Foreign Official. Then-Director of International Relations of Telecommunications D'Haiti, the state-owned telecommunications company.

FCPA Statutory Provision. Conspiracy (Anti-Bribery).

Other Statutory Provision. Conspiracy (Money Laundering).

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. 10-Months Imprisonment; Forfeiture of $36,375.

Related Enforcement Actions. *United States v. Esquenazi, et al.*; *United States v. Vasconez, et al.*; *United States v. Fourcand*; *United States v. Diaz.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

84. UNITED STATES V. STUART CARSON, HONG CARSON, PAUL COSGROVE, DAVID EDMONDS, FLAVIO RICOTTI, AND HAN YONG KIM (C.D. CAL. 2009)

NATURE OF THE BUSINESS

Stuart Carson and his five co-defendants are former executives of Control Components, Inc. ("CCI"), a California-based company that designs and manufactures severe service control valves used in the nuclear, oil and gas, and power generation industries. Stuart Carson was Chief Executive Officer. His wife, Hong Carson, a/k/a Rose Carson, was Director of Sales for China and Taiwan. Paul Cosgrove was Executive Vice President. David Edmonds was Vice President of Worldwide Customer Service. Flavio Ricotti was Vice President and Head of Sales for Europe, Africa, and the Middle East. CCI retained Han Yong Kim as a consultant to advise CCI operations in South Korea in 2005; from 1997 to 2005, he was President of CCI's South Korea office. The Carsons, Cosgrove, and Edmonds are U.S. citizens. Ricotti is a citizen of Italy and Kim is a citizen of South Korea.

INFLUENCE TO BE OBTAINED

From 2003 through 2007, federal prosecutors allege that Carson and his co-defendants approved, and in some cases personally made, payments totaling approximately $4.9 million to officers and employees of numerous state-owned customers for the purpose of influencing the award of contracts and project technical specifications. From these payments, CCI derived approximately $31.7 million in net profits.

During the same period, prosecutors allege that the defendants made corrupt payments of approximately $1.95 million to employees of privately owned companies. In total, the defendants allegedly made approximately 236 corrupt payments in over 30 countries.

Carson is the alleged "prime architect" of CCI's "friend-in-camp" sales model through which the defendants rewarded customers' employees for the award of contracts to CCI with money, expensive gifts, tuition payments, and extravagant overseas holidays to destinations including Disneyland, Las Vegas, and Hawaii under the guise of training and inspection trips.

In 2004, Stuart Carson, Hong Carson, Edmonds, and Kim allegedly interfered and provided false and misleading information in connection with an internal audit of CCI commission payments carried out by CCI's parent company, IMI plc. According to the indictment, Edmonds created false invoices and spreadsheets to cover up illicit payments. In 2007, Hong Carson, Cosgrove, Edmonds, and Ricotti allegedly provided false and misleading information about CCI's commission payments to internal investigators. Also, during the 2007 internal investigation, Hong Carson allegedly flushed documents down a toilet to prevent their discovery.

ENFORCEMENT

On April 8, 2009, a federal grand jury indicted all six defendants for conspiracy to violate the FCPA and the Travel Act (through commercial bribery of employees of private companies in violation of California state law). Stuart Carson was also indicted on two counts of bribery under the FCPA. Hong Carson was indicted on five counts of bribery under the FCPA as well as one count for obstruction of justice for intentionally destroying records. Cosgrove was indicted on six counts of bribery under the FCPA and one count under the

KEY FACTS

Citation. *United States v. Carson, et al.*, No. 8:09-cr-00077 (C.D. Cal. 2009).

Date Filed. April 8, 2009.

Country. China; South Korea; Malaysia; United Arab Emirates.

Date of Conduct. 2003 – 2005.

Amount of the Value. $4,900,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Consultants.

Foreign Official. Employees of various state-owned entities, including, but not limited to: Jiangsu Nuclear Power Corporation, Guohua Electric Power, China Petroleum Materials and Equipment Corporation, PetroChina, Dongfang Electric Corporation, and China National Offshore Oil Company (China); Korea Hydro Nuclear Power (South Korea); Petronas (Malaysia); and National Petroleum Construction Company (United Arab Emirates).

FCPA Statutory Provision.

- **Stuart Carson**. Anti-Bribery.
- **Hong Carson**. Anti-Bribery.
- **Paul Cosgrove**. Anti-Bribery.
- **David Edmonds**. Anti-Bribery.
- **Flavio Ricotti**. Conspiracy (Anti-Bribery).
- **Han Yong Kim**. Conspiracy (Anti-Bribery and Wire Fraud); Anti-Bribery.

Other Statutory Provision.

- **Han Yong Kim**. Conspiracy (Travel Act); Aiding and Abetting (Travel Act); Travel Act.

Disposition.

- **Stuart Carson**. Plea Agreement.
- **Hong Carson**. Plea Agreement.
- **Paul Cosgrove**. Plea Agreement.
- **David Edmonds**. Plea Agreement.
- **Flavio Ricotti**. Plea Agreement.
- **Han Yong Kim**. Fugitive.

Defendant Jurisdictional Basis.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

Travel Act. Edmonds was indicted on three counts of bribery under the FCPA and two counts under the Travel Act. Ricotti was indicted on one count of bribery under the FCPA and three counts under the Travel Act. Kim was indicted on two counts of bribery under the FCPA.

German authorities arrested Ricotti in Frankfurt, Germany in February 2010; he was extradited to the U.S. on July 2, 2010 and first made an appearance in the case on July 12, 2009. Kim made an appearance on March 4, 2011.

On May 18, 2011, the Court denied the defendants' motion to dismiss Counts 1-10 which argued that the definition of "foreign official" in the FCPA did not include the employees of state-owned enterprises. Kim is considered a fugitive after his failed motion for leave to file a special appearance, and U.S. officials continue to seek his extradition. He filed a renewed motion to file a special appearance in May 2013.

On April 16, 2012, Stuart and Hong Carson each pleaded guilty to separate one-count superseding informations charging them with making a corrupt payment to a foreign government official in violation of the FCPA. Stuart Carson was sentenced to four months in prison and ordered to pay a fine of $20,000. Hong Carson was sentenced to three years' probation and ordered to pay a fine of $20,000.

Flavio Ricotti pleaded guilty on April 28, 2011, and was sentenced on March 18, 2013 to time served. Cosgrove pleaded guilty on May 29, 2012, and on September 13, 2012 was sentenced to three years' probation and a $20,000 fine. Edmonds pleaded guilty on June 15, 2012, and on December 17, 2012, was sentenced to 4 months in prison followed by 4 months' home confinement, with a $20,000 fine.

See DOJ Digest Numbers B-88, B-79, and B-73.

- **Stuart Carson**. Domestic Concern; Agent of Domestic Concern.
- **Hong Carson**. Domestic Concern; Agent of Domestic Concern.
- **Paul Cosgrove**. Domestic Concern; Agent of Domestic Concern.
- **David Edmonds**. Domestic Concern; Agent of Domestic Concern.
- **Flavio Ricotti**. Agent of Domestic Concern.
- **Han Yong Kim**. Agent of Domestic Concern.

Defendant's Citizenship.

- **Stuart Carson**. United States.
- **Hong Carson**. United States.
- **Paul Cosgrove**. United States.
- **David Edmonds**. United States.
- **Flavio Ricotti**. Italy.
- **Han Yong Kim**. South Korea.

Total Sanction.

- **Stuart Carson**. 4-Months Imprisonment; $20,000 Criminal Fine.
- **Hong Carson**. 3-Years Probation; $20,000 Criminal Fine.
- **Paul Cosgrove**. 3-Years Probation; $20,000 Criminal Fine.
- **David Edmonds**. 4-Months Imprisonment; $20,000 Criminal Fine.
- **Flavio Ricotti**. Time Served.
- **Han Yong Kim**. Pending.

Related Enforcement Actions. *United States v. Control Components, Inc.*; *SEC v. Control Components, Inc.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

83. UNITED STATES V. LATIN NODE, INC. (S.D. FLA. 2009)

NATURE OF THE BUSINESS

Interconnection agreements with state-owned telecommunications companies in Honduras and Yemen by Latin Node, Inc. ("Latin Node"), a privately held U.S. corporation acquired in 2007 by eLandia International Inc. ("eLandia"), a U.S. corporation. Latin Node provided telecommunications services using Internet protocol technology.

INFLUENCE TO BE OBTAINED

From March 2004 through June 2007, Latin Node paid or caused to be paid approximately $1,099,889 to a third party consultant, Latin Node employees, and Honduran officials, knowing that some or all of these funds would be passed on as bribes to officials of Hondutel, the Honduran state-owned telecommunications company. Latin Node admitted it made these payments in exchange for obtaining an interconnection agreement with Hondutel as well as reducing the rate per minute under the interconnection agreement. From July 2005 to April 2006, Latin Node made payments totaling approximately $1,150,654 either directly to Yemeni officials or to a third party consultant knowing that some or all of the money would be passed on to Yemeni officials in exchange for favorable interconnection rates in Yemen. Payments were made from Latin Node's Miami bank account and approved by senior executives of Latin Node.

In September 2007, eLandia disclosed that, after it acquired Latin Node, it discovered the improper payments in the course of reviewing Latin Node's internal controls and procedures. eLandia conducted an internal investigation, terminated the improperly-obtained agreements, and voluntarily disclosed the unlawful conduct to the DOJ and the SEC. eLandia has written off its investment and sued Latin Node's former CEO and parent company for misrepresentation.

ENFORCEMENT

On March 23, 2009, the DOJ filed charges against Latin Node. On April 3, 2009, Latin Node pleaded guilty to one count of violating the anti-bribery provisions of the FCPA and agreed to pay a $2,000,000 fine. The DOJ cited eLandia's cooperation, internal investigation, and remedial action with approval.

See DOJ Digest Number B-114.
See Parallel Litigation Digest Number H-C21.

KEY FACTS

Citation. *United States v. Latin Node, Inc.*, No. 1:09-cr-20239 (S.D. Fla. 2009).

Date Filed. March 24, 2009.

Country. Honduras; Yemen.

Date of Conduct. 2004 – 2007.

Amount of the Value. $2,250,543.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Third party consultant, Servicios IP, S.A., a Guatemalan company created at the direction of Latin Node, that entered into sham agreements to facilitate payments to officials in Honduras and an unnamed third party consultant in Yemen.

Foreign Official. Officials at Hondutel, the Honduran state-owned telecommunications company; officials at TeleYemen, the Yemeni state-owned telecommunications company; and officials from the Yemeni Ministry of Telecommunications.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. $2,000,000.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *United States v. Vasquez*; *United States v. Granados, et al.*; *United States v. Salvoch.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

82. UNITED STATES V. JEFFERY TESLER AND WOJCIECH J. CHODAN (S.D. TEX. 2009)

NATURE OF THE BUSINESS

Engineering, procurement, and construction ("EPC") contracts to build liquefied natural gas ("LNG") facilities on Bonny Island, Nigeria as part of a four-company joint venture. During most of the time of the conduct, which occurred between 1994 and 2004, one of the joint venture partners, M.W. Kellogg Ltd., was a subsidiary of Halliburton Company and is now a wholly-owned subsidiary of KBR, Inc. Jeffrey Tesler, a U.K. solicitor with a Gibraltar-based company called Tri-Star, acted as an agent for the joint venture. Wojciech J. Chodan, a former employee of M.W. Kellogg who worked on the EPC contracts, is also a U.K. citizen.

INFLUENCE TO BE OBTAINED

M.W. Kellogg, and later its successor company, Kellogg, Brown & Root, Inc., was part of a four-company joint venture seeking to obtain contracts to build LNG facilities on Bonny Island, Nigeria. The joint venture ultimately obtained four contracts worth $6 billion.

From 1988 until June 16, 2004, Chodan was a sales vice president and then a consultant for M.W. Kellogg, which was 55% owned by KBR. Chodan reported to Albert "Jack" Stanley, the former CEO of KBR, and assisted KBR in winning four Bonny Island contracts. Beginning in 1999, Chodan served on the board of managers of a Portugal-based company owned by the joint venture partners ("Madeira Company 3") that allegedly entered into contracts with consultants for the purpose of bribing Nigerian government officials.

The joint venture allegedly hired Tesler, a U.K. solicitor with a shell company (Tri-Star) located in Gibraltar and bank accounts in Switzerland and Monaco, to bribe Nigerian government officials to obtain contracts from the Nigerian National Petroleum Corporation. The consulting contract between Madeira Company 3 and Tri-Star allegedly indicated that Tri-Star would be paid for marketing and advisory services when in fact the primary purpose was to facilitate bribes. Between 1995 and 2004, the joint venture allegedly paid Tesler over $130 million for use in bribing Nigerian government officials.

Through Madeira Company 3, the joint venture also allegedly hired a consulting company headquartered in Japan to assist it in obtaining business, including by offering and paying bribes to government officials. Between 1996 and 2004, the joint venture allegedly paid the company $50 million.

ENFORCEMENT

The DOJ filed an eleven-count indictment under seal against Tesler and Chodan on February 17, 2009. The indictment, which was unsealed on March 5, 2009, alleged one count of conspiring to violate the anti-bribery provisions of the FCPA and ten substantive counts of violating the anti-bribery provisions of the FCPA. The indictment also contained forfeiture allegations seeking $132 million from Tesler and Chodan if convicted of one or more of the counts. At the request of U.S. authorities, the British police arrested Tesler on March 5, 2009.

On December 6, 2010, Chodan pleaded guilty to the conspiracy charge. The plea agreement states that Chodan agrees to forfeit $726,885 to the United States and to cooperate fully with the DOJ. On February 22, 2012, Chodan

KEY FACTS

Citation. *United States v. Tesler, et al.*, No. 4:09-cr-00098 (S.D. Tex. 2009).

Date Filed. February 17, 2009.

Country. Nigeria.

Date of Conduct. 1994 – 2004.

Amount of the Value. Approximately $180 million.

Amount of Business Related to the Payment. Approximately $6 billion.

Intermediary. Agent.

Foreign Official. Officials of Nigeria's executive branch; employees of Nigerian National Petroleum Company, the government-owned company responsible for developing and regulating Nigeria's oil and gas industry; and employees of Nigeria LNG Limited, a government-controlled company formed to develop the Bonny Island Project.

FCPA Statutory Provision.

- **Jeffrey Tesler**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Wojciech Chodan**. Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition.

- **Jeffrey Tesler**. Plea Agreement.
- **Wojciech Chodan**. Plea Agreement.

Defendant Jurisdictional Basis.

- **Jeffrey Tesler**. Agent of Issuer; Agent of Domestic Concern; Agent of "Other Person."
- **Wojciech Chodan**. Agent of Domestic Concern.

Defendant's Citizenship.

- **Jeffrey Tesler**. United Kingdom.
- **Wojciech Chodan**. United Kingdom.

Total Sanction.

- **Jeffrey Tesler**. 21-Months Imprisonment; $25,000 Criminal Fine; $148,964,568.67 in Forfeiture.
- **Wojciech Chodan**. 1-Year Probation; $20,000 Criminal Fine.

Related Enforcement Actions. *United States v. Kellogg Brown & Root LLC*; *United States v. Stanley*; *United States v. ENI, S.p.A.*; *United States*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

was sentenced to one year of unsupervised probation and was ordered to pay a $20,000 penalty.

On March 11, 2011, Tesler also pleaded guilty to conspiracy to violate the FCPA and a substantive FCPA count following his extradition to the United States from the United Kingdom. Tesler additionally agreed to forfeit $148,964,568.67 – the largest FCPA-related forfeiture by an individual to date. On February 23, 2012, Tesler was sentenced to 21 months in prison followed by two years of supervised release and a $25,000 penalty.

In March 2009, a Nigerian paper reported that Nigerian authorities intended to prosecute Tesler and Chodan in the International Criminal Court; however, it does not appear that any charges were filed.

In September 2008, Stanley pleaded guilty to conspiring to violate the FCPA, admitting that he participated in a scheme to bribe Nigerian government officials, and was sentenced on February 23, 2012. On February 11, 2009, KBR and Halliburton settled related DOJ and SEC actions.

See DOJ Digest Numbers B-126, B-118, B-101, B-100, B-80, and B-70.
See SEC Digest Numbers D-74, D-72, D-57, and D-54.
See Parallel Litigation Digest Number H-F10.

v. Technip S.A.; *United States v. JCG Corp.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

81. UNITED STATES V. OUSAMA M. NAAMAN (D.D.C. 2008)

NATURE OF THE BUSINESS

Sale of gasoline additives used in the refining of leaded gasoline and some types of jet fuel. Ousama M. Naaman is a Lebanese/Canadian dual national, with principal business offices in Abu Dhabi, United Arab Emirates. In its SEC filings, Innospec Inc., a Delaware corporation based in the United Kingdom, identified Naaman as having acted as its agent in Iraq. In that role, Naaman negotiated contracts with the Iraqi Ministry of Oil for the provision of gasoline additives to oil refineries operating in Iraq.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil-for-Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value.

From March 2001 to February 2008, Naaman promised or paid kickback payments of over $8.5 million to Iraqi government officials in exchange for contracts with the Ministry of Oil to purchase a chemical additive from Innospec, a U.S. company. Between 2001 and 2003, Naaman negotiated five agreements under the U.N. Oil-for-Food Program, including a 10% increase in the price to cover the kickback, and routed a total of approximately $5,000,000 to Iraqi government accounts in the Middle East. In 2004 and 2008, Naaman also entered two long-term agreements with the Ministry of Oil under which bribes of $3,279,600 were promised and $167,000 was paid to officials. Naaman also paid an official in the Trade Bank of Iraq in exchange for a favorable exchange rate on letters of credit for purchases under the 2004 agreement. Naaman created false invoices for reimbursement of the illicit payments, causing Innospec to conceal the payments and falsify its consolidated books and records. During this time, Naaman also arranged or paid approximately $91,061 in travel, gifts, and entertainment expenses for Iraqi senior officials. Naaman told Innospec executives that he agreed to pay $150,000 in bribes to Ministry of Oil officials to ensure Innospec's competitors' product would fail field trial tests, but this money was retained by Naaman and never paid to Iraqi officials.

ENFORCEMENT

Naaman was originally indicted on August 7, 2008. On July 30, 2009, Naaman was arrested in Frankfurt, Germany and extradited to the United States. On June 25, 2010, as part of a plea agreement with the DOJ, Naaman pleaded guilty to a two-count superseding information filed June 24, 2001, charging him with one count of conspiracy to violate the anti-bribery provisions of the FCPA, commit wire fraud, and falsify books and records of a U.S. issuer; and one count of violating the anti-bribery provisions of the FCPA. The government expressly reserved all of its rights in connection with sentencing. On December 22, 2011, Naaman was sentenced to 30 months in prison and fined $250,000.

See DOJ Digest Number B-98.
See SEC Digest Numbers D-76 and D-70.
See Ongoing Investigation Number F-2.

KEY FACTS

Citation. *United States v. Naaman*, No. 1:08-cr-00246 (D.D.C. 2008).

Date Filed. August 7, 2008.

Country. Iraq.

Date of Conduct. 2001 – 2008.

Amount of the Value. Over $5 million in kickbacks to the Iraqi government.

Amount of Business Related to the Payment. Approximately $40 million in profits.

Intermediary. Agent.

Foreign Official. Ministry of Oil and unspecified Iraqi government officials.

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision. Conspiracy (Wire Fraud).

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Agent of Domestic Concern.

Defendant's Citizenship. Lebanon/Canada.

Total Sanction. 30-Months Imprisonment; $250,000 Criminal Fine.

Related Enforcement Actions. *United States v. Innospec, Inc.*; *SEC v. Jennings*; *SEC v. Innospec.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

80. UNITED STATES V. KELLOGG BROWN & ROOT LLC (S.D. TEX. 2009)

NATURE OF THE BUSINESS

Engineering, procurement, and construction ("EPC") contracts for natural gas liquefaction facilities at Bonny Island in Nigeria ("Bonny Island Project"). During most of the time of the conduct, which occurred between 1994 and 2004, Kellogg Brown & Root LLC, a U.S. corporation, was a subsidiary of Halliburton Company ("Halliburton"). Kellogg Brown & Root LLC is now a wholly-owned subsidiary of KBR, Inc. ("KBR"). Halliburton and KBR are incorporated in Delaware and headquartered in Houston, Texas. The government's charges identified the three foreign partners in the joint venture as "unindicted co-conspirators."

INFLUENCE TO BE OBTAINED

Kellogg Brown & Root LLC participated in a joint venture to obtain and perform EPC contracts to build and expand the Bonny Island Project for Nigeria LNG Limited, which is owned in part by the Nigerian National Petroleum Corporation. The joint venture was awarded four EPC contracts for the Bonny Island Project between 1995 and 2004. From August 1994 until June 2004, Kellogg Brown and Root LLC and its partners in the joint venture authorized, promised, and paid bribes to Nigerian government officials, including officials in the executive branch, employees of the government-owned Nigerian National Petroleum Corporation, and employees of government-controlled Nigeria LNG Limited, to win and retain the EPC contracts to build the Bonny Island Project. To conceal the bribes, the joint venture entered into sham consulting or services agreements with intermediaries. The joint venture hired one consultant to pay bribes to high-level Nigerian government officials. That consultant received over $130 million for use in bribing the officials. Another consultant, hired to bribe lower-level Nigerian officials, received over $50 million to use for that purpose.

ENFORCEMENT

On February 11, 2009, Kellogg Brown & Root LLC pleaded guilty to one count of conspiring to violate the FCPA and four counts of violating the anti-bribery provisions of the FCPA. Kellogg Brown & Root LLC and KBR, which is also a party to the February 11, 2009 plea agreement, agreed to pay a $402 million fine. Pursuant to the master separation agreement between Halliburton and KBR, Halliburton agreed to indemnify KBR for certain FCPA-related matters, and Halliburton will pay $382 million of the fine. As part of the plea agreement, Kellogg Brown & Root LLC will retain an independent corporate monitor for a term of three years.

Halliburton and KBR also settled a related SEC action on February 11, 2009. Without admitting or denying the allegations in the complaint, Halliburton and KBR consented to the entry of final judgments permanently enjoining future violations, ordering disgorgement of $177 million, requiring Halliburton to retain an independent consultant to evaluate its FCPA-related policies and procedures and adopt any recommendations, and requiring KBR to obtain an independent corporate monitor for a term of three years.

In the criminal information against KBR, the DOJ alleged that the other members of the joint ventures, French, Italian, and Japanese companies, were "unindicted co-conspirators." On June 28, 2010, the DOJ and SEC announced that they had settled their charges against Technip, one of the joint venture

KEY FACTS

Citation. *United States v. Kellogg Brown & Root LLC*, No. 4:090-cr-00071 (S.D. Tex. 2009).

Date Filed. February 6, 2009.

Country. Nigeria.

Date of Conduct. 1994 – 2004.

Amount of the Value. Approximately $180 million.

Amount of Business Related to the Payment. Over $6 billion.

Intermediary. Agents.

Foreign Official. Officials in the executive branch of the Nigerian government; employees of Nigerian National Petroleum Corporation; and employees of Nigeria LNG Limited, controlled by the Nigerian government.

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision. None.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. $402,000,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *SEC v. KBR, Inc.*; *SEC v. Halliburton Co.*

Total Combined Sanction. $579,000,000.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

partners. The DOJ and SEC reported the company agreed to pay $98 million in disgorgement and prejudgment interest along with a payment of $240 million as a criminal penalty. Snamprogetti Netherlands B.V. and ENI S.p.A., other members of the joint venture, similarly settled pending DOJ and SEC charges with an agreement to disgorge $125 million.

Previously, in September 2008, Albert "Jack" Stanley, former CEO and chairman of Kellogg Brown & Root LLC, pleaded guilty to conspiring to violate the FCPA, admitting that he participated in a scheme to bribe Nigerian government officials. Two of Stanley's alleged co-conspirators, Wojciech Chodan and Jeffrey Tesler, were indicted on February 17, 2009. Chodan pleaded guilty to conspiracy on December 6, 2010. Tesler subsequently pleaded guilty to one count of conspiracy and one count of violating the anti-bribery provisions of the FCPA on March 11, 2011. Stanley, Chodan, and Tesler were sentenced in February 2012.

French, Nigerian, Swiss, and British authorities are continuing to investigate this matter. In an SEC filing on February 17, 2010, Halliburton reported it was seeking plea negotiations with the United Kingdom's Serious Fraud Office. On February 16, 2011, KBR announced that its wholly-owned subsidiary, M.W. Kellogg Limited ("MWKL"), reached a civil settlement with the Serious Fraud Office, according to which MWKL paid approximately $11,238,886 and agreed to improve its internal audit and compliance systems.

According to a February 17, 2011 SEC filing, Halliburton and KBR reached a settlement to resolve charges filed against the two corporations in Nigeria in December 2010. As a result, Halliburton agreed to pay $33 million to the Government of Nigeria and an additional $2 million for the Government of Nigeria's attorneys' fees.

Although it was not clear whether there is a separate Italian investigation of the Italian joint venture partner, the DOJ acknowledged the assistance of the Italian authorities.

See DOJ Digest Numbers B-126, B-118, B-101, B-100, B-82, and B-70.
See SEC Digest Numbers D-74, D-72, D-57, and D-54.
See Parallel Litigation Digest Number H-F10.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

79. UNITED STATES V. RICHARD MORLOK (C.D. CAL. 2009)

NATURE OF THE BUSINESS

Richard Morlok, a U.S. citizen, was Finance Director for Control Components, Inc. ("CCI"), a California-based company that designs and manufactures severe service control valves used in the nuclear, oil and gas, and power generation industries.

INFLUENCE TO BE OBTAINED

From 2003 to 2006, Morlok caused employees and agents of CCI to make payments totaling approximately $628,000 to officials employed by state-owned companies, in exchange for their assistance in obtaining sales contracts. These payments resulted in profits of approximately $3.5 million.

For example, in April 2004, Morlok approved a corrupt payment of $57,658 to an official of Korea Hydro and Nuclear Power ("KHNP"). Morlok caused CCI to wire the payment from its California bank account to an account with a Korean bank. In April and August 2004, Morlok provided false and misleading statements to auditors, engaged by CCI's parent company, IMI plc, when he denied knowledge of and participation in improper payments.

ENFORCEMENT

On February 3, 2009, Morlok pleaded guilty to conspiring to violate the FCPA's anti-bribery provisions. Under the terms of his plea agreement, Morlok agreed to cooperate with the government in its continuing investigation and prosecution of six other former CCI employees, among which five have pleaded guilty and one is considered a fugitive.

On March 11, 2013, Morlok was sentenced to three years of probation, including three months in a home detention program. He was also ordered to pay a fine of $5,000.

See DOJ Digest Numbers B-88, B-84, and B-73.

KEY FACTS

Citation. *United States. v. Morlok*, No. 09-cr-00005 (C.D. Cal. 2009).

Date Filed. January 7, 2009.

Country. China; Korea; Romania; Saudi Arabia.

Date of Conduct. 2003 – 2006.

Amount of the Value. $628,000.

Amount of Business Related to the Payment. At least $3.5 million.

Intermediary. Agents.

Foreign Official. Officers and employees of state-owned enterprises including, but not limited to, China National Offshore Oil Company, Petrochina, Jiangsu Nuclear Power Corporation (China), Korea Hydro and Nuclear Power, Rovinari Power (Romania), and Safco (Saudi Arabia).

FCPA Statutory Provision. Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. 3-Years Probation; $5,000 Criminal Fine.

Related Enforcement Actions. *United States v. Control Components, Inc.*; *United States v. Carson, et al.*; *United States v. Covino.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

78. UNITED STATES V. SIEMENS AKTIENGESELLSCHAFT (D.D.C 2008)
UNITED STATES V. SIEMENS S.A. (ARGENTINA) (D.D.C 2008)
UNITED STATES V. SIEMENS BANGLADESH LTD. (D.D.C 2008)
UNITED STATES V. SIEMENS S.A. (VENEZUELA) (D.D.C 2008)

NATURE OF THE BUSINESS

Sale of power and electrical equipment and gas turbines to the Iraqi Ministries of Electricity and Oil under the U.N. Oil-for-Food Program (Siemens Aktiengesellschaft, "Siemens AG"); development of a new national identity card (Siemens Argentina); creation of a nationwide digital cellular telephone network (Siemens Bangladesh); design and construction of mass transit systems (Siemens Venezuela).

INFLUENCE TO BE OBTAINED

Siemens AG and several of its subsidiaries paid more than $1.7 million in kickbacks to the Iraqi government to procure 42 contracts worth more than $80 million under the U.N. Oil-for-Food Program. Additionally, Siemens AG engaged in systematic efforts to falsify books-and-records and circumvent internal controls to permit this and other corrupt payments to occur. For example, Siemens AG used off-book accounts to make corrupt payments, entered into purported business consulting agreements with no basis, hired former Siemens employees as purported business consultants to make corrupt payments, used false invoices to justify payments to business consultants, mischaracterized corrupt payments as legitimate expenses, and limited the quality and scope of audits of payments to business consultants. Additionally, Siemens AG lacked sufficient anti-corruption compliance controls and its senior management failed to take action even after they were informed of significant control weaknesses.

Siemens Argentina paid approximately $105 million, directly or indirectly through a sham consultant and other intermediaries, to officials in the Argentine government in connection with the company's bid for a project worth more than $1 billion involving the development of a national identification card in Argentina. Between 1997 and 2007, Siemens Argentina made or directed payments of more than $15 million to entities controlled by members of the government of Argentina. During this period, Siemens Argentina also made nearly $35 million in payments to a consultant that acted as a conduit for further payments to Argentine government officials responsible for the identity card project and paid almost $55 million to other third parties in connection with the project.

Siemens Bangladesh made more than $5.3 million in corrupt payments between 2001 and 2006 to Bangladeshi government officials and senior employees of the state-owned Bangladesh Telegraph & Telephone Board ("BTTB"). Siemens Bangladesh made payments through business consultants that it retained pursuant to "sham agreements" that purportedly involved rendering services in connection with a mobile telephone contract worth approximately $40.9 million. In reality, Siemens Bangladesh used the business consultants to channel bribes to the son of the former Prime Minister of Bangladesh, the Minister of Posts & Telecommunications ("MoPT"), and the Director of Procurement at BTTB. Siemens Bangladesh also made direct payments to Bangladeshi government officials (or their relatives) with responsibility for awarding the BTTB project. Additionally, Siemens Bangladesh hired relatives of two other BTTB and MoPT officials, although

KEY FACTS

Citation. *United States v. Siemens Aktiengesellschaft*, No. 08-CR-367 (D.D.C. 2008); *United States v. Siemens S.A. (Argentina)*, No. 08-CR-368 (D.D.C 2008); *United States v. Siemens Bangladesh Ltd.*, No. 08-CR-369 (D.D.C 2008); *United States v. Siemens S.A. (Venezuela)*, No. 08-CR-370 (D.D.C 2008).

Date Filed. December 12, 2008.

Country. Argentina; Bangladesh; Germany; Iraq; Venezuela.

Date of Conduct. 2000 – 2007.

Amount of the Value. Over $800 million.

Amount of Business Related to the Payment. More than $1.4 billion.

Intermediary. Business Consultants; Agents; Other Payment Intermediaries.

Foreign Official. Unspecified Argentine government officials; The Minister and other officials of the Bangladesh Ministry of Posts and Telecommunications; The Director of Procurement and other officials of the state-owned Bangladesh Telegraph & Telephone Board; Unspecified Venezuelan government officials.

FCPA Statutory Provision.

- **Siemens**. Books-and-Records; Internal Controls.
- **Siemens Argentina**. Conspiracy.
- **Siemens Bangladesh**. Conspiracy.
- **Siemens Venezuela**. Conspiracy.

Other Statutory Provision. None.

Disposition.

- **Siemens**. Plea Agreement.
- **Siemens Argentina**. Plea Agreement.
- **Siemens Bangladesh**. Plea Agreement.
- **Siemens Venezuela**. Plea Agreement.

Defendant Jurisdictional Basis.

- **Siemens**. Issuer.
- **Siemens Argentina**. Territorial Jurisdiction.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

Siemens Bangladesh did not need the relatives' services for its business.

Siemens Venezuela paid almost $19 million in bribes to Venezuelan government officials in connection with mass transit systems in the Venezuelan cities of Valencia and Maracaibo. As with the FCPA violations by other Siemens entities, Siemens Venezuela admitted that it paid money to sham agents and business consultants, who had no substantive role on the projects, with the understanding that they would pass on some or all of the funds to relevant government officials. Siemens Venezuela's underlying FCPA violations involved falsification of the company's books, records, and accounts, as payments were labeled as involving nonexistent studies, sham supply contracts, and off-the-books or improperly recorded bank accounts, all of which Siemens Venezuela used to conceal corrupt payments to Venezuelan government officials.

ENFORCEMENT

On December 15, 2008, Siemens AG pleaded guilty to conspiring to violate the FCPA's internal controls and books and records provisions. Siemens Argentina pleaded guilty to conspiring to violate the FCPA's books-and-records provisions, and Siemens Bangladesh and Siemens Venezuela each pleaded guilty to conspiring to violate the FCPA's anti-bribery and books-and-records provisions. This is the first time that the DOJ has charged a company with a criminal violation of the FCPA's internal controls or books and records provisions. Siemens AG and its subsidiaries agreed to pay criminal fines totaling $450 million.

In connection with a parallel enforcement action by the SEC, Siemens AG also agreed to disgorge more than $350 million in ill-gotten profits. On the same day, Siemens also entered into a settlement with German authorities, agreeing to pay penalties of €395 million in addition to the €201 million in penalties that it previously paid in an earlier settlement. Siemens AG also agreed to the imposition of an independent monitor for a period of up to four years. Theo Wiegle, a former German finance minister, will serve as the Monitor, and will be assisted by a U.S. law firm, marking the first time that a non-U.S. Monitor has been appointed in an FCPA case.

In addition, the DOJ brought a forfeiture action against more than $3 million contained in several bank accounts held by or for the benefit of the son of the former Prime Minister of Bangladesh and two of the intermediaries involved in the bribery scheme involving Siemens Bangladesh. On April 7, 2010, the district court granted an unopposed motion for default judgment as to approximately $3 million, no party having challenged the forfeiture claim.

In July 2009, Siemens reached a settlement with the World Bank over bribery allegations. The Bank's investigation focused specifically on an urban-transport project the Bank financed in Moscow, Russia. Siemens agreed to pay $100 million over 15 years to help anticorruption efforts and also agreed to forgo bidding on any of the Bank's projects for two years. The settlement means that Siemens and its subsidiaries will not face additional sanctions from the World Bank.

Separately, on August 12, 2009, Siemens AG stated that it would drop a case against Argentina's government in the World Bank's International Center for Settlement of Investment Disputes, which had demanded $200 million related to the cancellation of a contract to make identity cards. Proceedings were discontinued in September 2009. Siemens had been accused of paying bribes to win the contract. Siemens stated that it would continue to cooperate

- **Siemens Bangladesh**. Territorial Jurisdiction.
- **Siemens Venezuela**. Territorial Jurisdiction.

Defendant's Citizenship.

- **Siemens**. Germany.
- **Siemens Argentina**. Argentina.
- **Siemens Bangladesh**. Bangladesh.
- **Siemens Venezuela**. Venezuela.

Total Sanction. $450,001,200.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *SEC v. Siemens Aktiengesellschaft*; *United States v. Sharef, et al.*; *SEC v. Sharef, et al.*

Total Combined Sanction. $800,002,000.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

with investigations by Argentine authorities.

On December 6, 2009, Siemens AG reached a settlement with nine of the eleven former Supervisory Board members. On January 25, 2010, Siemens AG filed a lawsuit with the Munich District Court I against the two former board members who were not willing to settle.

See DOJ Digest Numbers B-123 and B-78.
See SEC Digest Numbers D-99 and D-56.
See Parallel Litigation Digest Numbers H-A11, H-C24, and H-H1.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

77. UNITED STATES V. MISAO HIOKI (S.D. TEX. 2008)

NATURE OF THE BUSINESS

Sale of industrial rubber products, including marine hose used to transfer oil between tankers and storage facilities. According to court documents, Hioki, a Japanese citizen, was the General Manager for the International Engineered Products ("IEP") Department of a Japanese company. Press reports identify that company as Bridgestone Corporation.

INFLUENCE TO BE OBTAINED

From approximately January 2004 until May 2007, Hioki served as the General Manager of Bridgestone Corporation's IEP Department, which coordinated efforts between the corporation's headquarters in Japan and its regional subsidiaries to sell IEP products throughout the world. To secure sales in Latin America, local sales agents, who developed relationships with employees in state-owned companies, forwarded information related to potential projects to their counterparts in the company's regional subsidiaries, including the company's U.S. subsidiary. The regional subsidiaries then forwarded the information provided by the local agents to the IEP employee in Japan responsible for the particular product. The local agents often agreed to pay officials within the state-owned customer a percentage of the total value of the proposed deal. If the regional subsidiary secured the project, it paid the local sales agent a commission, which included both the agent's actual commission and the corrupt payments to be paid to the employees of the state-owned customer. The local sales agent then made the agreed-upon payments to the customer's employees. The regional subsidiaries and the supervisors in Japan authorized, and took steps to conceal, these payments. Hioki personally authorized certain corrupt payments and also approved transactions which he knew included corrupt payments.

ENFORCEMENT

The DOJ filed a criminal information on December 8, 2008. On December 10, 2008, Hioki pleaded guilty to conspiring to violate the FCPA's anti-bribery provisions and conspiring to rig bids, fix prices, and allocate market shares of marine hose in violation of the Sherman Antitrust Act. Hioki is the first individual to plead guilty in the FCPA conspiracy and the ninth individual to plead guilty in the marine hose antitrust conspiracy. Hioki was sentenced to 24 months in prison and ordered to pay a fine of $80,000.

In a related action by the DOJ, Bridgestone pleaded guilty to one count of conspiracy to violate the Sherman Act and one count of conspiracy to violate the anti-bribery provisions of the FCPA and agreed to pay a criminal fine of $28 million.

See DOJ Digest Numbers B-123.

KEY FACTS

Citation. *United States v. Hioki*, No. 08-cr-795 (S.D. Tex. 2008).

Date Filed. December 8, 2008.

Country. Argentina; Brazil; Ecuador; Mexico; Venezuela.

Date of Conduct. 2004 – 2007.

Amount of the Value. More than $1 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Agents.

Foreign Official. Employees of State-Owned Businesses.

FCPA Statutory Provision. Conspiracy (Anti-Bribery).

Other Statutory Provision. Conspiracy (Antitrust).

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Conspiracy; Territorial Jurisdiction.

Defendant's Citizenship. Not Stated.

Total Sanction. 24-Months Imprisonment; $80,000 Criminal Fine.

Related Enforcement Actions. *United States v. Bridgestone Corp.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

76. UNITED STATES V. JAMES K. TILLERY AND PAUL G. NOVAK (S.D. TEX. 2008)

NATURE OF THE BUSINESS

Procurement of contracts for oil and gas pipeline construction projects by Willbros International Inc. ("Willbros International"), a wholly-owned subsidiary of Houston-based Willbros Group, Inc. ("Willbros Group").

INFLUENCE TO BE OBTAINED

James K. Tillery, a former U.S. citizen, was an officer and employee of Willbros International and another Willbros Group subsidiary. Paul G. Novak, a U.S. citizen, represented two consulting companies that allegedly acted as conduits for corrupt payments authorized by Willbros International employees to foreign officials in Nigeria. Tillery and others allegedly authorized Novak to enter into corrupt negotiations with, and make payments to, Nigerian officials who had influence over awarding government construction contracts to obtain and retain favorable treatment in oil and gas pipeline construction contract decisions for Willbros International and Willbros Group. By late 2004, more than $1 million in corrupt payments allegedly had been paid to Nigerian officials, with millions more to be paid under commitments made to Nigerian officials. From January to March 2005, Tillery and Novak's co-conspirators raised approximately $1.85 million to fulfill a portion of the remaining commitments. The money was then provided to consultants for delivery to Nigerian officials. Tillery and Novak's co-conspirators included Jim Bob Brown and Jason Edward Steph, former Willbros International employees who separately have pleaded guilty to FPCA violations, a Nigerian national who performed purported consulting services for one or more of Willbros's Nigerian subsidiaries, and Nigeria-based employees of a major German construction and engineering firm. Additionally, Tillery and Novak, along with several other individuals, allegedly agreed to make corrupt payments of at least $300,000 to Ecuadorian officials to obtain a contract for the rehabilitation of a gas pipeline for Willbros International. Novak, at the direction of Tillery, allegedly made a $150,000 corrupt payment by wire transfer to an Ecuadorian bank account.

ENFORCEMENT

On January 17, 2008, a grand jury indicted Tillery and Novak on one count of conspiracy to violate the FCPA and two substantive counts of violating the FCPA. The indictment also charged one count of conspiracy to commit money laundering. The indictment remained under seal until December 19, 2008, when U.S. authorities arrested Novak at a Houston airport. He was returning to the U.S. from South Africa after his U.S. passport was revoked. On January 27, 2009, the court granted the return of Novak's passport. On November 12, 2009, Novak pleaded guilty to one count of conspiracy to violate the FCPA and one substantive count of violating the FCPA. On May 3, 2013, Novak was sentenced to 15 months in prison by U.S. District Judge Simeon T. Lake III of the Southern District of Texas. In addition to the prison sentence, Novak was ordered to pay a $1 million fine and to serve two years of supervised release following his release from prison. A Nigerian court halted American authorities' attempts to extradite Tillery, an American who acquired Nigerian citizenship in 2009. Tillery remains a fugitive.

See DOJ Digest Numbers B-67, B-54, and B-45.
See SEC Digest Numbers D-51 and D-28.
See Parallel Litigation Digest Number H-A8.

KEY FACTS

Citation. *United States v. Tillery, et al.*, No. 4:08-cr-00022 (S.D. Tex. 2008).

Date Filed. January 17, 2008.

Country. Nigeria; Ecuador.

Date of Conduct: 2003 – 2005.

Amount of the Value. $4.2 million.

Amount of Business Related to the Payment. Approximately $390 million.

Intermediary. Consultants; Employees.

Foreign Official. Officials of Nigerian Petroleum Corporation and National Petroleum Investment Management Services; a senior Executive-branch Nigerian government official; officials of the dominant political party in Nigeria; PetroEcuador and PetroComercial officials.

FCPA Statutory Provision.

- **James Tillery**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Paul Novak**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Other Statutory Provision.**
- **James Tillery**. Conspiracy (Money Laundering).

Disposition.

- **James Tillery**. Fugitive.
- **Paul Novak**. Plea Agreement.

Defendant Jurisdictional Basis.

- **James Tillery**. Agent of Domestic Concern; Agent of Issuer.
- **Paul Novak**. Agent of Domestic Concern; Agent of Issuer.

Defendant's Citizenship.

- **James Tillery**. United States.
- **Paul Novak**. United States.

Total Sanction.

- **James Tillery**. Pending.
- **Paul Novak**. 15-Months Imprisonment; $1,000,000 Criminal Fine.

Related Enforcement Actions. *United States v. Willbros Group, Inc.*; *United States v. Brown*; *United States v. Steph.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

75. UNITED STATES V. AIBEL GROUP LTD. (S.D. TEX. 2008)

NATURE OF THE BUSINESS

Provision of engineering and procurement services and subsea construction equipment for Nigeria's first deepwater oil drilling operation.

INFLUENCE TO BE OBTAINED

From at least September 2002 to around April 2005, Aibel Group Ltd. ("Aibel") and its co-conspirators made payments on at least 61 occasions to Nigerian Customs Service officials through an agent to secure preferential treatment during the customs process.

ENFORCEMENT

On November 21, 2008, Aibel pleaded guilty to both counts of a superseding information charging one count of conspiracy to authorize corrupt payments to Nigerian customs officials and one count of violating the FCPA by authorizing the payment of an invoice, via a phone call from Norway to Houston, for the agent's earlier payment of approximately $45,454 to Nigerian customs officials.

In 2007, Vetco Gray Controls Inc., Vetco Gray Controls Ltd., and Vetco Gray U.K. Ltd., then fellow subsidiaries of Vetco International, pleaded guilty to violating the anti-bribery provisions of the FCPA. At the same time, Aibel Group Ltd. entered into a deferred prosecution agreement relating to the same underlying conduct charged here, but based upon a statement of facts that included a single corrupt payment and did not allege a conspiracy.

On November 21, 2008, Aibel admitted that it was not in compliance with the 2007 deferred prosecution agreement and agreed to pay a $4.2 million fine. The government consented to the dismissal of the deferred prosecution agreement.

See DOJ Digest Numbers B-47 and B-31.
See SEC Digest Numbers D-26 and D-17.
See DOJ FCPA Opinion Procedure Release Digest Number E-41.
See Parallel Litigation Digest Number H-E5.

KEY FACTS

Citation. *United States v. Aibel Group Ltd.*, No.4:07-cr-00005 (S.D. Tex. 2008).

Date Filed. January 5, 2007.

Country. Nigeria.

Date of Conduct. 2001 – 2005.

Amount of the Value. Approximately $2.1 million.

Amount of Business Related to the Payment. $10.5 million.

Intermediary. Major International Freight Forwarding and Customs Clearance Company.

Foreign Official. Nigerian Customs Officials.

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision. None.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Territorial Jurisdiction.

Defendant's Citizenship. United States.

Total Sanction. $4,200,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

74. UNITED STATES V. FIAT S.P.A., ET AL. (2008)[73]
UNITED STATES V. IVECO S.P.A. (D.D.C. 2008)
UNITED STATES V. CNH ITALIA S.P.A (D.D.C. 2008)
UNITED STATES V. CNH FRANCE S.A. (D.D.C. 2008)

NATURE OF THE BUSINESS

Sales of trucks and parts, agricultural and construction equipment, construction vehicles and spare parts, and other equipment to Iraq under the U.N. Oil-for-Food Program.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil-for-Food Program"). In an extensive scheme, the Iraqi government solicited illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by approximately 10% of the contract value, though in this case sometimes as high as 15%.

Iveco S.p.A. ("Iveco"), a wholly-owned subsidiary of Fiat S.p.A. ("Fiat"), is an international manufacturer and supplier of commercial trucks, parts, and diesel engines. Between October 2000 and June 2001, Iveco, through an unnamed Lebanese company acting as an agent and distributor and an unnamed United Arab Emirates company acting as a conduit for payments to the Iraqi government, paid approximately $3.17 million in kickbacks to the government of Iraq for sixteen contracts worth approximately €31.9 million to supply Iveco trucks and parts to the Republic of Iraq.

CNH Italia S.p.A. ("CNH Italia"), a wholly-owned subsidiary of CNH Global N.V. ("CNH Global") and 90% owned by Fiat, is an international manufacturer of agricultural and construction equipment. From December 2000 through June 2002, CNH Italia, directly and through an unnamed Jordanian company acting as an agent and distributor, paid approximately $1 million in kickbacks to the government of Iraq to obtain four contracts worth approximately €12 million to supply agricultural equipment to the Ministry of Agriculture of the Republic of Iraq.

CNH France S.A. ("CNH France") is a wholly-owned subsidiary of CNH Global and Fiat. From June 2001 through July 2001, CNH France, through an unnamed Lebanese company acting as a distributor, paid approximately $188,000 in kickbacks to the government of Iraq to obtain three contracts worth approximately €2.2 million with the Ministry of Oil to supply construction vehicles and spare parts.

Iveco and CNH Italia improperly characterized these kickback payments as service and commission fees. Their books and records, including those containing false characterizations, were incorporated into the books and records of Fiat.

KEY FACTS

Citation. *United States v. Fiat S.p.A.* (2008); *United States v. Iveco S.p.A*, No. 1:08-cr-00377 (D.D.C. 2008); *United States v. CNH Italia S.p.A.*, No. 1:08-cr-00378 (D.D.C. 2008); *United States v. CNH France S.A.*, No. 1:08-cr-00379 (D.D.C. 2008).

Date Filed. December 22, 2008.

Country. Iraq.

Date of Conduct. 2000 – 2002.

Amount of the Value. $4.4 million.

Amount of Business Related to the Payment. €46.1 million.

Intermediary. A Lebanese company acting as an agent and distributor, a United Arab Emirates company acting as a conduit for payments, a Jordanian company acting as an agent and distributor, and a Lebanese company acting as a distributor.

Foreign Official. None.

FCPA Statutory Provision.

- **Fiat S.p.A.** None.
- **Iveco S.p.A.** Conspiracy (Books-and-Records).
- **CNH Italia S.p.A.** Conspiracy (Books-and-Records).
- **CNH France S.A.** None.

Other Statutory Provision.

- **Fiat S.p.A.** None.
- **Iveco S.p.A.** Conspiracy (Wire Fraud).
- **CNH Italia S.p.A.** Conspiracy (Wire Fraud).
- **CNH France S.A.** Conspiracy (Wire Fraud).

Disposition.

- **Fiat S.p.A.** Deferred Prosecution Agreement.
- **Iveco S.p.A.** Deferred Prosecution Agreement.
- **CNH Italia S.p.A.** Deferred Prosecution Agreement.

[73] Matter resolved through deferred-prosecution agreement (December 2008).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

The government did not allege bribery of any individual foreign governmental officials.

ENFORCEMENT

On December 22, 2008, Fiat, on behalf of itself and Iveco, CNH Italia, and CNH France, entered into a three-year deferred prosecution agreement with the DOJ. Pursuant to the agreement, the DOJ filed two one-count criminal informations against Iveco and CNH Italia, respectively alleging conspiracy to commit wire fraud and to violate the FCPA's books-and-records provisions. The DOJ also filed a one-count criminal information against CNH France alleging conspiracy to commit wire fraud.

Under the agreement, Fiat also agreed to pay a $7 million penalty. On December 22, 2008, Fiat and CNH Global also entered into a consent agreement with the SEC for failure to maintain internal controls and for books-and-records violations. The agreement called for disgorgement of $5,309,632 in profits, prejudgment interest of $1,899,510, and a civil penalty of $3,600,000.

See SEC Digest Number D-55.

- **CNH France S.A.** Deferred Prosecution Agreement.

Defendant Jurisdictional Basis.

- **Fiat S.p.A.** Issuer.
- **Iveco S.p.A.** Agent of Issuer; Conspiracy.
- **CNH Italia S.p.A.** Agent of Issuer; Conspiracy.
- **CNH France S.A.** Agent of Issuer; Conspiracy.

Defendant's Citizenship.

- **Fiat S.p.A.** Italy.
- **Iveco S.p.A.** Italy.
- **CNH Italia S.p.A.** Italy.
- **CNH France S.A.** France.

Total Sanction. $7,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions: *SEC v. Fiat S.p.A.*; *SEC v. CNH France S.A.*

Total Combined Sanction. $17,809,142.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

73. UNITED STATES V. MARIO COVINO (C.D. CAL. 2008)

NATURE OF THE BUSINESS

Mario Covino, an Italian national and U.S. resident, was the Director of Worldwide Factory Sales for Control Components, Inc. ("CCI"), a California-based company that designs and manufactures severe service control valves used in the nuclear, oil and gas, and power generation industries.

INFLUENCE TO BE OBTAINED

From 2003 to 2007, Covino caused CCI employees and agents to make payments totaling approximately $1 million to officials employed by state-owned companies, for their assistance in obtaining sales contracts thereby earning profits of approximately $5 million.

For example, in March 2004, Covino approved a payment of $15,000 to an official of PetroChina, for assistance in awarding CCI PetroChina's business. Covino caused CCI to wire the payment to the Bank of China. The following August, Covino provided false and misleading statements to auditors when he denied knowledge of improper payments. He obstructed the audit, initiated by CCI's parent company, IMI plc, by deleting emails referencing the payments and instructing other employees to do the same.

ENFORCEMENT

On December 17, 2008, Covino entered an agreement with the DOJ under which he pleaded guilty on January 8, 2009 to conspiring to violate the anti-bribery provisions of the FCPA. Under the terms of his plea agreement, Covino agreed to cooperate with the government in its continuing investigation and prosecution of six other former CCI employees, among which five have pleaded guilty and the remaining defendant is considered a fugitive.

On March 11, 2013, Covino was sentenced to three years of probation, including three months in a home detention program. He was also ordered to pay a fine of $7,500.

See DOJ Digest Numbers B-88, B-84, and B-79.

KEY FACTS

Citation. *United States v. Covino*, No. 08-cr-00336 (C.D. Cal. 2008).

Date Filed. December 17, 2008.

Country. Brazil; China; India; Korea; Malaysia; United Arab Emirates.

Date of Conduct. 2003 – 2007.

Amount of the Value. $1 million.

Amount of Business Related to the Payment. At least $5 million.

Intermediary. Agents.

Foreign Official. Officers and employees of state-owned enterprises including, but not limited to, Petrobras (Brazil), Dingzhou Power (China), Datang Power (China), China Petroleum, China Resources Power, China National Offshore Oil Company, PetroChina, Maharashtra State Electricity Board (India), Korea Hydro and Nuclear Power ("KHNP"), Petronas (Malaysia), Dolphin Energy (UAE), and Abu Dhabi Company for Oil Operations (UAE).

FCPA Statutory Provision. Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Conspiracy; Domestic Concern.

Defendant's Citizenship. Italy.[74]

Total Sanction. 3-Years Probation; $7,500 Criminal Fine.

Related Enforcement Actions. *United States v. Control Components, Inc.*; *SEC v. Control Components, Inc.*; *United States v. Carson, et al.*

[74] Covino was a permanent resident of the United States.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

72. UNITED STATES V. SHU QUAN SHENG (E.D. VA. 2008)

NATURE OF THE BUSINESS

Contract for a hydrogen liquefier project on behalf of a French company. Shu Quan-Sheng ("Shu"), a U.S. citizen, was President, Secretary, and Treasurer of AMAC International ("AMAC"), a high-tech company located in Virginia with an office in China.

INFLUENCE TO BE OBTAINED

In 2006, Shu offered bribes amounting to approximately $189,300 to Chinese government officials with the 101st Research Institute to induce the award of a hydrogen liquefier project to a French company that retained Shu as its representative in 2003. The representative agreement with the French company entitled Shu to a 10-15% success fee. From 2003 to 2007, Shu also improperly provided technical assistance and exported technical data to Chinese government entities involved in the design and manufacture of a space launch facility in China, in violation of the Arms Export Control Act.

ENFORCEMENT

The government filed a complaint against Shu on September 19, 2008, alleging one count of violating the FCPA and two counts of violating the Arms Export Control Act. Shu was arrested on September 24, 2008, and a detention hearing held on September 29, 2008 set his bond at $100,000. On November 12, 2008, Shu pleaded guilty to all three counts alleged in the government's complaint. On December 18, 2008, the court ordered Shu to forfeit $386,740, the commission payments he received as the representative of the French company. On April 7, 2009, the court sentenced Shu to 51 months in prison, to be followed by a two year supervised release.

KEY FACTS

Citation. *United States v. Shu*, No. 2:08-cr-00194 (E.D. Va. 2008).

Date Filed. September 19, 2008.

Country. China.

Date of Conduct. 2005 – 2007.

Amount of the Value. Approximately $189,300.

Amount of Business Related to the Payment. Approximately $4 million.

Intermediary. Agent.

Foreign Official. Chinese government officials with the 101st Research Institute, a research institute of the China Academy of Launch Vehicle Technology.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. Arms Export Control Act.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern; Agent of Domestic Concern; Agent of Issuer.

Defendant's Citizenship. United States.

Total Sanction. 3-Years Probation; $7,500 Criminal Fine.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

71. UNITED STATES V. NEXUS TECHNOLOGIES, INC., NAM QUOC NGUYEN, JOSEPH T. LUKAS, KIM ANH NGUYEN AND AN QUOC NGUYEN (E.D. PA. 2008)

NATURE OF THE BUSINESS

Sale of third-party underwater mapping and bomb containment equipment, helicopter parts, chemical detectors, satellite communication parts, and air tracking systems to Vietnamese government agencies.

INFLUENCE TO BE OBTAINED

From 1999 through 2008, the defendants allegedly paid at least $150,000 to various Vietnamese government officials to secure supply contracts. These officials, typically described as "supporters," allegedly assisted Nexus Technologies Inc. ("Nexus"), a privately-held Delaware company, by providing confidential information and rigging bids in exchange for the bribes. According to the indictment, individual defendant Nam Nguyen negotiated contracts and bribes with Vietnamese government officials, while Lukas negotiated with vendors in the United States. Defendants Kim and An Nguyen allegedly arranged for the transfer of funds at Nam Nguyen's direction.

ENFORCEMENT

On September 4, 2008, Nexus and the individual defendants were indicted by a federal grand jury in Philadelphia on one count of conspiracy to violate the FCPA and four substantive counts of violating the FCPA. On October 8, 2008, Nam Quoc Nguyen, the founder and president of Nexus, pleaded not guilty on behalf of all of Nexus. On November 20, 2008, the Court issued an Order for a Complex Criminal Case Designation, waiving the time limitations required under the Speedy Trial Act due to the complexity of the case and the quantity of evidence, particularly electronic evidence such as U.S.B. drives and CPU towers, to be reviewed.

On June 29, 2009, one of the defendants, Joseph Lukas, pleaded guilty in connection with his participation in the conspiracy to bribe Vietnamese government officials. Lukas admitted that from 1999 to 2005, he and other employees of Nexus agreed to pay, and knowingly paid, bribes to Vietnamese government officials in exchange for contracts with the agencies for which the officials worked. The bribes were falsely described as "commissions" in the company's records.

On October 29, 2009, the government entered a superseding indictment against the remaining individual defendants and Nexus, adding charges of conspiracy to violate the Travel Act and to launder money, nine substantive counts of violating the Travel Act, nine substantive counts of money laundering, and five additional counts of violating the FCPA.

On March 16, 2010, Nexus pleaded guilty to all charges filed against the company in the superseding indictment. In connection with the guilty plea, Nexus admitted that from 1999 to 2008, it agreed to pay, and knowingly paid, bribes in excess of $250,000 to Vietnamese government officials in exchange for contracts with the agencies and companies for which the bribe recipients worked. The bribes were falsely described as "commissions" in the company's records. In pleading guilty, Nexus also acknowledged that, as a company, it operated primarily through criminal means and agreed to cease operations as a condition of the guilty plea.

KEY FACTS

Citation. *United States v. Nguyen, et al.*, No. 2:08-cr-00522 (E.D.Pa. 2008).

Date Filed. September 4, 2008.

Country. Vietnam.

Date of Conduct. 1999 – 2008.

Amount of the Value. At least $150,000.

Amount of Business Related to the Payment. At least $500,000.

Intermediary. An Unnamed Company Located in Hong Kong.

Foreign Official. Officials from multiple Vietnamese government agencies, including Vietnam's Ministries of Transport, Industry, and Public Safety.

FCPA Statutory Provision.

- **Nexus Technologies**. Conspiracy (Anti-Briber); Anti-Bribery.
- **Nam Quoc Nguyen**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Joseph Lukas**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Kim Anh Nguyen**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **An Quoc Nguyen**. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision.

- **Nexus Technologies**. Travel Act; Money Laundering.
- **Nam Quoc Nguyen**. Conspiracy (Travel Act); Conspiracy (Money-Laundering); Travel Act; Money Laundering.
- **Kim Anh Nguyen**. Conspiracy (Travel Act); Conspiracy (Money-Laundering); Travel Act; Money Laundering.
- **An Quoc Nguyen**. Conspiracy (Travel Act); Conspiracy (Money-Laundering); Travel Act; Money Laundering.

Disposition.

- **Nexus Technologies**. Plea Agreement.
- **Nam Quoc Nguyen**. Plea Agreement.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

On September 15, 2010, the Court issued an order approving the government's motion for a downward departure at sentencing for Lukas for the assistance he provided to the government in their investigation of Nexus. The court cited Lukas's cooperation as significant, finding that he gave the government valuable insight into the workings of Nexus, explained various documents and emails and provided the government with critical details regarding the bribery logistics and amounts, assisting with the evidentiary basis for the superseding indictment. On September 16, 2010, Lukas was sentenced to probation for a term of two years, ordered to pay a fine of $1000 and special assessment of $200.00, and perform 200 hours of community service.

On September 16, 2010, Nexus was sentenced to probation for a term of one year, ordered to cease all operations permanently, turn over all net assets to the Clerk of Court as a fine, and pay a special assessment of $11,200. On the same day, Nam Quoc Nguyen, founder of Nexus, was sentenced to 16 months imprisonment for each count to be served concurrently with the other counts and two years of supervised release. Co-defendant An Quoc Nguyen was sentenced to nine months imprisonment and three years of supervised release for a term of three years. In consideration of her cooperation, the court found that co-defendant Kim Anh Nguyen was entitled to a downward departure and sentenced her to two years' probation, a $20,000 fine, a special assessment of $300, and 200 hours of community service.

- **Joseph Lukas**. Plea Agreement.
- **Kim Anh Nguyen**. Plea Agreement.
- **An Quoc Nguyen**. Plea Agreement.

Defendant Jurisdictional Basis.

- **Nexus Technologies**. Domestic Concern.
- **Nam Quoc Nguyen**. Domestic Concern.
- **Joseph Lukas**. Domestic Concern.
- **Kim Anh Nguyen**. Domestic Concern.
- **An Quoc Nguyen**. Domestic Concern.

Defendant's Citizenship.

- **Nexus Technologies**. United States.
- **Nam Quoc Nguyen**. United States.
- **Joseph Lukas**. United States.
- **Kim Anh Nguyen**. United States.
- **An Quoc Nguyen**. United States.

Total Sanction.

- **Nexus Technologies**. 1-Year Probation; $11,200 Special Assessment.
- **Nam Quoc Nguyen**. 16-Months Imprisonment.
- **Joseph Lukas**. 2-Years Probation; $1,000 Criminal Fine.
- **Kim Anh Nguyen**. 2-Years Probation; $20,000 Criminal Fine.
- **An Quoc Nguyen**. 9-Months Imprisonment.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

70. UNITED STATES V. ALBERT JACKSON STANLEY (S.D. TEX. 2008)

NATURE OF THE BUSINESS

Engineering, procurement, and construction ("EPC") contracts to build liquefied natural gas ("LNG") facilities on Bonny Island, Nigeria. Albert "Jack" Stanley ("Stanley") is a U.S. citizen and a former officer and director of Kellogg, Brown & Root, Inc. ("KBR"), a global engineering and construction company based in Houston, Texas, that was during part of the relevant period a subsidiary of Halliburton.

INFLUENCE TO BE OBTAINED

KBR participated in a joint venture seeking EPC contracts to build LNG facilities on Bonny Island, Nigeria. Four EPC contracts were awarded to the joint venture by Nigeria LNG Ltd., the largest shareholder of the Nigerian government-owned Nigerian National Petroleum Corporation. Stanley was responsible for hiring two agents to pay bribes to Nigerian government officials. From 1995 to 2004, the joint venture paid the two agents a total of $182 million, to be used in part to bribe government officials. Stanley also received $10.8 million dollars in kickbacks from a consultant whom his former employer had hired at his direction.

ENFORCEMENT

On September 3, 2008, Stanley pleaded guilty to one count of conspiring to violate the FCPA as well as one count of conspiring to commit mail and wire fraud. On February 23, 2012, Stanley was sentenced to 30 months in prison followed by three years of supervised release. The sentencing also included a payment of $10.8 million in restitution set by the terms of Stanley's plea agreement.

On February 11, 2009, KBR and Halliburton settled related actions with the DOJ and SEC. Two alleged co-conspirators, Wojciech Chodan and Jeffrey Tesler, were indicted on February 17, 2009. Chodan subsequently pleaded guilty to conspiracy on December 6, 2010. Tesler, having been extradited to the United States by the United Kingdom, pleaded guilty to conspiracy as well as one count of violating the anti-bribery provisions of the FCPA on March 11, 2011. Both individuals were sentenced in 2012.

See DOJ Digest Numbers B-126, B-118, B-101, B-100, B-82, and B-80.
See SEC Digest Numbers D-74, D-72, D-57 and D-54.
See Parallel Litigation Digest Number H-F10.

KEY FACTS

Citation. *United States v. Stanley*, No. 08-cr-00597 (S.D. Tex. 2008).

Date Filed. August 29, 2008.

Country. Nigeria.

Date of Conduct. 2003 – 2007.

Amount of the Value. $182 million.

Amount of Business Related to the Payment. $6 billion.

Intermediary. Two Agents.

Foreign Official. Officials of the Nigerian Government.

FCPA Statutory Provision. Conspiracy (Anti-Bribery).

Other Statutory Provision. Conspiracy (Wire Fraud & Mail Fraud).

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Conspiracy; Domestic Concern; Agent of Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. 30-Months Imprisonment; $10,800,000 Restitution.

Related Enforcement Actions. *United States v. Kellogg Brown & Root LLC*; *United States v. ENI, S.p.A.*; *United States v. Technip S.A.*; *United States v. JCG Corp*; *United States v. Stanley, et al.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

69. IN RE FARO TECHNOLOGIES INC. (2008)[75]

NATURE OF THE BUSINESS

Procurement of contracts for the sale of portable computerized measurement devices and software for the manufacturing sector.

INFLUENCE TO BE OBTAINED

Faro Technologies Inc. ("Faro"), a U.S. corporation, began direct sales in China in 2003 through a subsidiary, Faro Shanghai Co., Ltd. ("Faro China"). In 2004 and 2005, the head of Faro China's office made corrupt payments totaling $444,492, authorized by Faro's then regional sales manager for the Asia-Pacific region, directly to employees of Chinese state-owned or controlled entities on several occasions. An additional $88,671 was promised but not paid. The payments were made to secure contracts for Faro worth approximately $4,944,234.

In 2005, the then regional sales manager and the Faro China employee decided to route the corrupt payments through an intermediary to "avoid exposure," according to internal e-mails. In January 2005, Faro China entered into a false services contract with an intermediary. The intermediary would pay the bribes and send regular invoices to Faro China for payment.

Faro falsely recorded at least $238,000 in improper payments in its books and records, describing the bribe payments as "referral fees." Between approximately May 2003 and February 2006, Faro also failed to devise and maintain a system of internal controls to ensure compliance with the FCPA.

ENFORCEMENT

On June 4, 2008, Faro entered into a two-year non-prosecution agreement with the DOJ and agreed to pay a $1,100,000 criminal penalty and to retain an independent compliance monitor for a period of two years.

See SEC Digest Numbers D-65 and D-52.
See Parallel Litigation Digest Numbers H-A4 and H-F6.

KEY FACTS

Citation. *In re Faro Technologies, Inc.* (2008).

Date Filed. June 3, 2008.

Country. China.

Date of Conduct. 2003 – 2006.

Amount of the Value. $533,163 paid or authorized.

Amount of Business Related to the Payment. $4.9 million.

Intermediary. Agent.

Foreign Official. Employees of Chinese State-Owned or Controlled Entities.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $1,100,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. None.

[75] Matter resolved through non-prosecution agreement (June 2008).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

68. UNITED STATES V. AGA MEDICAL CORP. (D. MINN. 2008)

NATURE OF THE BUSINESS

Sale of medical devices.

INFLUENCE TO BE OBTAINED

AGA Medical Corporation ("AGA"), a U.S.-based corporation, manufactured and sold medical devices for the minimally invasive treatment of congenital heart defects. AGA marketed and sold its products in over 90 countries through a network of local distributors and direct sales. Between 1997 and 2005, AGA, a high-ranking officer of AGA, and other AGA employees agreed to make corrupt kickback payments to physicians employed at state-owned hospitals. The payments were made through AGA's Chinese distributor. In exchange for these payments, the physicians directed the hospitals to purchase AGA's products. In addition, between 2000 to 2002, AGA and a high-ranking officer of AGA agreed to make payments through the same distributor to officials of the State Intellectual Property Office to have patents for AGA products approved.

ENFORCEMENT

On June 2, 2008, AGA entered into a three-year deferred prosecution agreement, admitting to the alleged conduct and agreeing to pay a $2 million penalty and to retain an independent compliance monitor for a period of three years.

See Parallel Litigation Digest Number H-C15.

KEY FACTS

Citation. *United States v. AGA Medical Corp.*, No. 0:08-cr-00172 (D. Minn. 2008).

Date Filed. June 3, 2008.

Country. China.

Date of Conduct. 1997 – 2005.

Amount of the Value. At least $480,000.

Amount of Business Related to the Payment. $13.5 million.

Intermediary. Chinese Distributor.

Foreign Official. Physicians employed at state-owned hospitals; officials of China's State Intellectual Property Office.

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Domestic.

Defendant's Citizenship. United States.

Total Sanction. $2,000,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

67. UNITED STATES V. WILLBROS GROUP, INC., AND WILLBROS INT'L, INC. (S.D. TEX. 2008)

NATURE OF THE BUSINESS

Procurement of contracts for oil and gas construction projects by Willbros International Inc., a wholly-owned subsidiary of Willbros Group, Inc., both Panama corporations.

INFLUENCE TO BE OBTAINED

The DOJ alleged that Willbros Group and Willbros International used contractual payments, fraudulent loans, and petty cash obtained by fraudulent invoices to funnel money to two "consultants" for the purposes of bribing foreign officials from Nigeria to pursue contracts associated with the Eastern Gas Gathering Systems ("EGGS"), a project building a natural gas pipeline system in the Niger Delta designed to relieve existing pipeline capacity constraints and contracts to repair offshore oil platforms along the Nigerian coast. In addition, from December 2003 through the first half of 2004, Willbros International pursued contracts to refurbish a pipeline in Ecuador with PetroComercial, a subsidiary of state-owned PetroEcuador. In addition, the DOJ alleged that Willbros International and Willbros Group violated the books and records provision by recording all of the above payments as contract costs. In addition, a subsidiary of Willbros International devised a scheme to buy false invoices through a consultant to fraudulently claim VAT tax credits to reduce tax liability in violation of books and records requirements.

ENFORCEMENT

On May 14, 2008, Willbros Group and Willbros International entered into a three-year deferred prosecution agreement, pursuant to which they agreed, jointly and severally, to a fine of $22 million payable in four installments. In addition, Willbros Group and Willbros International agreed to engage an independent corporate monitor for a period of three years.

See DOJ Digest Numbers B-76, B-54, and B-45.
See SEC Digest Numbers D-51 and D-28.
See Parallel Litigation Digest Number H-A8.

KEY FACTS

Citation. *United States v. Willbros Grp., Inc.*, et al., No. 4:08-cr-0287 (S.D. Tex. 2008).

Date Filed. May 14, 2008.

Country. Nigeria; Ecuador; Bolivia.

Date of Conduct. 2003 – 2005.

Amount of the Value. Approximately $10.8 million.

Amount of Business Related to the Payment. Approximately $390 million.

Intermediary. Outside Consultants.

Foreign Official. Nigerian National Petroleum Corporation ("NNPC") officials; Officials of NNPC's wholly-owned subsidiary National Petroleum Investment Management Services ("NAPIMS"); Officials of NNPC's majority-owned joint venture operator, Shell Petroleum Development Company of Nigeria ("SPDC"); A senior official in the Nigerian federal government; Officials in the dominant political party in Nigeria; Officials of PetroEcuador and PetroComercial in Ecuador.

FCPA Statutory Provision.

- **Willbros Group**. Conspiracy (Anti-Bribery); Anti-Bribery; Books-and-Records.
- **Willbros Int'l**. Conspiracy (Anti-Bribery); Anti-Bribery; Books-and-Records.

Other Statutory Provision. None.

Disposition.

- **Willbros Group**. Deferred Prosecution Agreement.
- **Willbros Int'l**. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis.

- **Willbros Group**. Issuer.
- **Willbros Int'l**. Domestic Concern.

Defendant's Citizenship.

- **Willbros Group**. United States.
- **Willbros Int'l**. United States.

Total Sanction. $22,000,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *SEC v. Willbros Group, Inc.*

Total Combined Sanction. $32,300,000.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

66. UNITED STATES V. MARTIN ERIC SELF (C.D. CAL. 2008)

NATURE OF THE BUSINESS

Contracts with United Kingdom Ministry of Defense ("U.K.-MOD") for military spare parts. Martin Self, a U.S. citizen, was the President of Pacific Consolidated Industries ("PCI"), a manufacturer of Air Separation Units ("ASU") and other equipment for defense departments around the world. PCI is headquartered in Santa Ana, California.

INFLUENCE TO BE OBTAINED

In October 1999, Self and Leo Winston Smith, the Executive Vice President of Sales and Marketing at PCI, entered into a marketing agreement with a relative of a U.K.-MOD official. Under this agreement, the relative was not obligated to provide any services, but payments would be made by PCI to the relative. The actual purpose of these payments was to obtain contracts with the U.K.-MOD for ASU spare parts. Beginning in 1999 and continuing until May 2002, Smith wired approximately $70,350 to the relative of the U.K.-MOD official. As President of PCI, Self failed to investigate the marketing agreement and the purpose of the payments made to the relative and deliberately avoided learning the true facts.

ENFORCEMENT

On May 2, 2008, the DOJ filed a two-count information alleging violations of the FCPA's anti-bribery provisions. On May 7, 2008, Self pleaded guilty to both counts. On November 10, 2008, the government moved to have the court impose a sentence at the low end of the applicable advisory guideline range, which was 8 to 14 months, given Self's limited involvement in the bribery scheme. On November 17, 2008, Self was fined $20,000 and sentenced to 2 years' probation. Smith was separately indicted. In a plea hearing on September 3, 2009, Smith pleaded guilty to causing bribes to be paid to the U.K.-MOD official, including via a spurious marketing agreement at a rate of $5,000 for two quarters, and endeavoring to instruct and impede the due administration of the Internal Revenue laws. On December 2, 2010, Smith was sentenced to 6 months in prison to be followed by 6 months of home confinement and fines and a special assessment totaling $7,700.

See DOJ Digest Number B-49.

KEY FACTS

Citation. *United States v. Self*, No. 8:08-cr-00110 (C.D. Cal. 2008).

Date Filed. May 2, 2008.

Country. United Kingdom.

Date of Conduct. 1999 – 2002.

Amount of the Value. $70,350.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Relative of Government Official.

Foreign Official. United Kingdom Ministry of Defense official.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. 2-Years Probation; $20,000 Criminal Fine.

Related Enforcement Actions. *United States v. Smith.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

65. UNITED STATES V. AB VOLVO (D.D.C. 2008)
UNITED STATES V. VOLVO CONSTRUCTION EQUIPMENT AB (D.D.C. 2008)
UNITED STATES V. RENAULT TRUCKS SAS (D.D.C. 2008)

NATURE OF THE BUSINESS

Sales of heavy commercial construction equipment and vehicles and other equipment to Iraq under the U.N. Oil-for-Food Program.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil-for-Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value. The government did not allege bribery of any individual foreign governmental officials.

Volvo Construction Equipment (formerly Volvo Construction Equipment International, AB or "Volvo Construction") is an international seller of heavy commercial construction equipment. Between December 2000 and January 2003, Volvo Construction paid approximately $1.3 million in kickbacks to the Iraqi government, improperly labeled as "commission" payments in its books and records. These kickbacks were included in various contract prices submitted by Volvo Construction and its distributors and ensured that Volvo Construction was awarded a total of approximately $13.8 million worth of contracts to supply construction vehicles to the Iraqi government.

From November 2000 through April 2003, Renault Trucks SAS ("Renault") entered into 17 contracts with various Iraqi ministries, including the 10% kickback payment. In performing the contracts, Renault used a Swiss bodybuilder to tailor the requested vehicles to the Iraqi ministry's specifications. Renault provided extra payments to that company and was aware that these extra payments were being passed on to the Iraqi government to ensure that they were awarded additional contracts. Overall, the Iraqi government received $4.8 million in kickbacks from Renault. In return for these kickbacks, Renault Trucks SAS obtained contracts to supply vehicles and other equipment approximately worth €61 million.

ENFORCEMENT

On March 20, 2008, AB Volvo (the parent company of Volvo Construction and Renault Trucks SAS) entered into a three-year deferred prosecution agreement with the DOJ. Pursuant to the agreement, the DOJ filed two criminal informations against Volvo Construction and Renault respectively alleging conspiracy to commit wire fraud and to violate the FCPA's books-and-records provisions. Under the agreement, AB Volvo agreed to pay a fine totaling $7 million. In June 2011, the Court granted the DOJ's motion to dismiss the information against AB Volvo because it had complied with the terms of the DPA. In addition, AB Volvo settled related charges with the SEC. In March 2009, three unnamed executives at Volvo Construction were criminally charged by Swedish prosecutors for their involvement in the bribery scandal. They could face jail sentences if convicted.

KEY FACTS

Citation. *United States v. AB Volvo, et al.*, No. 1:08-cr-00069 (D.D.C. 2008); *United States v. Volvo Const. Equip. AB*, No. 1:08-cr-00069 (D.D.C. 2008); *United States. v. Renault Trucks SAS*, No. 1:08-cr-00069 (D.D.C. 2008).

Date Filed. March 20, 2008.

Country. Iraq.

Date of Conduct. 2000 – 2003.

Amount of the Value. $6.1 million in kickbacks to the Iraqi government.

Amount of Business Related to the Payment. $13.8 million and €61 million.

Intermediary. Distributors and "Bodybuilder."

Foreign Official. None.

FCPA Statutory Provision.

- **AB Volvo**. None.
- **Volvo Construction Equip.** Conspiracy (Books-and-Records).
- **Renault Trucks**. Conspiracy (Wire Fraud).

Other Statutory Provision.

- **AB Volvo**. None.
- **Volvo Construction Equip.** Conspiracy (Wire Fraud).
- **Renault Trucks**. Conspiracy (Wire Fraud).

Disposition.

- **AB Volvo**. Deferred Prosecution Agreement.
- **Volvo Construction Equip.** Deferred Prosecution Agreement.
- **Renault Trucks**. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis.

- **AB Volvo**. Issuer.
- **Volvo Construction Equip.** Conspiracy; Agent of Issuer.
- **Renault Trucks**. Conspiracy; Agent of Issuer.

Defendant's Citizenship.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

See SEC Digest Number D-50. *See* Ongoing Investigations Number F-2.	• **AB Volvo**. Sweden. • **Volvo Construction Equip.** Sweden. • **Renault Trucks**. France. **Total Sanction**. $7,000,000. **Compliance Monitor/Reporting Requirements.** None. **Related Enforcement Actions.** *SEC v. AB Volvo*. **Total Combined Sanction.** $19,602,649.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

64. UNITED STATES V. FLOWSERVE CORP. (D.D.C. 2008)
UNITED STATES V. FLOWSERVE POMPES SAS (D.D.C. 2008)

NATURE OF THE BUSINESS

Sale of pumps and other oil refinery equipment to Iraq under the U.N. Oil-for-Food Program.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil-for-Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value.

Flowserve Corporation ("Flowserve"), an American corporation, was involved in the U.N. Oil-for-Food Program through two of its foreign subsidiaries including Flowserve Pompes SAS, a French subsidiary. Between 2001 and 2003, Flowserve Pompes entered into nineteen contracts in connection to which kickback payments to the Iraqi government were either made or authorized. Flowserve Pompes offered to pay a total of $778,409 in payments, of which approximately $604,651 was in fact paid to the Iraqi government through a Jordanian agent pursuant to side agreements for nonexistent after-sales services.

The government did not allege bribery of any individual foreign governmental officials.

ENFORCEMENT

On February 21, 2008, Flowserve entered into a three-year deferred prosecution agreement with the DOJ under which Flowserve acknowledged responsibility for its subsidiary Flowserve Pompes SAS's actions. Flowserve agreed to pay a penalty of $4,000,000.

On the same day, the DOJ filed a criminal information against Flowserve Pompes SAS, charging the company with conspiring to commit wire fraud and violate the FCPA's books-and-records provisions.

See SEC Digest Number D-49.
See Ongoing Investigations Number F-57 and F-2.

KEY FACTS

Citation. *United States v. Flowserve Corp.*, No. 1:08-00035 (D.D.C. 2008); *United States v. Flowserve Pompes SAS*, No. 1:08-cr-00035 (D.D.C. 2008).

Date Filed. May 14, 2008.

Country. Iraq.

Date of Conduct. 2001 – 2003.

Amount of the Value. $778,409 in paid or authorized kickbacks to the Iraqi government.

Amount of Business Related to the Payment. €7,435,381.

Intermediary. Jordanian Agent.

Foreign Official. None.

FCPA Statutory Provision.

- **Flowserve Corp.** None.
- **Flowserve Pompes**. Conspiracy (Books-and-Records).

Other Statutory Provision.

- **Flowserve Corp.** None.
- **Flowserve Pompes**. Conspiracy (Wire Fraud).

Disposition.

- **Flowserve Corp.** Deferred Prosecution Agreement.
- **Flowserve Pompes**. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis.

- **Flowserve Corp.** Issuer.
- **Flowserve Pompes**. Conspiracy; Agent of Issuer.

Defendant's Citizenship.

- **Flowserve Corp.** United States.
- **Flowserve Pompes**. France.

Total Sanction. $4,000,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *SEC v. Flowserve Corp.*

Total Combined Sanction. $10,574,225.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

63. IN RE WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORP. (2008)[76]

NATURE OF THE BUSINESS

Sales of railway equipment and scheduling inspections, product delivery certificates, and curbing tax audits.

INFLUENCE TO BE OBTAINED

From 2001 to 2005, Pioneer Friction Limited ("Pioneer"), an Indian subsidiary of Westinghouse Air Brake Technologies Corporation ("Wabtec"), a U.S. corporation, and its employees and agents made various payments to officials of the Indian Railway Board ("IRB"), a government agency which is part of India's Ministry of Railroads, to assist Pioneer in obtaining and retaining business with the IRB, scheduling pre-shipping product inspections, obtaining issuance of product delivery certificates, and curbing what Pioneer considered to be excessive tax audits.

ENFORCEMENT

In February 2008, Wabtec entered into a three-year non-prosecution agreement with the DOJ, admitting to the alleged conduct and agreeing to pay a $300,000 penalty, to implement rigorous internal controls, and to cooperate fully with the DOJ.

See SEC Digest Number D-48.

KEY FACTS

Citation. *In re Westinghouse Air Brake Techs. Corp.* (2008).

Date Filed. February 14, 2008.

Country. Iraq.

Date of Conduct. 2001 – 2005.

Amount of the Value. $170,542.

Amount of Business Related to the Payment. $259,000.

Intermediary. Agents.

Foreign Official. Officials of the Indian Railway Board.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $300,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *SEC v. Westinghouse Air Brake Techs. Corp.*

[76] Matter resolved through non-prosecution agreement (February 2008).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

62. IN RE EL PASO CORP. (S.D.N.Y. 2007)[77]

NATURE OF THE BUSINESS

Purchase of Iraqi oil by El Paso Corporation ("El Paso"), a U.S. corporation. The Coastal Corporation ("Coastal") was the predecessor-in-interest to El Paso CGP Company, which now operates as a wholly-owned subsidiary of El Paso.

INFLUENCE TO BE OBTAINED

From June 2001 through May 2002, El Paso purchased Iraqi oil from third parties, who had paid approximately $5.48 million in illegal surcharges to the former government of Iraq.

ENFORCEMENT

On February 7, 2007, the United States Attorney for the Southern District of New York and El Paso entered into a non-prosecution agreement, under which El Paso agreed to forfeit the sum of $5,482,363, equal to the sum of illegal surcharges paid to the former Iraqi government. The Office of Foreign Assets Control ("OFAC") agreed not to pursue civil penalties against El Paso for any violations of OFAC sanctions programs related to El Paso's participation in the former Iraqi government's scheme. El Paso also settled a related complaint filed by the SEC, consenting to a civil penalty of $2.25 million.

See SEC Digest Number D-31.
See Ongoing Investigation Number F-2.

KEY FACTS

Citation. *In re El Paso Corp.* (2007).

Date Filed. February 5, 2007.

Country. Iraq.

Date of Conduct. 2001 – 2002.

Amount of the Value. Approximately $5.48 million.

Amount of Business Related to the Payment. Approximately $420 million in oil purchases.

Intermediary. Third-Party Iraqi Oil Companies.

Foreign official. None.

FCPA Statutory Provision. None.

Other Statutory Provision. Wire Fraud.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Not Applicable.

Defendant's Citizenship. United States.

Total Sanction. $5,482,363.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

[77] Matter resolved through non-prosecution agreement (February 2007).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

61. UNITED STATES V. GERALD GREEN AND PATRICIA GREEN (C.D. CAL. 2007) UNITED STATES V. JUTHAMAS SIRIWAN AND JITTISOPA SIRIWAN (C.D. CAL. 2009)

NATURE OF THE BUSINESS

Procurement of contracts for the annual Bangkok International Film Festival ("Film Festival") through the Tourism Authority of Thailand ("TAT") and for other programs managed by a TAT-controlled entity, the Thailand Privilege Card Co. Ltd. ("Card Co.").

INFLUENCE TO BE OBTAINED

The superseding indictment alleges that the Greens owned or operated several incorporated and unincorporated businesses in the U.S. to obtain and manage contracts with TAT and Card Co. TAT, a government agency, administered the funds for the Film Festival. The indictment alleges that, between 2002 and 2007, the Greens paid at least $1,800,000 in bribes to the senior government officer at TAT to secure contracts with the Film Festival and with Card Co. for other tourism-related projects. The indictment alleges that the Greens inflated the value of their contracts with TAT and Card Co. and with third-party contractors with whom they subcontracted to include corrupt payments of 10-20% of the contract value, that would be passed on to the official. The payments were allegedly made indirectly to bank accounts of the daughter and a friend of the government official in Singapore, the United Kingdom, and the Isle of Jersey, and were recorded improperly in the books and records of the Greens' companies as "sales commissions." The indictment also alleges that the Greens took unlawful tax deductions for those payments, accounting for them as commissions in the costs of goods sold. According to a second superseding indictment, Gerald Green altered and falsified film production budgets to make them appear as though they were created in 2006 to disguise bribe payments as bona fide expenses.

ENFORCEMENT

The Greens were charged by criminal complaint filed on December 7, 2007 and were arrested on December 18, 2007. On October 1, 2008, a superseding indictment was filed alleging additional facts, adding money laundering and tax counts, and seeking criminal forfeiture. The tax counts, however, were brought only against Patricia Green. The Greens pleaded not guilty. A restraining order was issued preventing the Greens from disposing of their assets until after trial. On March 11, 2009, a second superseding indictment was filed, which added a count of obstruction of justice against Gerald Green.

On September 11, 2009, after a two-and-a-half week trial, a jury found the Greens both guilty of conspiracy to violate the FCPA and money laundering laws along with substantive violations of those laws. The jury also found Patricia Green guilty of falsely subscribing U.S. income tax returns in connection with their bribery scheme. Prosecutors dismissed a substantive money laundering count prior to the case going to the jury. The jury was unable to reach a verdict on the obstruction of justice count against Gerald Green. On August 13, 2010, the court entered a general order of forfeiture against the Greens. The court entered a personal forfeiture judgment against the defendants jointly and severally in the amount of $1,049,465 plus the amount of each defendant's share of the Artis Design Corporation's Benefits Plan, representing the amount defendants obtained as proceeds of the offenses. On September 10, 2010, the court sentenced the defendants to six months in prison and three years of supervised release. The court waived

KEY FACTS

Citation. *United States v. Green*, No. 2:08-cr-00059 (C.D. Cal. 2008); *United States v. Siriwan*, No. 2:09-cr-00081 (C.D. Cal. 2009).

Date Filed. December 7, 2007.

Country. Thailand.

Date of Conduct. 2002 – 2006.

Amount of the Value. At least $1,800,000.

Amount of Business Related to the Payment. At least $14 million.

Intermediary. Daughter and friend of the Thai government official with TAT.

Foreign Official. Thai government official with TAT.

FCPA Statutory Provision.

- **Gerald Green.** Conspiracy (Anti-Bribery); Aiding-and-Abetting (Anti-Bribery).
- **Patricia Green.** Conspiracy (Anti-Bribery); Aiding-and-Abetting (Anti-Bribery).

Other Statutory Provision.

- **Gerald Green.** Aiding-and-Abetting (Money Laundering); Money Laundering.
- **Patricia Green**. Aiding-and-Abetting (Money Laundering); Money Laundering; Tax Fraud.
- **Juthamas Siriwan.** Conspiracy (Money Laundering); Money Laundering.
- **Jittisopa Siriwan.** Conspiracy (Money Laundering); Money Laundering.

Disposition.

- **Gerald Green.** Conviction.
- **Patricia Green.** Conviction.
- **Juthamas Siriwan.** Pending.
- **Jittisopa Siriwan.** Pending.

Defendant Jurisdictional Basis.

- **Gerald Green.** Conspiracy; Aiding-and-Abetting; Domestic Concern.
- **Patricia Green.** Conspiracy; Aiding-and-Abetting; Domestic Concern.
- **Defendant's Citizenship.**

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

other fines but ordered Gerald Green to pay a special assessment of $1,700 and Patricia Green to pay a special assessment of $1,900. The court also ordered that defendants jointly and severally pay restitution in the amount of $250,000. The government appealed the sentence to the Ninth Circuit Court of Appeals on October 22, 2010, but subsequently withdrew the appeal on August 23, 2011. The defendants then appealed the restitution order, claiming that the court could not order restitution without a jury's finding of an identifiable victim who suffered a pecuniary loss. However, on July 11, 2013, the Ninth Circuit Court of Appeals affirmed the district court's ruling.

RELATED CASE

United States v. Siriwan (C.D. Cal. 2009).

On January 28, 2009, the senior government official with TAT, Juthamas Siriwan, and her daughter, Jittisopa Siriwan, both Thai citizens, were indicted in the U.S. District Court for the Central District of California. They are charged with transporting funds to promote unlawful activity, namely bribery of a foreign official in violation of the FCPA, conspiring to do so, and aiding and abetting. The Greens are identified in the indictment as co-conspirators. On August 19, 2011, the Siriwans moved to dismiss the indictments on the ground that the government's charges rely on an expansive interpretation of "promotion of money laundering" under the Money Laundering Control Act to circumvent the fact that the FCPA does not criminalize a foreign public official's receipt of a bribe. During a hearing on March 2013, the prosecution set forth its theory of money laundering, whereby an "offense against a foreign nation" is the purported specified unlawful activity. Subsequently, the court issued a stay of the case pending a decision by Thai authorities as to whether the defendants violated Thai law, thus constituting an "offense against a foreign nation." In August 2015, Thai prosecutors indicted Juthamas Siriwan and her daughter, Jittisopha Siriwan, on charges of taking bribes, corruption, and bid rigging. A status conference in the district court has been scheduled for October 2017.

- **Gerald Green.** United States.
- **Patricia Green.** United States.
- **Juthamas Siriwan.** Thailand.
- **Jittisopa Siriwan.** Thailand.

Total Sanction.

- **Gerald Green.** 6-Months Imprisonment; $250,000 Restitution (Jointly and Severally with Patricia Green).
- **Patricia Green.** 6-Months Imprisonment; $250,000 Restitution (Jointly and Severally with Gerald Green).
- **Juthamas Siriwan.** Pending.
- **Jittisopa Siriwan.** Pending.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

60. IN RE AKZO NOBEL, N.V. (2007)[78]

NATURE OF THE BUSINESS

Sales of humanitarian goods. Akzo Nobel N.V. ("Akzo Nobel"), a Netherlands-based pharmaceutical company, manufactures human and animal health care products, decorative paints, and other chemicals.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil-for-Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value.

Between 2000 and 2002, two Akzo Nobel subsidiaries authorized and made approximately $280,000 in kickback payments to the Iraqi government in connection with their sales of humanitarian goods. The kickback payments were improperly recorded in the company's books and records as commission payments in violation of the books-and-records provisions of the FCPA.

The government did not allege bribery of any individual foreign governmental officials.

ENFORCEMENT

On December 20, 2007, Akzo Nobel entered into a non-prosecution agreement with the DOJ, which required the company to reach a resolution with the Dutch Public Prosecutor under which it would pay a criminal fine of no less than €381,602 in the Netherlands. According to the agreement, if Akzo Nobel fails to reach a resolution with the Dutch Public Prosecutor within 180 days, Akzo Nobel will pay $800,000 to the U.S. Treasury. Further, if the criminal fine paid in the Netherlands is less than €381,602, then Akzo Nobel shall pay the U.S. Treasury the difference between the amount of the fine paid and U.S. $800,000. In a related SEC litigation, the company consented to the entry of a final judgment permanently enjoining it from future violations and ordering disgorgement of $1,647,363 in profits, plus $584,150 in prejudgment interest, and a civil penalty of $750,000.

See SEC Digest Number D-44.

KEY FACTS

Citation. *In re Akzo Nobel, N.V.* (2007).

Date Filed. December 20, 2007.

Country. Iraq.

Date of Conduct. 2000 – 2002.

Amount of the Value. Approximately $280,000 in kickbacks to the Iraqi government.

Amount of Business Related to the Payment. $1,446,626.92 in profits.

Intermediary. Agents.

Foreign Official. None.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Netherlands.

Total Sanction. $800,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *SEC v. Akzo Nobel, N.V.*

Total Combined Sanction. $3,781,513.

[78] Matter resolved through non-prosecution agreement (December 2007).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

59. IN RE CHEVRON CORP. (S.D.N.Y. 2007)[79]

NATURE OF THE BUSINESS

The purchase of oil from Iraq by Chevron Corp. and its subsidiaries ("Chevron") under the United Nations Oil-for-Food Program.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil-for-Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value.

From April 2001 through May 2002, Chevron purchased Iraqi oil from third-party intermediaries and allocation holders who had paid surcharge payments to the Iraqi government in exchange for the right to buy the oil, in violation of sanctions and the U.N. Oil-for-Food Program rules and the books and records provisions of the FCPA. The government did not allege bribery of any individual foreign governmental officials.

ENFORCEMENT

On November 8, 2007, Chevron entered into a two-year non-prosecution agreement with the U.S. Attorney's Office for the Southern District of New York and the District Attorney of New York County, New York. Chevron accepted responsibility and agreed to continue cooperating with state and federal authorities and to pay a total of $27 million, consisting of $20 million to the U.S. Attorney's Office intended for the Development Fund of Iraq, $5 million to the New York County District Attorney's Office, and $2 million to the United States Office of Foreign Assets Control. In a related SEC settlement, the company also separately agreed to pay an additional monetary penalty of $3 million and to disgorge $25 million, which was to be satisfied by its payments to the U.S. Attorney's Office and the New York County District Attorney's Office.

See SEC Digest Number D-42.
See Parallel Litigation Digest Number H-F8.
See Ongoing Investigations Number F-1.

KEY FACTS

Citation. *In re Chevron Corp. (2007).*

Date Filed. November 8, 2007.

Country. Iraq.

Date of Conduct. 2000 – 2003.

Amount of the Value. Approximately $20 million in kickbacks to the Iraqi government.

Amount of Business Related to the Payment. Unspecified.

Intermediary. Unnamed Third-Party Intermediaries and Allocation Holders.

Foreign Official. None.

FCPA Statutory Provision. None.

Other Statutory Provision. Wire Fraud.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Not Applicable.

Defendant's Citizenship. United States.

Total Sanction. $27,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *SEC v. Chevron Corp.*

Total Combined Sanction. $30,000,000.

[79] Matter resolved through non-prosecution agreement (November 2007).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

58. IN RE LUCENT TECHNOLOGIES INC. (2007)[80]

NATURE OF THE BUSINESS

Procurement of contracts for communications networks systems. Lucent Technologies Inc. ("Lucent"), a U.S. corporation, merged with Alcatel SA in 2006, forming a new entity, Alcatel-Lucent, incorporated in France.

INFLUENCE TO BE OBTAINED

From at least 2000 to 2003, Lucent paid all of the expenses, and often per diems, for approximately 315 trips to the United States by numerous Chinese government officials as well as providing various educational expenses for additional government officials. The trips were primarily, and sometimes wholly, for sightseeing and leisure rather than business purposes and were booked improperly in Lucent's books and records, for example as "factory inspections" in locations where no factory existed. The educational expenses, which included graduate school tuition and expenses for an employee of a Chinese government ministry, were improperly recorded as "marketing expenses." These trips and educational expenses were intended to procure contracts for the provision of communications networks systems worth at least $2 billion.

ENFORCEMENT

Lucent entered into a two-year non-prosecution agreement with the DOJ in December 2007, admitting to the alleged conduct and agreeing to pay a $1 million penalty and to adopt new, or to modify existing, internal controls. Lucent also consented to a final judgment with the SEC requiring it to cease and desist from further violations of the FCPA, to implement an FCPA compliance protocol, and to pay a civil penalty of $1.5 million.

See DOJ Digest Numbers B-115 and B-46.
See SEC Digest Numbers D-89 and D-46.

KEY FACTS

Citation. *In re Lucent Techs. Inc. (2007).*

Date Filed. November 14, 2007.

Country. China.

Date of Conduct. 2000 – 2003.

Amount of the Value. Approximately $7.4 million.

Amount of Business Related to the Payment. At least $2 billion.

Intermediary. None.

Foreign Official. Senior level officials of the Chinese government, including heads of state-owned telecommunications companies and provincial subsidiaries.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $1,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *SEC v. Lucent Techs. Inc.*

Total Combined Sanction. $2,500,000.

[80] Matter resolved through non-prosecution agreement (December 2007).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

57. UNITED STATES V. INGERSOLL-RAND CO. LTD. (D.D.C. 2007)
UNITED STATES V. INGERSOLL-RAND ITALIANA SPA (D.D.C. 2007)
UNITED STATES V. THERMO KING IRELAND LTD. (D.D.C. 2007)

NATURE OF THE BUSINESS

Procurement of humanitarian contracts to provide road construction equipment, air compressors and parts, and refrigerated trucks to Iraqi ministries by including kickbacks in contracts under the United Nations Oil-for-Food Program. Ingersoll-Rand Co. Ltd. ("Ingersoll-Rand") is a Bermuda corporation.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil-for-Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value.

From October 2000 to August 2003, Ingersoll-Rand's Italian and Irish wholly-owned subsidiaries (Ingersoll-Rand Italiana, SpA, and Thermo King Ireland Limited) paid kickbacks to the Iraqi government, and the Italian subsidiary paid for travel, entertainment, and "pocket money" for eight Iraqi government officials, to obtain humanitarian contracts with Iraqi ministries to provide road construction equipment, air compressors and parts, and refrigerated trucks.

ENFORCEMENT

On October 31, 2007, the DOJ filed a criminal information in the U.S. District Court for the District of Columbia charging Thermo King Ireland Limited with conspiracy to commit wire fraud. The information alleges that the Irish subsidiary secured contracts as described above with the Iraqi government by offering to pay kickbacks of 10%. The DOJ filed another criminal information in the U.S. District Court for the District of Columbia charging Ingersoll-Rand Italiana, SpA, with conspiracy to commit wire fraud and to violate the books and records provisions of the FCPA. The information alleges a similar kickback scheme as well as the facilitation of travel for Iraqi officials for the same purpose.

Ingersoll-Rand entered into a 3-year deferred prosecution agreement with the DOJ on October 31, 2007, on behalf of itself and these subsidiaries. Ingersoll-Rand agreed to pay a monetary penalty of $2.5 million, accept responsibility for the alleged misconduct, continue to cooperate with the DOJ, adopt an FCPA compliance program as well as a set of internal controls designed to prevent future violations, and retain an independent compliance expert for a period of three years. Ingersoll-Rand also consented to the entry of a final judgment with the SEC, agreeing to a cease and desist order and to pay disgorgement of profits of $1,710,034 plus prejudgment interest of $560,953, and a further civil penalty of $1,950,000, and to retain a compliance monitor.

See SEC Digest Number D-45.
See Ongoing Investigations Number F-2.

KEY FACTS

Citation. *United States v. Ingersoll-Rand Co. Ltd.*, No. 1:07-cr-00294 (D.D.C. 2007); *United States v. Ingersoll-Rand Italiana SpA*, No. 1:07-cr-00294 (D.D.C. 2007); *United States v. Thermo King Ir. Ltd.*, No. 1:07-cr-00296 (D.D.C. 2007).

Date Filed. October 31, 2007.

Country. Iraq.

Date of Conduct. 2000 – 2003.

Amount of the Value. Approximately $850,000 in kickbacks to the Iraqi government.

Amount of Business Related to the Payment. $2.27 million in profits.

Intermediary. Agent/Distributor.

Foreign Official. Unspecified Iraqi Officials.

FCPA Statutory Provision.

- **Ingersoll-Rand Co.** None.
- **Ingersoll-Rand Italiana**. Conspiracy (Books-and-Records).
- **Thermo King Ireland**. None.

Other Statutory Provision.

- **Ingersoll-Rand Co.** None.
- **Ingersoll-Rand Italiana**. Conspiracy (Wire Fraud).
- **Thermo King Ireland**. Conspiracy (Wire Fraud).

Disposition.

- **Ingersoll-Rand Co.** Deferred Prosecution Agreement.
- **Ingersoll-Rand Italiana**. Deferred Prosecution Agreement.
- **Thermo King Ireland**. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis.

- **Ingersoll-Rand Co.** Issuer.
- **Ingersoll-Rand Italiana**. Conspiracy; Agent of Issuer.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

	• **Thermo King Ireland**. Conspiracy; Agent of Issuer. **Defendant's Citizenship.** • **Ingersoll-Rand Co.** United States/Bermuda. • **Ingersoll-Rand Italiana**. Italy. • **Thermo King Ireland**. Ireland. **Total Sanction**. $2,500,000. **Compliance Monitor/Reporting Requirements.** None. **Related Enforcement Actions.** *SEC v. Ingersoll-Rand Co. Ltd.* **Total Combined Sanction.** $6,720,987.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

56. UNITED STATES V. YORK INTERNATIONAL CORP. (D.D.C. 2007)

NATURE OF THE BUSINESS

Procurement of contracts to supply air compressors, air conditioners, air-cooled package units and spare parts to governmental entities in Iraq, the United Arab Emirates, and several other countries by York International Corp. ("York International"), a U.S. corporation, which is a major global supplier of heating, ventilation, air conditioning and refrigeration products. York International is now owned by U.S.-based Johnson Controls. York International maintained subsidiary entities around the world, including York Air Conditioning and Refrigeration FZE ("York FZE") in Dubai and York Air Conditioning and Refrigeration, Inc. ("York Inc."), a Delaware corporation.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil-for-Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value. From November 2000 to March 2003, York FZE used a Jordanian company as an intermediary to make a series of indirect kickback payments to the Iraqi government in exchange for receiving contracts to supply its products to various Iraqi ministries and governmental departments. In 2003–04, York Inc. used one of its employees, a Syrian sales manager, to make payments to an intermediary, which is suspected of passing along the payments to governmental appointees responsible for managing the construction of a luxury hotel and convention complex. From September 1999 through December 2005, York Inc. and York FZE used contractors and false invoices to extract cash from the companies that was, in turn, used to make hundreds of kickback or bribe payments.

ENFORCEMENT

On October 1, 2007, York International entered into a three-year deferred prosecution agreement ("DPA") with the DOJ. The criminal information attached to the agreement charges York International with wire fraud and violation of the books and records provisions of the FCPA, as well as conspiracy to commit such offenses. York International agreed to pay a $10 million fine and to submit to the appointment of an independent monitor for its compliance program. On October 1, 2010, the DOJ dismissed the criminal information on the basis that York International had fully complied with all of its obligations under the DPA, including (i) payment of the $10 million penalty; (ii) full cooperation with the government; and (iii) improvement of its compliance policies and procedures to ensure compliance with the FCPA and other applicable anti-corruption laws, as certified by the independent monitor. In a related SEC litigation, the company also separately consented to the entry of final judgment enjoining it from further violations and to pay over $10 million in disgorgement and interest, as well as a $2 million civil penalty.

See SEC Digest Number D-41.

KEY FACTS

Citation. *United States v. York Int'l Corp.*, No. 1:07-cr-00253 (D.D.C. 2007).

Date Filed. October 1, 2007.

Country. Iraq; Bahrain; Egypt; India; Turkey; United Arab Emirates.

Date of Conduct. 1999 – 2005.

Amount of the Value. Approximately $647,000 in connection with the Iraqi U.N. Oil-for-Food Program; approximately $550,000 in connection with a project in the UAE; an undisclosed amount comprising several hundred bribes and kickbacks relating to an unspecified number of projects in the other countries.

Amount of Business Related to the Payment. Over $6 million in contracts in connection with the U.N. Oil-for-Food Program; $3.7 million in contracts in connection with a project in the UAE; approximately $42 million relating to other projects in the UAE and projects in the other countries mentioned above.

Intermediary. A Jordanian company as a sales agent for some contracts in connection with the U.N. Oil-for-Food Program; a York Inc. employee and an unspecified intermediary in connection with the UAE project; unnamed contractors for other projects in Bahrain, Egypt, India, Turkey, and the UAE.

Foreign Official. Various Bahraini, Egyptian, Indian, Turkish, and UAE government officials.

FCPA Statutory Provision. Conspiracy (Books-and-Records); Books-and-Records.

Other Statutory Provision. Conspiracy (Wire Fraud); Wire Fraud.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $10,000,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *SEC v. York Int'l Corp.*

Total Combined Sanction. $22,032,880.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

55. IN RE PARADIGM B.V. (2007)[81]

NATURE OF THE BUSINESS

Paradigm, a Dutch company previously located in Israel and now headquartered in Houston, Texas, is a provider of enterprise software solutions to the oil and gas exploration and production industry. Paradigm's software is used to create dynamic digital models of the Earth's subsurface by analyzing and interpreting large quantities of data.

INFLUENCE TO BE OBTAINED

Paradigm's current management first learned of the improper payments while conducting due diligence in preparation for listing its shares on U.S. stock exchanges. It thereafter retained counsel to conduct an internal investigation, implemented a new compliance program, and made a voluntary disclosure to the DOJ. According to the pleadings, Paradigm made the following payments for the following purposes:

- Kazakhstan: Paradigm made a payment into the Latvian bank account of a British West Indies company recommended as a consultant by a KazMunaiGas official to secure a tender in Kazakhstan for geological software.
- China: Paradigm's subsidiary used an agent in China to make commission payments to representatives of Zhonghai Petroleum (China) Co., Ltd., a subsidiary of the China National Offshore Oil Company ("CNOOC"), in connection with the sale of software. In addition, the company directly retained Chinese national oil and gas companies' employees as "internal consultants" to evaluate Paradigm's software, to influence procurement decisions, and to inspect and accept delivered software. These "internal consultants" were paid in cash. Finally, the company paid for travel, including sightseeing trips, for the "internal consultants" and other employees of the Chinese national oil and gas companies.
- Nigeria: Paradigm agreed to make payments through an agent to politicians to obtain a services contract with Integrated Data Services Limited, a subsidiary of the Nigerian National Petroleum Corp. ("NNPC"), but did not get the contract.
- Mexico: Paradigm used an agent in connection with a subcontract with the Mexican Bureau of Geophysical Contracting ("BGP"), without a written agency agreement. The agent requested his commission payments be paid through five different entities. Paradigm Mexico also took a decision-maker of Pemex, Mexico's national oil company, accompanied by the agent in the BGP deal, on a birthday trip to Napa Valley, California, in connection with another contract, and also spent large sums entertaining the same person at other times. Paradigm Mexico hired this official's brother as a driver. The official then awarded a third contract with another branch of Pemex to Paradigm.
- Indonesia: Paradigm used an agent who was involved in making payments "for the purpose of obtaining or retaining business" from

KEY FACTS

Citation. *In re Paradigm B.V. (2007).*

Date Filed. September 21, 2007.

Country. China; Indonesia; Kazakhstan; Mexico; Nigeria.

Date of Conduct. 2002 – 2007.

Amount of the Value. $22,500 in Kazakhstan. Although the pleadings did not list the total amount of payments elsewhere, they noted payments of $100-200 per official in China, commission payments of several hundred thousand in Mexico, and an agreement to make corrupt payments of between $100,000 and 200,000 through an agent in Nigeria, in addition to extensive improper entertainment and travel.

Amount of Business Related to the Payment. Total is not stated; $249,290 in Kazakhstan; First contract in Mexico was $1.48 million.

Intermediary. Frontera Holding, a British West Indies "consultant" (for Kazakhstan); Tangshan Haitai Oil Technology Consulting Co. Ltd. in China; unnamed agents for Nigeria, Indonesia.

Foreign Official. KazMunaiGas official; employees of Chinese national oil companies; Nigerian politicians; official of Pemex, the Mexican national oil company; officials of Pertamina, the Indonesian national oil company.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Domestic.

Defendant's Citizenship. United States.

Total Sanction. $1,000,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. None.

[81] Matter resolved through non-prosecution agreement (September 2007).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

Pertamina, the national oil company.

ENFORCEMENT

On October 1, 2007, York International entered into a three-year deferred prosecution agreement ("DPA") with the DOJ. The criminal information attached to the agreement charges York International with wire fraud and violation of the books and records provisions of the FCPA, as well as conspiracy to commit such offenses. York International agreed to pay a $10 million fine and to submit to the appointment of an independent monitor for its compliance program. On October 1, 2010, the DOJ dismissed the criminal information on the basis that York International had fully complied with all of its obligations under the DPA, including (i) payment of the $10 million penalty; (ii) full cooperation with the government; and (iii) improvement of its compliance policies and procedures to ensure compliance with the FCPA and other applicable anti-corruption laws, as certified by the independent monitor. In a related SEC litigation, the company also separately consented to the entry of final judgment enjoining it from further violations and to pay over $10 million in disgorgement and interest, as well a $2 million civil penalty.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

54. UNITED STATES V. JASON EDWARD STEPH (S.D. TEX. 2007)

NATURE OF THE BUSINESS

Procurement of contracts for a gas pipeline construction project in Nigeria for Willbros International Inc. ("Willbros International"), a wholly-owned subsidiary of Willbros Group, Inc. ("Willbros Group"). Willbros is a Panamanian corporation listed on the New York Stock Exchange. Jason Edward Steph was formerly the general manager of on-shore operations for Willbros International Inc.

INFLUENCE TO BE OBTAINED

Steph, a U.S. citizen, conspired to make payments to certain Nigerian government officials, with the assistance of consultants, employees of a major German construction and engineering firm, and other third parties to secure gas pipeline construction business in Nigeria. Despite an ongoing internal investigation at Willbros, Steph conspired to secure cash for payment of prior commitments to Nigerian officials using the petty cash accounts of the company's Nigerian subsidiary and loans from third parties, including a German construction and engineering firm that was a consortium partner with Willbros.

ENFORCEMENT

On July 19, 2007, the DOJ filed an indictment against Steph charging one count of conspiracy to violate the FCPA and for three money laundering counts. In November 2007, Steph pleaded guilty, admitting to conspiring to pay approximately $1.8 million to Nigerian officials. Under the plea agreement, Steph agreed to plead guilty to conspiracy, to file accurate amended tax returns, and to cooperate with the DOJ in its ongoing investigation into the Willbros matter. The Government dismissed the money laundering charges and did not oppose Steph's request for a two-level downward adjustment under the sentencing guidelines for acceptance of responsibility. On January 28, 2010, the court sentenced Steph to 15 months of imprisonment, 2 years of supervised release, a criminal fine of $2,000 and an assessment of $100.

See DOJ Digest Numbers B-76, B-67, and B-45.
See SEC Digest Numbers D-51 and D-28.
See Parallel Litigation Digest Numbers H-A8.

KEY FACTS

Citation. *United States v. Steph*, No. 4:07-cr-00307 (S.D. Tex. 2007).

Date Filed. July 19, 2007.

Country. Nigeria.

Date of Conduct. 2003 – 2005.

Amount of the Value. $6 million.

Amount of Business Related to the Payment. Approximately $387,500,000.

Intermediary. Consultants.

Foreign Official. Officials of the Nigerian National Petroleum Corporation and the National Petroleum Investment Management Services, a senior executive branch official of the Nigerian government, a political party, and Shell Petroleum Development Corporation, operator of a joint venture majority-owned by the Nigerian government.

FCPA Statutory Provision. Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition. Guilty Plea.

Defendant Jurisdictional Basis. Conspiracy; Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. 15-Months Imprisonment; $2,000 Criminal Fine.

Related Enforcement Actions. *United States v. Willbros Group, Inc.; SEC v. Willbros Group, Inc.; United States v. Tillery*.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

53. IN RE TEXTRON INC. (2007)[82]

NATURE OF THE BUSINESS

Sales of industrial pumps, gears, spare parts, and other equipment to Iraq under the U.N. Oil-for-Food Program by three of Rhode-Island-based Textron Inc.'s David Brown French subsidiaries between 2001 and 2003. The investigation into the Iraq payments yielded several dozen more corrupt payments in other countries to secure 36 contracts in those places between 2000 and 2005.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil-for-Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value.

Textron's French subsidiaries used consultants to make kickback payments to the government of Iraq to secure sales of industrial pumps and gear. In addition, the Textron subsidiaries paid bribes to officials of state-owned companies in the UAE, Indonesia, Bangladesh, India, and Egypt to obtain contracts.

ENFORCEMENT

On August 21, 2007, the government and Textron entered into a non-prosecution agreement, in which Textron acknowledged that its subsidiaries were responsible for the illegal conduct alleged and agreed to pay a fine of $1.15 million, not to commit further crimes, and to waive the statute of limitations indefinitely as to the crimes covered by the agreement. The government in turn agreed not to prosecute Textron for any crimes related to the payments to the Iraqi government (except for criminal tax violations), or for the other improper payments discovered and disclosed through Textron's own investigation.

See SEC Digest Number D-35.
See Ongoing Investigations Number F-2.

KEY FACTS

Citation. In re Textron Inc. (2007).

Date Filed. August 21, 2007.

Country. Iraq; United Arab Emirates; Bangladesh; Indonesia; Egypt; India.

Date of Conduct. 2000 – 2003.

Amount of the Value. Approximately $600,000 in Iraq; $114,995.20 in the other countries.

Amount of Business Related to the Payment. Profits of $1,936,926 from Iraq, and $328,939 from the other countries.

Intermediary. Two "consultants" for the Iraq payments, one in Lebanon and one in Jordan.

Foreign Official. Officials of GASCO, ZADCO, and ADCO (subsidiaries of state-owned Abu Dhabi National Oil Company), Pertamina (Indonesian state-owned oil company), and unidentified government-owned companies in Bangladesh, India, and Egypt.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $1,150,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. SEC v. Textron, Inc.

Total Combined Sanction. $4,685,040.

[82] Matter resolved through non-prosecution agreement (August 2007).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

52. UNITED STATES V. STEVEN J. OTT (D.N.J. 2007)
UNITED STATES V. ROGER MICHAEL YOUNG (D.N.J. 2007)

NATURE OF THE BUSINESS

Procurement of telecommunication services contracts by ITXC Corp. ("ITXC"), a U.S.-based provider of global telecommunications services. In 2004, ITXC merged with Teleglobe International Holdings, Ltd. ("Teleglobe"), a U.S.-based provider of international voice, data, Internet, and mobile roaming services. Steven J. Ott was ITXC's Executive Vice-President of Global Sales and Roger Michael Young was ITXC's Managing Director for Africa and the Middle East.

INFLUENCE TO BE OBTAINED

Ott and Young helped arrange several payments to officials at government-owned telephone companies, including Nitel, Rwandatel, and Sonatel. In exchange for the payments, they sought the award of lucrative telephone contracts to provide individual and business telecommunication services in those countries.

ENFORCEMENT

Ott and Young pleaded guilty to violating the FCPA on July 25, 2007. On July 21, 2008, Ott was sentenced to 5 years' probation, including 6 months of home confinement, 6 months in a community corrections facility, 200 hours of community service, and a fine of $10,000. On December 1, 2008, Ott filed a motion to reduce the provisions of his sentence, due to his parents' declining health. The court denied his motion on January 8, 2009.

On September 2, 2008, Young was sentenced to 5 years' probation, including 3 months of home confinement, 3 months in a community corrections facility, 200 hours of community service, and a fine of $7,000.

See DOJ Digest Number B-37.
See SEC Digest Number D-22.
See DOJ FCPA Opinion Procedure Release Digest Number E-38.

KEY FACTS

Citation. *United States v. Ott*, No. 07-cr-00608 (D.N.J. 2007); *United States v. Young*, No. 07-cr-00609 (D.N.J. 2007).

Date Filed. July 25, 2007.

Country. Nigeria; Rwanda; Senegal.

Date of Conduct: 2001 – 2004.

Amount of the Value. $267,468.48.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Fictitious "Sales Representative" Entity Owned by Ultimate Recipient (Nigeria); None (Rwanda, Senegal).

Foreign Official. Employees of State-Owned Telecommunications Carriers.

FCPA Statutory Provision.

Steven J. Ott. Conspiracy (Anti-Bribery).

Roger M. Young. Conspiracy (Anti-Bribery).

Other Statutory Provision.

Steven J. Ott. Conspiracy (Travel Act).

Roger M. Young. Conspiracy (Travel Act).

Disposition.

Steven J. Ott. Plea Agreement.

Roger M. Young. Plea Agreement.

Defendant Jurisdictional Basis.

Steven J. Ott. Domestic Concern.

Roger M. Young. Domestic Concern.

Defendant's Citizenship. United States (Steven J. Ott and Roger M. Young).

Total Sanction.

Steven J. Ott. 5-Years Probation; $10,000 Criminal Fine.

Roger M. Young. 5-Years Probation; $7,000 Criminal Fine.

Related Enforcement Actions. *United States v. Amoako.*

51. UNITED STATES V. SI CHAN WOOH (D. OR. 2007)

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

NATURE OF THE BUSINESS

Sale of scrap metal by SSI International Far East, Ltd. ("SSI Korea"), a wholly-owned South Korean subsidiary of Schnitzer Steel Industries, Inc. ("Schnitzer Steel"), a U.S. corporation.

INFLUENCE TO BE OBTAINED

From 1995 to August 2004, Wooh, a former Executive Vice President and head of SSI, conspired with Schnitzer Steel, SSI, and SSI International Far East, Ltd. (a South Korea-based wholly-owned subsidiary of Schnitzer managed by SSI) to make payments to officers and employees of government-owned customers in China to induce them to purchase scrap metal. The payments were made to foreign officials primarily in the form of commissions, refunds, and gratuities via off-book foreign bank accounts.

ENFORCEMENT

Wooh pleaded guilty to violating the FCPA on June 29, 2007. On that same day, he also settled related charges brought by the SEC. Without admitting or denying the allegations of the SEC's complaint, he agreed to pay approximately $40,000 in disgorgement, interest, and civil penalties.

On October 14, 2011, before a sentence was imposed, the DOJ moved to dismiss the criminal information against Wooh, citing "prosecutorial discretion in the interests of justice and the efficient use of government resources." That motion was granted on October 17, 2011.

See DOJ Digest Number B-44.
See SEC Digest Numbers D-43, D-37, and D-30.

KEY FACTS

Citation. *U.S. v. Wooh*, No. 3:07-cr-00244 (D. Or. 2007).

Date Filed. June 26, 2007.

Country. China.

Date of Conduct. 1995 – 2004.

Amount of the Value. $204, 537 (foreign officials) and $1,683,672 (private parties).

Amount of Business Related to the Payment. Gross revenue of $96,396,740 and profits of $6,259,104 from government entities.

Intermediary. None.

Foreign Official. Managers of Government Customers.

FCPA Statutory Provision. Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Conspiracy.

Defendant's Citizenship. United States.

Total Sanction. None.

Related Enforcement Actions. *United States v. SSI Int'l Far East, Ltd.*, No.3: 06-cr-00398 (D. Or. 2006); *In re Schnitzer Steel Industries, Inc.* (2006); *SEC v. Schnitzer Steel Indus., Inc.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

50. UNITED STATES V. WILLIAM J. JEFFERSON (E.D. VA. 2007)

NATURE OF THE BUSINESS

Provision of telecommunications services by a joint venture in which William J. Jefferson, a now-former Representative of the United States House of Representatives, held a financial interest. Jefferson represented Louisiana's 2nd Congressional District from 1991 to 2009.

INFLUENCE TO BE OBTAINED

From around April 2005 through August 2005, Jefferson offered $500,000 in cash and a share of the future profits of a Nigerian joint venture in which he held a financial interest to a high-ranking Nigerian government official for the purpose of securing necessary approvals for that joint venture from NITEL, the Nigerian public telecommunications company, which offer the Nigerian official accepted. Jefferson also used a Nigerian businessman to offer bribes to lower-ranking Nigerian officials. For statutory purposes, the government alleged that Jefferson was a citizen and a "domestic concern," as well as an "agent of a domestic concern," as an owner of a U.S. company involved in the bribery allegations.

According to the indictment, Jefferson allegedly drove his car with $100,000 in cash from Arlington, VA to Washington, DC to prepare to deliver the money to the Nigerian official, as the first installment in the payment of $500,000. $90,000 of that alleged $100,000 bribe payment was later found in Jefferson's freezer.

In addition to allegations he violated the FCPA, the government charged Jefferson with soliciting bribes, money laundering, obstruction of justice and RICO. These included allegations that he provided assistance in the form of various official acts for companies, such as Kentucky-based iGate, Inc., to help those companies secure business in Nigeria, Ghana, Cameroon, Equatorial Guinea, and Sao Tome and Principe, in exchange for monetary payments and other financial consideration. The government alleged that Jefferson used Congressional staff members and family members to form companies in which he held undisclosed financial interests to receive his bribe payments. Two individuals, including the owner of iGate, Inc., pleaded guilty to bribing Rep. Jefferson in separate proceedings.

ENFORCEMENT

On June 8, 2007, Rep. Jefferson pleaded not guilty to all charges and was released on $100,000 bail. The U.S. District Court for the Eastern District of Virginia ordered the restraint of approximately $950,000 of Jefferson's assets as well as certain shares owned by Jefferson. Jefferson moved to dismiss several non-FCPA bribery charges on September 7, 2007. The district court denied the motion on February 6, 2008, and the Fourth Circuit affirmed the denial on November 12, 2008. On February 19, 2009, Jefferson filed a petition to the Supreme Court for a writ of certiorari appealing the Fourth Circuit's decision. On May 18, 2009, the Supreme Court declined to hear Jefferson's appeal. On August 5, 2009, after a trial in the U.S. District Court for the Eastern District of Virginia, a federal jury found Jefferson guilty of 11 of the 16 charges against him including solicitation of bribes, wire fraud, and money laundering. Jefferson was acquitted of the substantive FCPA charge. However, he was convicted of the count of the indictment charging him with conspiracy to solicit bribes, deprive citizens of honest services by wire fraud,

KEY FACTS

Citation. *United States. v. Jefferson*, No. 1:07-cr-00209 (E.D. Va. 2007).

Date Filed. June 4, 2007.

Country. Nigeria.

Date of Conduct. 2005.

Amount of the Value. $500,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign Official. High-ranking Nigerian Executive Government Official.

FCPA Statutory Provision. Conspiracy (Anti-Bribery).

Other Statutory Provision. Conspiracy (Solicitation of Bribes); Conspiracy (Honest Services Fraud); Solicitation of Bribes; Honest Services Fraud; Money Laundering; RICO.

Disposition. Convicted.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. 156-Months Imprisonment; $478,153.47 Criminal Forfeiture.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

and violate the FCPA. The verdict form did not require the jury to indicate whether it found that the government proved each object of the conspiracy charge. The jury set Jefferson's forfeiture of assets obtained from criminal activity at $470,653. Jefferson was sentenced to 60 months in prison on the conspiracy count. He also received concurrent sentences for the substantive offenses, the longest of which is 156 months plus 3 years supervised release for the substantive crimes of soliciting bribes and wire fraud and for a RICO count. On November 23, 2009, Jefferson filed a notice of appeal. His conviction was affirmed on March 26, 2012.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

49. UNITED STATES V. LEO WINSTON SMITH (C.D. CAL. 2007)

NATURE OF THE BUSINESS

Military spare parts. Leo Winston Smith, a U.S. citizen, was the Executive Vice President of Sales and Marketing of Pacific Consolidated Industries ("PCI"), a manufacturer of Air Separation Units ("ASU") and other equipment for defense departments around the world.

INFLUENCE TO BE OBTAINED

In 1999, the President of PCI and Smith created a sham marketing agreement between PCI and a relative of a United Kingdom Ministry of Defense (U.K.-MOD) project manager for consulting/marketing services in Europe at a rate of $5,000 for two quarters. In this way, Smith and the executive caused bribe payments to be made to a U.K.-MOD project manager who assisted Smith and the executive in obtaining lucrative contracts. In addition, Smith under-reported income on his 2003 tax return and failed to file a 2003 tax return for his Nevada corporation.

ENFORCEMENT

A grand jury in the Central District of California indicted Smith on April 25, 2007 on 11 counts including violations of the anti-bribery provisions of the FCPA. He was arrested on June 18, 2007. Prosecutors in the United Kingdom have already prosecuted and convicted the U.K.-MOD official. Smith first pleaded guilty on August 28, 2009. In a plea hearing on September 3, 2009, Smith changed his plea to a plea of guilty to the first superseding information, filed September 1, 2009. The first superseding information alleged two counts: (1) conspiracy to violate the anti-bribery provisions of the FCPA and (2) obstruction of the due administration of the internal revenue laws. An evidentiary hearing took place on September 28, 2010. On December 2, 2010, Smith was sentenced to 6 months in prison to be followed by 6 months of home confinement and fines and a special assessment totaling $7,700.

See DOJ Digest Number B-66.

KEY FACTS

Citation. *United States v. Smith*, No. 8:07-cr-00069 (C.D. Cal. 2007).

Date Filed. April 25, 2007.

Country. United Kingdom.

Date of Conduct. 1999 – 2004.

Amount of the Value. More than $70,000.

Amount of Business Related to the Payment. Not stated.

Intermediary. Relative of Government Official.

Foreign Official. United Kingdom Ministry of Defense Official.

FCPA Statutory Provision. Conspiracy (Anti-Bribery).

Other Statutory Provision. Attempt to Interfere with Administration of Internal Revenue Laws.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Conspiracy; Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. 6-Months Imprisonment; $7,500 Criminal Fine.

Related Enforcement Actions. *United States v. Self*.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

48. UNITED STATES V. BAKER HUGHES INC. (S.D. TEX. 2007)
UNITED STATES V. BAKER HUGHES SERVICES INT'L, INC. (S.D. TEX. 2007)

NATURE OF THE BUSINESS

Procurement of a contract for oilfield development by Baker Hughes Services International, Inc. ("Baker Hughes Services"), a wholly-owned subsidiary of Baker Hughes Incorporated ("Baker Hughes"). Baker Hughes is a U.S. oilfield services company.

INFLUENCE TO BE OBTAINED

In February 2000, Baker Hughes Services submitted a bid for a services contract relating to the development of Karachaganak, a large gas and oil field in northwestern Kazakhstan. In September 2000, the company received unofficial notification that it would win the contract. However, later that month Kazakhoil officials demanded that Baker Hughes Services retain an unidentified consulting firm to secure approval of the Karachaganak contract and pay the firm a commission based on Baker Hughes Services's revenues from the contract. Shortly thereafter Baker Hughes Services entered into a contract with the consulting firm, and in October 2003 Baker Hughes Services was formally notified that it had been awarded the Karachaganak contract. Then, on an approximately monthly basis from May 2001 to November 2003, Baker Hughes and Baker Hughes Services made commission payments totaling approximately $4.1 million to the consultant as a reward for securing the contract. Employees of Baker Hughes Services understood that all or part of these commissions would be transferred to officials of Kazakhoil as bribes.

ENFORCEMENT

Baker Hughes Services pleaded guilty to violations of the anti-bribery and books-and-records provisions of the FCPA and agreed to an $11 million criminal fine. Baker Hughes entered into a deferred prosecution agreement with the DOJ and accepted responsibility for the conduct of its employees and Baker Hughes Services. Under the terms of the agreement, Baker Hughes must hire an independent monitor that will oversee the implementation of a robust compliance program and make a series of reports to the company and the DOJ.

See SEC Digest Numbers D-34 and D-11.
See Parallel Litigation Digest Numbers H-F4 and H-F9.

KEY FACTS

Citation. United States v. Baker Hughes Servs. Int'l, Inc., No. 07-cr-129 (S.D. Tex. 2007); United States v. Baker Hughes Inc., No. 07-cr-130 (S.D. Tex. 2007).

Date Filed. April 11, 2007.

Country. Kazakhstan.

Date of Conduct. 2001 – 2003.

Amount of the Value. Approximately $4.1 million.

Amount of Business Related to the Payment. Approximately $205 million.

Intermediary. An Unidentified Isle of Man-Based Consulting Firm.

Foreign Official. Officials of Kazakhoil, a State-Owned Entity.

FCPA Statutory Provision.

Baker Hughes Inc. Conspiracy (Anti-Bribery); Anti-Bribery; Books-and-Records.

Baker Hughes Services Int'l. Conspiracy (Anti-Bribery); Anti-Bribery; Aiding-and-Abetting (Books-and-Records).

Other Statutory Provision. None.

Disposition.

Baker Hughes Inc. Deferred Prosecution Agreement.

Baker Hughes Services Int'l. Plea Agreement.

Defendant Jurisdictional Basis.

Baker Hughes Inc. Issuer.

Baker Hughes Services Int'l. Domestic Concern.

Defendant's Citizenship.

Baker Hughes Inc. United States.

Baker Hughes Services Int'l. United States.

Total Sanction. $11,000,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. SEC v. Baker Hughes Inc.

Total Combined Sanction. $44,078,015.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

47. UNITED STATES V. VETCO GRAY CONTROLS INC., VETCO GRAY U.K. LTD., AND VETCO GRAY CONTROLS LTD. (S.D. TEX. 2007)
UNITED STATES V. AIBEL GROUP LTD. (S.D. TEX. 2007)

NATURE OF THE BUSINESS

Provision of upstream oil and gas products and services by Vetco Gray Controls Inc., Vetco Gray Controls Ltd., Vetco Gray U.K. Ltd., and Aibel Group Ltd., which are all wholly-owned subsidiaries of Vetco International Ltd., a U.K. corporation. Of the four subsidiaries, only Vetco Gray Controls Inc. is a U.S. corporation.

INFLUENCE TO BE OBTAINED

From at least September 2002 to at least April 2005, the Vetco International Subsidiaries made at least 378 payments through an agent to officials of the Nigerian Customs Service to secure preferential treatment during the customs process.

ENFORCEMENT

Vetco Gray Controls Inc., Vetco Gray Controls Ltd., and Vetco Gray U.K. Ltd. pleaded guilty to violations of the anti-bribery provisions of the FCPA and agreed to a collective fine of $26 million, paying $6 million, $8 million and $12 million respectively. They also agreed to hire an independent monitor to oversee the implementation of a robust compliance program, to undertake an investigation of the company's operations as required under FCPA Opinion Release 04-02, and to agree that any potential buyer of the company would be bound to those monitoring and investigation conditions. Aibel Group Ltd. entered a deferred prosecution agreement relating to the same underlying conduct. Vetco Gray Controls Inc. and Vetco Gray U.K. Ltd. had previously pleaded guilty under the FCPA in 2004 in connection with their sale by ABB and the DOJ had required the implementation of compliance measures at that time. The previous guilty pleas and the failure of such compliance measures, evidenced by the continuation of corrupt activity, were taken into account by the DOJ in assessing the fines.

In November 2008, Aibel Group Ltd. pleaded guilty to a superseding information relating to the same conduct, which charged conspiracy to violate the FCPA and a violation of the FCPA. Pursuant to the plea agreement, the court dismissed the 2007 deferred prosecution agreement, which Aibel admitted having violated. Aibel agreed to pay a $4.2 million fine.

See DOJ Digest Numbers B-75 and B-31.
See SEC Digest Numbers D-26 and D-17.
See DOJ FCPA Opinion Procedure Release Digest Number E-41.
See Parallel Litigation Digest Number H-E5.

KEY FACTS

Citation. *United States v. Vetco Gray Controls Inc.*, No. 4:07-cr-00004 (S.D. Tex. 2007); *United States v. Aibel Grp. Ltd.*, No. 4:07-cr-00005 (S.D. Tex. 2007).

Date Filed. January 5, 2007.

Country. Nigeria.

Date of Conduct. 2002 – 2005.

Amount of the Value. Approximately $2.1 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Major International Freight Forwarding and Customs Clearance Company.

Foreign Official. Nigerian customs officials.

FCPA Statutory Provision.

- **Vetco Gray Controls Inc.** Conspiracy (Anti-Bribery); Anti-Bribery.
- **Vetco Gray U.K.** Conspiracy (Anti-Bribery); Anti-Bribery.
- **Vetco Gray Controls Ltd.** Conspiracy (Anti-Bribery); Anti-Bribery.
- **Aibel Group**. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision. None.

Disposition.

- **Vetco Gray Controls Inc.** Plea Agreement.
- **Vetco Gray U.K.** Plea Agreement.
- **Vetco Gray Controls Ltd.** Plea Agreement.
- **Aibel Group**. Plea Agreement.

Defendant Jurisdictional Basis.

- **Vetco Gray Controls Inc.** Domestic Concern.
- **Vetco Gray U.K.** Territorial Jurisdiction.
- **Vetco Gray Controls Ltd.** Territorial Jurisdiction.
- **Aibel Group**. Territorial Jurisdiction.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

	Defendant's Citizenship. • **Vetco Gray Controls Inc.** United States. • **Vetco Gray U.K.** United Kingdom. • **Vetco Gray Controls Ltd.** United Kingdom. • **Aibel Group**. United Kingdom. **Total Sanction**. $30,209,600. **Compliance Monitor/Reporting Requirements.** None. **Related Enforcement Actions.** None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

46. UNITED STATES V. CHRISTIAN SAPSIZIAN AND EDGAR VALVERDE ACOSTA (S.D. FLA. 2006)

NATURE OF THE BUSINESS

Procurement of telecommunications business by Christian Sapsizian, an executive of Alcatel S.A. ("Alcatel"), a French corporation with registered shares traded in the United States. Sapsizian held a number of positions in Alcatel including Vice President of Latin America for one of Alcatel's subsidiaries. Edgar Valverde Acosta was a Costa Rican national who managed the day-to-day affairs of Alcatel's Costa Rican subsidiary and held the title of Senior Country Officer.

INFLUENCE TO BE OBTAINED

From around February 2000 through September 2004, Sapsizian and Acosta, on behalf of Alcatel, a French company, allegedly directly made payments to an official of the state-owned telecommunications company, intending for that official to share the payments with another senior official. During this period, Sapsizian and Acosta also employed an agent consulting firm as a conduit for bribe payments to the two officials and the wife of one of the officials.

ENFORCEMENT

On March 20, 2007, a superseding indictment was filed against Sapsizian and Acosta. On June 7, 2007, the DOJ announced that Sapsizian pleaded guilty to two counts of conspiracy and violating the FCPA. The terms of his plea agreement provide for an immediate forfeiture of $261,500, as well as Sapsizian's continued cooperation with U.S. and foreign law enforcement officials in the ongoing investigation concerning Alcatel CIT. On September 23, 2008, Sapsizian was sentenced to 30 months in prison and 3 years of supervised release. Separately, on June 14, 2007, the court transferred Acosta to fugitive status.

See DOJ Digest Numbers B-115 and B-58.
See SEC Digest Numbers D-89 and D-46.

KEY FACTS

Citation. *United States v. Sapsizian*, No. 1:06-cr-20797 (S.D. Fla. 2006).

Date Filed. December 5, 2006 (Sapsizian); March 22, 2007 (Acosta).

Country. Costa Rica.

Date of Conduct: 2000 – 2004.

Amount of the Value. At least $2.56 million.

Amount of Business Related to the Payment. At least $250 million.

Intermediary. Consulting firm in Costa Rica.

Foreign Official. Board Member of State Telecommunications Authority.

FCPA Statutory Provision.

- **Christian Sapsizian**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Edgar Valverde Acosta**. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision.

- **Christian Sapsizian**. Criminal Forfeiture.
- **Edgar Valverde Acosta**. Criminal Forfeiture.

Disposition.

- **Christian Sapsizian**. Plea Agreement.
- **Edgar Valverde Acosta**. Fugitive.

Defendant Jurisdictional Basis.

- **Christian Sapsizian**. Conspiracy; Agent of Issuer.
- **Edgar Valverde Acosta**. Conspiracy; Agent of Issuer.

Defendant's Citizenship.

- **Christian Sapsizian.** France.
- **Edgar Valverde Acosta**. Costa Rica.

Total Sanction.

- **Christian Sapsizian**. 30-Months Imprisonment; $261,500 Criminal Forfeiture.
- **Edgar Valverde Acosta**. Pending.

Related Enforcement Actions. *United States v. Alcatel-Lucent S.A.*; *United States v. Alcatel-Lucent France, S.A.*; *SEC v. Alcatel-Lucent, S.A.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

45. UNITED STATES V. JIM BOB BROWN (S.D. TEX. 2006)

NATURE OF THE BUSINESS

Procurement of contracts for oil and gas pipeline construction projects by Willbros International Inc. ("Willbros International"), a wholly-owned subsidiary of Willbros Group, Inc. ("Willbros Group"). Willbros is a Panamanian corporation listed on the New York Stock Exchange. Jim Bob Brown ("Brown"), a former employee of Willbros International, was a managing director of Nigerian and South American subsidiary operations of Willbros International from 2000 until his termination in 2005.

INFLUENCE TO BE OBTAINED

Payments were made by Willbros International consultants to foreign officials at the Nigerian and Ecuadorian government-owned oil companies to obtain oil and gas pipeline construction business. The payments in Nigeria were part of a larger multi-million dollar bribery scheme involving a former senior Willbros executive, a U.S. national acting as a purported "consultant," and Nigeria-based employees of a major German construction and engineering firm. Payments dating back to 1996 were also made to influence tax and court officials in Nigeria for favorable treatment for tax assessments and litigation.

ENFORCEMENT

Pursuant to a Plea Agreement executed September 14, 2006, Brown pleaded guilty to the one-count information charging conspiracy to violate the FCPA by bribing Nigerian and Ecuadorian officials. Under the terms of his plea, Brown agreed to cooperate with the government in its ongoing investigation connected to Willbros. On January 28, 2010, the court sentenced Brown to 12 months and 1 day of imprisonment, supervised release of 2 years, a criminal fine of $17,500, and an assessment of $100.

See DOJ Digest Numbers B-76, B-67, and B-54.
See SEC Digest Numbers D-51 and D-28.
See Parallel Litigation Digest Number H-A8.

KEY FACTS

Citation. *United States v. Brown*, No. 4:06-cr-00316 (S.D. Tex. 2006).

Date Filed. September 11, 2006.

Country. Nigeria; Ecuador.

Date of Conduct. 1996 – 2005.

Amount of the Value. $6.6 million.

Amount of Business Related to the Payment. Revenue of $390,500,000.

Intermediary. Outside Consultants.

Foreign Official. Officials of Nigerian Petroleum Corporation; Nigerian Tax Officials; Nigerian Court Officials; Officials of PetroEcuador.

FCPA Statutory Provision. Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Conspiracy.

Defendant's Citizenship. United States.

Total Sanction. 12 Months and 1-day Imprisonment; $17,500 Criminal Fine.

Related Enforcement Actions. *United States v. Willbros Group, Inc.*; *SEC v. Willbros Group, Inc.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

44. UNITED STATES V. SSI INT'L FAR EAST, LTD. (D. OR. 2006) IN RE SCHNITZER STEEL INDUSTRIES, INC. (2006)[83]

NATURE OF THE BUSINESS

Sale of scrap metal by SSI International Far East, Ltd. ("SSI Korea"), a wholly-owned South Korean subsidiary of Schnitzer Steel Industries, Inc. ("Schnitzer Steel"), a U.S. corporation.

INFLUENCE TO BE OBTAINED

From 1995 to August 2004, SSI Korea made payments to officers and employees of private customers in South Korea and private and government-owned customers in China to induce them to purchase scrap metal. The payments were made to foreign officials primarily in the form of commissions, refunds and gratuities via off-book foreign bank accounts.

ENFORCEMENT

SSI Korea agreed to plead guilty to violating the anti-bribery and accounting provisions of the FCPA and pay a $7.5 million penalty. Schnitzer Steel entered into a three-year deferred prosecution agreement and agreed to retain a compliance monitor for three years. In the SEC proceeding, Schnitzer Steel has agreed to pay disgorgement and prejudgment interest of $7.7 million and retain a compliance monitor.

See DOJ Digest Number B-51.
See SEC Digest Numbers D-43, D-37, and D-30.

KEY FACTS

Citation. *United States v. SSI Int'l Far East, Ltd.*, No.3: 06-cr-00398 (D. Or. 2006); *In re Schnitzer Steel Industries, Inc.* (2006).

Date Filed. October 10, 2006.

Country. South Korea; China.

Date of Conduct. 1995 – 2004.

Amount of the Value. $204, 537 (foreign officials) and $1,683,672 (private parties).

Amount of Business Related to the Payment. Gross Revenue of $96,455,350 and Profits of $6,279,095 from Government Entities and Gross Revenue of $603,593,957 and Profits of $55,327,840 from Private Entities.

Intermediary. None.

Foreign Official. Managers of Government Customers.

FCPA Statutory Provision.

- **SSI Int'l Far East**. Conspiracy (Anti-Bribery); Aiding-and-Abetting (Books-and-Records); Anti-Bribery.
- **Schnitzer Steel Indus**. None.

Other Statutory Provision.

- **SSI Int'l Far East**. Wire Fraud.

Disposition.

- **SSI Int'l Far East**. Plea Agreement.
- **Schnitzer Steel Indus**. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis.

- **SSI Int'l Far East**. Territorial Jurisdiction.
- **Schnitzer Steel Indus**. Issuer.

Defendant's Citizenship.

- **SSI Int'l Far East**. United States.

[83] Matter resolved through deferred prosecution agreement (October 2006).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

	• **Schnitzer Steel Indus**. South Korea. **Total Sanction**. $7,500,000. **Compliance Monitor/Reporting Requirements.** Compliance Monitor. **Related Enforcement Actions.** *SEC v. Schnitzer Steel Indus., Inc.* **Total Combined Sanction.** $15,225,201.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

43. UNITED STATES V. STATOIL ASA (S.D.N.Y. 2006)

NATURE OF THE BUSINESS

Procurement of oil and gas business in Iran by Statoil, Norway's largest oil and gas company, which is a foreign issuer listed on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

From 2000, Statoil sought to expand its international operations with a focus on Iran. In 2001, high-level Statoil officials met with the head of the Iranian Fuel Consumption Optimizing Organization, a subsidiary of the National Iranian Oil Company. The Iranian official, the son of a former President of Iran, was determined to be highly influential in the award of oil and gas business in Iran. In 2002, Statoil entered into a $15.2 million contract with Horton Investments, Ltd. ("Horton"), a small consulting firm in Turks & Caicos and owned by a third-party in London, England, to provide payments to the Iranian official, of which $200,000 was paid in June 2002. The Iranian official used his influence to secure a contract for Statoil in October 2002 to develop the South Pars oil and gas field (one of the largest in the world), a contract which would yield "millions of dollars in profit." In December 2002, Statoil paid an additional $5 million to the official.

In 2004, Statoil's internal audit department uncovered and reported the existence of the consulting contract and the $5.2 million payments to the company's CFO, who ordered an investigation. Statoil's security group and internal audit group prepared a report concluding that the company may have violated U.S. and Norwegian bribery laws and recommended that the contract be terminated immediately. Nevertheless, Statoil's CEO and the Chairman of its Board took no corrective action.

Three senior executives at Statoil have resigned: its chairman Leif Terje Loeddesoel, chief executive officer Olav Fjell, and executive vice president Richard Hubbard.

ENFORCEMENT

Statoil entered a three-year deferred prosecution agreement and has admitted to having violated the anti-bribery and accounting provisions of the FCPA. It has also agreed to pay a $10.5 million penalty. In the SEC proceeding, it has agreed to pay $10.5 million in disgorgement and retain a monitor. Statoil has already paid a NOK 20 million ($3.045 million USD) fine to the Norway National Authority for Investigation and Prosecution of Economic Crime, without admitting or denying any liability, which will be deducted from the U.S. fines. Statoil satisfactorily completed its period of supervision under the deferred prosecution agreement on November 12, 2009. On November 24, 2009, the court entered an order of nolle prosequi disposing of the case against Statoil.

See SEC Digest Number D-29.

KEY FACTS

Citation. *United States v. Statoil ASA*, No. 06-cr-00960 (S.D.N.Y. 2006).

Date Filed. October 12, 2006.

Country. Iran.

Date of Conduct. 2001 – 2002.

Amount of the Value. $5.2 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Offshore Intermediary Company Consultant.

Foreign Official. Head of a Subsidiary Organization of the National Oil Company.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Norway.

Total Sanction. $10,500,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *SEC v. Statoil ASA*.

Total Combined Sanction. $21,000,000.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

42. UNITED STATES V. STEVEN LYNWOOD HEAD (S.D. CAL. 2006)

NATURE OF THE BUSINESS

Development and operation of a wireless telephone system in Benin. In 1999, the Titan Corporation ("Titan"), a U.S. defense contractor (later acquired by L-3 Communications in July 2005), acquired the rights to develop and operate this network. Steven Lynwood Head was employed by Titan as program manager of business activities in Benin, and later as CEO of Titan Africa, Inc. Although separately incorporated, Titan Africa, Inc. shared employees, officers, and personnel with Titan.

INFLUENCE TO BE OBTAINED

As part of its contract to develop and operate the wireless telephone system, Titan was required to pay part of its profits as subsidies to the Benin government for development of certain economic sectors ("social payments"). In or about December 2000, the business advisor solicited money from Titan under the guise of "advanced social payments." Although Head believed that at least part of the payments would be used to support the Benin President's reelection effort, he nonetheless caused the requested payments to be made through a false invoice for consulting services allegedly performed. Head also used the scheduling and payment of the monies as leverage to increase Titan's management fee under the contract.

ENFORCEMENT

Steven Lynwood Head pleaded guilty to a one-count information charging falsification of the books, records and accounts of an issuer under the federal securities laws. Pursuant to the plea agreement, Head will cooperate with the government's ongoing investigation of individuals formerly associated with Titan. In September 2007, Head was sentenced to 6 months imprisonment, supervised release for a term of 3 years, and a $5,000 fine.

See DOJ Digest Number B-33.
See SEC Digest Number D-19.
See Parallel Litigation Digest Number H-A3.

KEY FACTS

Citation. *United States v. Head*, No. 06-cr-01380 (S.D. Cal. 2006).

Date Filed. June 23, 2006.

Country. Benin.

Date of Conduct. 2001.

Amount of the Value. Approximately $2 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. The Business Advisor of the President of Benin.

Foreign Official. President of Benin.

FCPA Statutory Provision. Books-and-Records.

Other Statutory Provision. None.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. Not Stated.

Total Sanction. 6-Months Imprisonment; $5,000 Criminal Fine.

Related Enforcement Actions. *United States v. Titan Corp.; SEC v. Titan Corp.*

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

41. UNITED STATES V. RICHARD JOHN NOVAK (E.D. WASH. 2006)

NATURE OF THE BUSINESS

So-called "diploma mill" universities and Internet-based universities that were falsely accredited and sold fraudulent degrees.

INFLUENCE TO BE OBTAINED

False accreditation for the universities from the government of Liberia and to induce officials to provide positive responses, including official documents, to inquiries about the universities and their legitimacy.

ENFORCEMENT

On March 20, 2006, Novak pleaded guilty to one count of violating the FCPA and an additional count of wire fraud and mail fraud. On September 30, 2008, Novak was sentenced to 3 years' probation, and 300 hours of community service. Additional defendants involved in the scheme have pleaded guilty to various non-FCPA charges and have been sentenced.

KEY FACTS

Citation. *United States v. Novak*, No. 05-cr-180 (E.D. Wash. 2006).

Date Filed. October 5, 2005.

Country. United States; Ghana; Liberia.

Date of Conduct. 2002 – 2005.

Amount of the Value. Between $30,000 and $70,000.

Amount of Business Related to the Payment. $2,345,326 in fraudulent products.

Intermediary. None.

Foreign Official. Two embassy officials of Liberia; Director of National Commission of Higher Education of Liberia; Director General of Higher Education of Liberia.

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision. Conspiracy (Wire Fraud); Conspiracy (Mail Fraud).

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Conspiracy; Domestic Concern; Agent of Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. 3-Years Probation.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

40. UNITED STATES V. FAHEEM MOUSA SALAM (D.D.C. 2006)

NATURE OF THE BUSINESS

A translator working for a U.S. contractor in Iraq engaged in business transactions unrelated to his employment.

INFLUENCE TO BE OBTAINED

The sale of a map printer and 1,000 armored vests to the Iraqi police force.

ENFORCEMENT

The government filed a criminal complaint against Salam on March 8, 2006 and filed a criminal information on June 7, 2006. On August 4, 2006, Salam pleaded guilty to one count of violating the anti-bribery provisions of the FCPA. On February 2, 2007, Salam was sentenced to 3 years in prison followed by two years of supervised release and 250 hours of community service.

KEY FACTS

Citation. *United States v. Salam*, No. 06-cr-00157 (D.D.C. 2006).

Date Filed. March 8, 2006.

Country. Iraq.

Date of Conduct. 2005 – 2006.

Amount of the Value. $60,000.

Amount of Business Related to the Payment. Approximately $1,090,000.

Intermediary. None.

Foreign Official. Senior Iraqi Police Official.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. 36-Months Imprisonment.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

39. UNITED STATES V. VIKTOR KOZENY, FREDERIC BOURKE, JR., AND DAVID PINKERTON (S.D.N.Y. 2005)
UNITED STATES V. HANS BODMER (S.D.N.Y. 2003)
IN RE OMEGA ADVISORS, INC. (2007)[84]
UNITED STATES V. CLAYTON LEWIS (S.D.N.Y. 2003)
UNITED STATES V. THOMAS FARRELL (S.D.N.Y. 2003)

NATURE OF THE BUSINESS

In connection with attempts to privatize the oil industry of the Republic of Azerbaijan in the late 1990s, a group of corporations and investors (the "Investment Consortium") attempted to acquire controlling interests in SOCAR, the Azeri national oil company. The Investment Consortium was comprised of Viktor Kozeny ("Kozeny"), Frederic Bourke Jr. ("Bourke"), David Pinkerton ("Pinkerton"), Oily Rock Group Ltd. ("Oily Rock"), Minaret Group Ltd. ("Minaret"), Oily Rock's shareholders, and co-investors. Kozeny was president and chairman of Oily Rock and Minaret, two corporations engaged in activities relating to the acquisition of Azeri government vouchers and options in SOCAR. Omega Advisors, Inc. ("Omega") and Pharos Capital Management, L.P. ("Pharos") both entered into co-investment agreements with Oily Rock and Minaret. Clayton Lewis and Thomas Farrell, identified as unnamed co-conspirators in this indictment, were engaged in activities relating to Omega and Pharos. American International Group, Inc. ("AIG"), through its subsidiary called Marlwood Commercial Inc., entered into an investment agreement with Pharos and a co-investment agreement with Oily Rock and Minaret. Pinkerton, then Managing Director of AIG Global Investment Corporation and in charge of AIG's private equity group, was responsible for initiating and supervising AIG's investment into the Azeri government privatization scheme. Bourke invested approximately $8,000,000 in Oily Rock shares through Blueport International Ltd.

Hans Bodmer, also an unnamed co-conspirator, acted as legal counsel to Kozeny, Omega, and various other investors. Hyposwiss Bank maintained operative and escrow accounts for receipt and transfer of money from investing members of the consortium to Azerbaijan.

INFLUENCE TO BE OBTAINED

To induce Azeri government officials to allow the Investment Consortium's continued participation in Azeri privatization, to privatize SOCAR, and to permit the Investment Consortium to acquire a controlling interest in SOCAR.

ENFORCEMENT

On October 6, 2005, Kozeny, Bourke, and Pinkerton were charged in a 27-count indictment in U.S. District Court for the Southern District of New York. The indictment sought $174,000,000 in fines and forfeiture. Kozeny, an Irish citizen and resident of the Bahamas, has challenged the right of the United States to seek his extradition given that he is neither a U.S. citizen, nor a resident, and was not in violation of an offense under Bahamian law. On September 28, 2006, a court in the Bahamas ordered Kozeny to be extradited, although Kozeny's lawyers announced that they intended to appeal the order.

KEY FACTS

Citation. *United States v. Kozeny*, No. 05-cr-518 (S.D.N.Y. 2005); *United States v. Bodmer*, No. 03-cr-947 (S.D.N.Y 2003); *In re Omega Advisors, Inc.* (2007); *United States v. Lewis*, No. 03-cr-930 (S.D.N.Y. 2003); *United States v. Farrell*, No. 03-cr-290 (S.D.N.Y. 2003).

Date Filed. August 5, 2003 (Bodmer); March 10, 2003 (Farrell); July 31, 2003 (Lewis); October 6, 2005 (Kozeny; Bourke; Pinkerton); June 19, 2007 (Omega Advisors)

Country. Azerbaijan.

Date of Conduct. 1997 – 1999.

Amount of the Value. Millions of dollars in payments in the form of: 1) cash and wire transfers to Azeri officials and family members; 2) promises of two-thirds of profits realized in the privatization of SOCAR; 3) transfer of Investment Consortium vouchers and options; 4) issuance of approximately $300,000,000 worth of Oily Rock shares; 5) jewelry and luxury items in excess of $600,000; and 6) medical, travel, and gift expenses to Azeri officials.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Business Consultants; Agents; Other Payment Intermediaries.

Foreign Official. Senior official of the government of Azerbaijan, a senior official of SOCAR, and two senior officials of Azerbaijan's State Property Committee.

CPA Statutory Provision.

- **Viktor Kozeny**. Conspiracy (Anti-Bribery); Aiding and Abetting (Anti-Bribery); Anti-Bribery.
- **Frederic Bourke**. Conspiracy (Anti-Bribery);

[84] Matter resolved through non-prosecution agreement (June 2007).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

The Bahamas press reports that, on October 24, 2007, the Bahamas Supreme Court denied the extradition of Kozeny on the grounds that the FCPA charges against Kozeny were not extraditable offenses. On February 13, 2009, the Southern District of New York ordered a freeze of Kozeny's U.S. assets subject to forfeiture, including proceeds from the sale of a Colorado residence amounting to approximately $23 million. On March 28, 2012, the U.K. Privy Council ruled that Kozeny cannot be extradited from the Bahamas to the U.S. to face the FCPA charges because Kozeny's alleged bribery did not break any laws in the Bahamas.

On June 21, 2007, the District Court for the Southern District of New York granted the motions to dismiss of Bourke and Pinkerton as to all FCPA counts. The court found that the indictment was time-barred because the government did not move to suspend the running of the statute of limitations to allow it to collect foreign evidence until after the statute of limitations had expired. The court found that filing such an application must be done before the running of the ordinary statute of limitations. The court found, in dicta, that the allegations were otherwise sufficient to withstand a motion to dismiss. Certain false statements counts against the defendants survived the motion to dismiss.

On July 5, 2007, the government moved for reconsideration of the court's June 21, 2007 decision, arguing that three of the counts of the indictment (including conspiracy to violate the FCPA and the Travel Act and a substantive FCPA violation) should not have been dismissed as time-barred. The court agreed with the government and on July 16, 2007, granted the government's motion for reconsideration and reinstated these three counts. The government appealed the balance of the court's June 21, 2007 order to the United States Court of Appeals for the Second Circuit and, on August 29, 2008, the Second Circuit affirmed the district court's dismissal of the remaining counts.

On September 17, 2008, Bourke filed a motion for the issuance of a Letter Rogatory to the appropriate judicial authority of the Principality of Liechtenstein, requesting international judicial assistance to inspect and obtain evidence to be used at trial. Bourke's motion was granted on October 17, 2008.

On October 21, 2008, the court issued an order denying Bourke's motion seeking a jury instruction on the FCPA affirmative defense of lawfulness under written law. Bourke argued that the alleged payments were legal under the written law of Azerbaijan, which provided that a "person who has given a bribe shall be free from criminal responsibility" if the bribe was the product of extortion or was subsequently disclosed. Bourke argued that he was extorted and that he disclosed the payment to the President of Azerbaijan.

The court held that for purposes of the FCPA affirmative defense, the payment must be legal under the written law. The court read the Azeri provision to relieve the bribe payer of criminal responsibility in certain circumstances but that the payment itself remained illegal. The court wrote that "[a]n individual may be prosecuted under the FCPA for a payment that violates foreign law even if the individual is relieved of criminal responsibility for his actions by a provision of foreign law." The court explained that the payment did not become lawful despite the payor being relieved of criminal liability.

The court also appears to have rejected an argument that economic extortion could be a defense to the statute. Instead, it stated that it would agree to give the jury an instruction on extortion only if the defendant laid a sufficient evidentiary foundation of "true extortion." In doing so, the district court distinguished between "true extortion" involving threats of injury, death or

Aiding and Abetting (Anti-Bribery); Anti-Bribery.

- **David Pinkerton**. Conspiracy (Anti-Bribery); Aiding and Abetting (Anti-Bribery); Anti-Bribery.
- **Hans Bodmer**. Conspiracy (Anti-Bribery).
- **Omega Advisors**. None.
- **Clayton Lewis**. Conspiracy (Anti-Bribery); Aiding and Abetting (Anti-Bribery); Anti-Bribery.
- **Thomas Farrell**. Conspiracy (Anti-Bribery); Aiding and Abetting (Anti-Bribery); Anti-Bribery.

Other Statutory Provision.

- **Viktor Kozeny**. Conspiracy (Travel Act); Aiding and Abetting (Travel Act); Travel Act; Conspiracy (Money Laundering); Aiding and Abetting (Money Laundering); Money Laundering; Criminal Forfeiture.
- **Frederic Bourke**. Conspiracy (Travel Act); Aiding and Abetting (Travel Act); Travel Act; Conspiracy (Money Laundering); Aiding and Abetting (Money Laundering); Money Laundering; Criminal Forfeiture.
- **David Pinkerton**. Conspiracy (Travel Act); Aiding and Abetting (Travel Act); Travel Act; Conspiracy (Money Laundering); Aiding and Abetting (Money Laundering); Money Laundering; Criminal Forfeiture.
- **Hans Bodmer**. Conspiracy (Money Laundering); Criminal Forfeiture.

Disposition.

- **Viktor Kozeny**. Fugitive.
- **Frederic Bourke**. Conviction.
- **David Pinkerton**. Dismissed.
- **Hans Bodmer**. Plea Agreement.
- **Omega Advisors**. Non-Prosecution Agreement.
- **Clayton Lewis**. Plea Agreement.
- **Thomas Farrell**. Plea Agreement.

Defendant Jurisdictional Basis.

- **Viktor Kozeny**. Agent of Domestic Concern; Conspiracy; Aiding and Abetting.
- **Frederic Bourke**. Domestic Concern; Conspiracy; Aiding and Abetting.
- **David Pinkerton**. Domestic Concern; Agent of Domestic Concern; Conspiracy; Aiding and Abetting.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

destruction versus mere demands made in exchange for business from which the defendant could have "walked away."

Bourke filed a motion for reconsideration, which was denied by the court on December 15, 2008. The court found, first, that Bourke was attempting to raise a proposed instruction not found in his initial motion. Moreover, the court concluded that it need not rule on Bourke's proposed instruction, which provided the circumstances under which a "mere offer" would not be illegal under Azeri law, because he had not been charged with making a "mere offer." The court also refused to consider Bourke's argument that the FCPA has a broader intent element than the "direct intent" required under Azeri law.

Bourke argued that, by being a whistleblower, he interfered in the strategic relationship between the United States and Azerbaijan and, consequently, was the target of a vindictive prosecution. At a hearing on November 17, 2008, Bourke thus requested that the court review internal prosecution documents prepared prior to his charge. Following a motion by Bourke to compel discovery in connection with these allegations, the court ordered that the government disclose to Bourke the grand jury testimony of Clayton Lewis and John Pulley. In addition, the government voluntarily disclosed affidavits and plea agreements from Lewis and Pulley.

On July 1, 2008, the court entered an order of nolle prosequi disposing of the case as to Pinkerton. The government stated that based upon its review of the evidence acquired since the filing of the indictment, further prosecution of Pinkerton would not be in the interest of justice.

On July 10, 2009, after a five week trial, a federal jury found Bourke guilty of conspiracy to violate the FCPA and the Travel Act, as well as of making false statements to the FBI. Bourke was acquitted on a charge of money laundering conspiracy. At trial, the government alleged that Bourke was expressly informed about the bribes, but it also advanced a theory that Bourke consciously avoided information about the bribes so he could deny knowledge.

In support of the theory that Bourke had direct knowledge of the bribes, Hans Bodmer and Thomas Farrell, Bourke's co-conspirators, testified against him, saying he asked them whether Kozeny was offering enough in bribes.

In support of the theory that Bourke consciously avoided information and was willfully blind, the government introduced a recorded conversation between Bourke, another investor, and their respective attorneys where Bourke asked his attorney what he should do if he became aware that Kozeny was bribing officials. The government also pointed to Bourke's knowledge of the involvement of government officials in Azerbaijan, a Fortune article referring to Kozeny as the "Pirate of Prague" with respect to a similar scheme, and his dismissal of warnings about corruption in Azerbaijan. The government introduced, over Bourke's objection, background evidence of the prevalence of corruption in Azerbaijan. In denying Bourke's motion to preclude this evidence, the court found the evidence made it probable that Bourke was aware Azeri officials were being bribed and was thus relevant and admissible. The court instructed the jury that "knowledge may be established if a person is aware of a high probability of its existence and consciously and intentionally avoided confirming that fact."

On November 12, 2009, the court sentenced Bourke to one year and one day in prison, followed by three years of supervised release. He also received a fine of $1,000,000 and a special assessment of $200. The court released

- **Hans Bodmer**. Agent of Domestic Concern; Conspiracy.
- **Omega Advisors**. Domestic Concern; Conspiracy.
- **Clayton Lewis**. Domestic Concern; Agent of Domestic Concern; Conspiracy; Aiding and Abetting.
- **Thomas Farrell**. Domestic Concern; Agent of Domestic Concern; Aiding and Abetting; Conspiracy.

Defendant's Citizenship.

- **Viktor Kozeny**. Czech Republic.
- **Frederic Bourke**. United States.
- **David Pinkerton**. United States.
- **Hans Bodmer**. Switzerland.
- **Omega Advisors**. United States.
- **Clayton Lewis**. United States.
- **Thomas Farrell**. United States.

Total Sanction.

- **Viktor Kozeny**. Pending.
- **Frederic Bourke**. 1-Year and 1-Day Imprisonment; $1,000,000 Criminal Fine.
- **David Pinkerton**. None.
- **Hans Bodmer**. Time Served.
- **Omega Advisors**. $500,000 Criminal Forfeiture.
- **Clayton Lewis**. Time Served.
- **Thomas Farrell**. Time Served.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

Bourke on bail pending his appeal to the Second Circuit. Bourke based his appeal primarily on his arguments that 1) the conscious avoidance charge lacked a factual predicate; and 2) the government should not have been allowed to proceed on both an actual knowledge theory and a conscious avoidance theory. On December 14, 2011, the Second Circuit affirmed the jury verdict against Bourke, finding that, while the government's primary theory at trial was that he had actual knowledge of the bribery scheme, there was ample evidence to support a conviction even based on the alternate theory of conscious avoidance. The Second Circuit also held that the district court correctly permitted the government to proceed on both actual knowledge and conscious avoidance theories. Bourke petitioned for a writ of certiorari with the Supreme Court on October 25, 2012. His petition was denied on April 15, 2013.

Meanwhile, on March 9, 2011, Bourke moved for a new trial based on newly discovered evidence, claiming that statements made by the prosecution at oral argument in the Second Circuit demonstrated that the prosecution knew that Bodmer lied at Bourke's original trial. On December 15, 2011, the trial court denied Bourke's motion for a new trial, rejecting Bourke's contention that the government knowingly permitted the introduction of false testimony. On December 17, 2011, Bourke filed an appeal with the Second Circuit from the trial court's order denying his motion for a new trial based on newly discovered evidence. On November 28, 2012, the Second Circuit denied Bourke's request for a new trial. On May 7, 2013, the Second Circuit denied Bourke's request to rehear the appeal.

In light of the Supreme Court's denial of his petition for certiorari, the trial court ordered Bourke to report to prison by May 10, 2013. The Federal Bureau of Prisons shows Bourke's release date as March 22, 2014.

RELATED CASE

United States v. Hans Bodmer (S.D.N.Y 2003)

Hans Bodmer is a Swiss citizen and was the lawyer who acted on behalf of the Investment Consortium. Bodmer was indicted by a federal grand jury on August 5, 2003 in the Southern District of New York for one count of conspiracy to violate the FCPA and one count of conspiracy to launder money. The indictment sought $150 million in restitution. In January 2004, Bodmer consented to his extradition to the United States from South Korea. The District Court set Bodmer's bail at $1.5 million and Bodmer filed a motion to dismiss the indictment. On July 23, 2004, the District Court granted Bodmer's motion to dismiss the count charging him with conspiring to violate the FCPA. His only charge for conspiring to launder money was upheld. The District Court held that prior to the 1998 amendments to the FCPA, foreign nationals who served as agents of domestic concerns and who were not residents of the United States could not be criminally prosecuted under the FCPA because they were outside the jurisdiction of the United States. In a lengthy opinion analyzing both the legislative history of the FCPA as well as relevant judicial interpretation, the District Court found that the phrase "otherwise subject to the jurisdiction of the United States" found in the pre-1998 FCPA was not so broad as to include foreign nationals acting merely as agents of domestic concerns. In early October 2004, Bodmer withdrew his previously entered plea of not guilty and pleaded guilty to conspiracy to launder money. On May 19, 2009, the District Court accepted Bodmer's guilty plea. Shortly thereafter, Bodmer testified against Bourke. In March 2014, Bodmer was sentenced to time served and ordered to pay a $500,000 fine for his role in the scheme. Bodmer was also ordered to forfeit $131,906.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

Related Cases. *United States v. Omega Advisors, Inc., United States v. Clayton Lewis, and U.S. v. Thomas Farrell*

Hedge fund Omega had invested in the privatization program in Azerbaijan. Omega has acknowledged that one of its employees, Clayton Lewis, who pleaded guilty in 2004, learned prior to the investment that Kozeny had entered into arrangements with Azeri government officials that gave those officials a financial interest in the privatization of certain industries. In April 2013, Lewis was sentenced to time served. In June 2007, Omega entered a non-prosecution agreement that provides that Omega will not be prosecuted for any crimes (except for criminal tax violations). Omega will civilly forfeit $500,000 and will continue to cooperate with the government. In January 2009, Omega settled a fraud suit against Kozeny. Thomas Farrell, who directed one of Kozeny's companies in the scheme, pleaded guilty to FCPA and conspiracy charges in 2003. In June 2009, Farrell testified against Bourke, and in April 2013, Farrell was sentenced to time served.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

38. UNITED STATES V. DPC (TIANJIN) CO. LTD. (C.D. CAL. 2005)

NATURE OF THE BUSINESS

Provision of medical products and hospital services by DPC Co. Ltd., formerly Tianjin Depu Biotechnological and Medical Products Inc. ("Tianjin"), a Chinese subsidiary of Diagnostics Products Corporation ("DPC"). DPC, a U.S. corporation, is a worldwide provider of immunodiagnostic systems and reagents.

INFLUENCE TO BE OBTAINED

Payments were made, disguised as commissions, by senior employees of Tianjin in exchange for agreements that hospitals would retain Tianjin's products and services.

ENFORCEMENT

In a company filing dated August 2005, DPC disclosed that it had agreed to pay approximately $4.8 million as part of a settlement with the SEC and DOJ, consisting of $2.0 million in fines and approximately $2.8 million in disgorgement of profits and interest. In addition, Tianjin pleaded guilty to violations of the FCPA, was issued a cease-and-desist order, and agreed to take certain actions, including engaging an independent monitor for its FCPA activities in China, to avert future violations.

See SEC Digest Number D-23.

KEY FACTS

Citation. *United States v. Diagnostic Prods. Corp.*, No. 05-cr-482 (C.D. Cal. 2005).

Date Filed. May 20, 2005.

Country. China.

Date of Conduct. 1991 – 2002.

Amount of the Value. $1.6 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Not Stated.

Foreign Official. Physicians and Laboratory Workers at Government-Owned Hospitals.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $2,000,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *In the Matter of Diagnostics Products Corporation*.

Total Combined Sanction. $4,788,622.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

37. UNITED STATES V. YAW OSEI AMOAKO (D.N.J. 2005)

NATURE OF THE BUSINESS

Procurement of business and individual telecommunication services contracts by Yaw Osei Amoako ("Amoako"), the former regional director for Africa for ITXC Corp. ("ITXC"), a U.S.-based provider of global telecommunications services. In 2004, ITXC merged with Teleglobe International Holdings, Ltd. ("Teleglobe"), a U.S.-based provider of international voice, data, Internet, and mobile roaming services.

INFLUENCE TO BE OBTAINED

According to the criminal and SEC complaints in this action and the SEC complaint in separate actions against his co-conspirators, Amoako helped arranged several payments to officials at government-owned telephone companies, Nitel, Rwandatel, and Sonatel. In exchange for the payments, Amoako sought the award of lucrative telephone contracts to provide individual and business telecommunication services in those countries.

ENFORCEMENT

After identifying the potential improper payments, Teleglobe notified the SEC and DOJ and conducted its own internal investigation. After conducting their own investigations, the SEC and DOJ in June 2005 brought separate cases against Amoako for violations of the FCPA. On September 6, 2006, the DOJ reported that Amoako had pled guilty to one count of conspiring to violate the anti-bribery provisions of the FCPA. On August 1, 2007, Amoako was sentenced to 18 months imprisonment, including 6 months in a halfway house, 2 years of supervised release with special conditions, a fine of $7,500 and a special assessment of $100. On April 18, 2008, Amoako entered into a settlement agreement with the SEC as well.

See DOJ Digest Number B-52.
See SEC Digest Number D-22.
See DOJ FCPA Opinion Procedure Release Digest Number E-38.

KEY FACTS

Citation. *United States v. Amoako*, No. 3:05-cr-01122 (D.N.J. 2006).

Date Filed. June 28, 2005.

Country. Nigeria, Rwanda, Senegal.

Date of Conduct. 2001 – 2004.

Amount of the Value. $267,468.95.

Amount of Business Related to the Payment. $11,509,733.

Intermediary. None.

Foreign Official. Senior Officials of Government-Owned Telephone Companies.

FCPA Statutory Provision. Conspiracy.

Other Statutory Provision. Conspiracy (Travel Act).

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Agent of Issuer; Conspiracy.

Defendant's Citizenship. Not Stated.[85]

Total Sanction. 18-Months Imprisonment, $7,500 Criminal Fine.

Related Enforcement Actions. *SEC v. Amoako*.

[85] Yaw Osei Amoako was a resident of New Jersey.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

36. UNITED STATES V. MONSANTO CO. (D.D.C. 2005)[86]

NATURE OF THE BUSINESS

Cultivation of genetically modified crops in Indonesia by Monsanto Co. ("Monsanto"), a U.S. corporation.

INFLUENCE TO BE OBTAINED

In November 2002, after a routine internal audit, Monsanto notified the SEC and the DOJ of various financial irregularities at its Indonesian affiliate companies. The inquiry revealed that a Monsanto officer authorized the payment of a $50,000 bribe to a local Indonesian government official to induce the official to repeal a government decree. The decree required an environmental impact assessment study prior to cultivation of certain agricultural products, and would have prevented Monsanto from cultivating certain of its genetically modified crops in Indonesia. Interestingly, the bribe itself was unrelated to any specific contract sought by Monsanto, or that Monsanto would be unable to pass an environmental impact study. It appears, rather, that the purpose of the bribe was to avoid the regulatory and administrative burden associated with undertaking the environmental study.

ENFORCEMENT

On January 6, 2005, Monsanto entered into a non-prosecution agreement with the DOJ and a settlement agreement with the SEC. As part of the settlement, Monsanto agreed to, among other things, pay a fine of $1.5 million and to appoint independent consultants to review its business practices over a three-year period, when the criminal charges against it would be dropped permanently by the DOJ. Several Monsanto employees in Indonesia were fired.

Upon receipt and review of a motion to dismiss filed by the DOJ, on March 5, 2008, the U.S. District Court for the District of Columbia entered an agreed order dismissing the proceeding against Monsanto with prejudice. The action by the court ends the Deferred Prosecution Agreement. The independent consultants have submitted the final report to the government for review.

See SEC Digest Numbers D-33 and D-21.

KEY FACTS

Citation. *United States v. Monsanto Co.*, No. 1:05-cr-00008 (D.D.C. 2005).

Date Filed. January 6, 2005.

Country. Indonesia.

Date of Conduct. 1997 – 2002.

Amount of the Value. $50,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Indonesian Consultant.

Foreign Official. A Local Indonesian Government Official.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $1,000,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *SEC v. Monsanto Co.*

Total Combined Sanction. $1,500,000.

[86] Matter resolved through non-prosecution agreement (January 2005).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

35. IN RE INVISION TECHNOLOGIES, INC. (2005)[87]

NATURE OF THE BUSINESS

Sales of explosives detection products by InVision Technologies, Inc. ("InVision"), a U.S. corporation.

INFLUENCE TO BE OBTAINED

Between 1996 and 2002, InVision's sales agents and distributors made payments to foreign officials to induce them to purchase InVision's baggage screening machines to be used at airports in the Philippines, China, and Thailand. The DOJ found that there was a "high probability" that senior employees at InVision were aware of the payments, but took no action to determine their legality.

ENFORCEMENT

InVision disclosed that it was the subject of DOJ and SEC investigations in August 2004. In December 2004, DOJ and InVision entered into a non-prosecution agreement whereby InVision agreed to certain conditions in exchange for a promise from the government that InVision will not be prosecuted for these violations. If InVision fails to comply with any of the terms of the agreement for a period of two years, the government will be free to prosecute the company for these violations. Among other things, InVision agreed to pay a fine of $800,000, accept responsibility for the misconduct, continue to cooperate with the DOJ, and adopt an FCPA compliance program as well as a set of internal controls designed to prevent future violations. Without admitting or denying the claims brought against it by the SEC, on February 14, 2005, InVision settled those claims and agreed to turn over $589,000 of ill-gotten profits, and pay a fine of $500,000. This case represents one of the few FCPA inquiries that involve distributors, rather than traditional FCPA investigations that focus on sales representatives or consultants to the company. Sales representatives and consultants are typically considered intermediaries of the company that is the subject of an investigation and the company is therefore deemed to be fully liable for their actions. In contrast, distributors purchase goods from manufacturers, take possession and title, and then offer the product for re-sale in their own name and at their own price. Accordingly, companies often do not view distributors as agents of the company for purposes of regulatory compliance.

See SEC Digest Numbers D-27 and D-20.
See Parallel Litigation Digest Number H-A7.

KEY FACTS

Citation. *In re InVision Technologies, Inc.* (2005).

Date Filed. December 3, 2004.

Country. Thailand; China; Philippines.

Date of Conduct. 2001 – 2004.

Amount of the Value. Approximately $203,000.

Amount of Business Related to the Payment. Approximately $41,300,000.

Intermediary. Third-Party Distributors of InVision's Products and InVision's Own Sales Agents.

Foreign Official. Unknown.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $800,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *SEC v. InVision Technologies, Inc.*

Total Combined Sanction. $1,917,703.57.

[87] Matter resolved through non-prosecution agreement (February 2005).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

34. IN RE MICRUS CORP. (2005)[88]

NATURE OF THE BUSINESS

Development and sale of medical devices known as embolic coils by the Micrus Corporation ("Micrus"), a privately-held U.S. company.

INFLUENCE TO BE OBTAINED

After conducting investigations, Micrus and the DOJ determined that certain officers, employees, agents and salespeople paid more than $105,000 disguised in Micrus's books as stock options, honorariums, and commissions, to doctors at state-run hospitals in France, Turkey, Spain and Germany. In exchange for these payments, the hospitals purchased Micrus's products. An additional $250,000 was comprised of payments for which Micrus did not obtain the necessary prior administrative or legal approval as required under the laws of the relevant foreign jurisdiction.

ENFORCEMENT

The DOJ and Micrus entered into a non-prosecution agreement on March 2, 2005 whereby Micrus agrees to certain conditions in exchange for a promise from the government that Micrus will not be prosecuted for these violations. If Micrus fails to comply with any of the terms of the agreement for a period of two years, the government will be free to prosecute Micrus for these violations. Among other things, Micrus agreed to pay a fine of $450,000, accept responsibility for the misconduct, continue to cooperate with DOJ, adopt an FCPA compliance program as well as a set of internal controls designed to prevent future violations, and retain an independent compliance expert for a period of three years.

According to an August 2008 SEC filing, the monitor filed his final report with the the DOJ in May 2008, and in July 2008, the DOJ confirmed that the monitorship had concluded. The company has reaffirmed its commitment to take all reasonable steps to ensure that it remains in compliance with the FCPA.

KEY FACTS

Citation. *In re Micrus Corp.* (2005).

Date Filed. February 28, 2005.

Country. France; Turkey; Spain; Germany.

Date of Conduct. 2002 – 2004.

Amount of the Value. More than $105,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign Official. Physicians at State-Owned Hospitals.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. $450,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. None.

[88] Matter resolved through non-prosecution agreement (March 2005).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

33. UNITED STATES V. TITAN CORP. (S.D. CAL. 2005)

NATURE OF THE BUSINESS

Provision of wireless telecommunications projects in Benin by subsidiaries of Titan Corporation ("Titan"), a U.S. company, which is a leading military and intelligence contractor with $2 billion in annual sales derived primarily from contracts with U.S. military, intelligence and homeland security agencies. Titan's subsidiaries include Titan Wireless, Inc., Titan Africa, Inc., and Titan Africa, S.A.

INFLUENCE TO BE OBTAINED

At the direction of at least one former senior Titan official based in the United States, Titan made payments to the re-election campaign of Benin's incumbent president to assist his re-election and thereby enable the company to develop a telecommunications project in Benin. The SEC alleged that Titan's internal controls were virtually nonexistent, and that Titan had falsified documents filed with the United States government and underreported commission payments in its business dealings in France, Japan, Nepal, Bangladesh, and Sri Lanka.

ENFORCEMENT

Titan pleaded guilty on March 1, 2005 to three felony counts of violating the FCPA and agreed to pay a criminal fine of $13 million, along with a civil penalty and disgorgement to the SEC in the amount of approximately $15.5 million.

See DOJ Digest Number B-42.
See SEC Digest Number D-19.
See Parallel Litigation Digest Number H-A3.

KEY FACTS

Citation. *United States v. Titan Corp.*, No. 05-cr-314 (S.D. Cal. 2005).

Date Filed. March 1, 2005.

Country. Benin.

Date of Conduct. 1999 – 2001.

Amount of the Value. $50,000.

Amount of Business Related to the Payment. Approximately $98 million.

Intermediary. Business Advisor to the President of Benin.

Foreign Official. President of Benin.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records.

Other Statutory Provision. Aiding and Abetting (Tax Fraud).

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $13,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *SEC v. Titan Corp.*

Total Combined Sanction. $28,479,195.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

32. UNITED STATES V. ROBERT E. THOMPSON AND JAMES C. REILLY (N.D. AL. 2004)

NATURE OF THE BUSINESS

Provision of hospital staffing and management services by HealthSouth, a U.S. corporation. Robert Thompson is the former president and COO of HealthSouth Corporation's In-Patient Division. James Reilly is the former HealthSouth Group's vice president of legal services.

INFLUENCE TO BE OBTAINED

This action related to HealthSouth's (successful) efforts to secure a contract for staffing and management services for a 450-bed hospital in Saudi Arabia. The DOJ alleged that the Director General of a Saudi Arabian foundation responsible for the hospital solicited a $1 million "finder's fee" from HealthSouth, and that HealthSouth, against the advice of counsel, agreed to pay the Director General $500,000 per year for five years. The payments were made via a consulting contract between the Director General and an Australian HealthSouth affiliate.

ENFORCEMENT

The DOJ first filed non-FCPA charges against two other HealthSouth employees in connection with these allegations: former Vice President Vincent Nico and former Executive Vice President Thomas Carman. Nico pled guilty to wire fraud on April 22, 2004, and agreed to forfeit $1,005,602 of ill-gotten gains relating to this scheme. On April 27, 2004, Carman admitted to making a false statement to the FBI. Both then began to cooperate with the DOJ's investigation.

Messrs. Thompson and Reilly were indicted under the Travel Act and the books-and-records provisions of the FCPA on July 1, 2004. After trial, the jury found both Thompson and Reilly not guilty on May 20, 2005.

KEY FACTS

Citation. *United States v. Thompson*, No. 2:04-cr-00240 (N.D. Ala. 2004).

Date Filed. July 1, 2004.

Country. Saudi Arabia.

Date of Conduct. 2000 – 2002.

Amount of the Value. $2.5 million.

Amount of Business Related to the Payment. $50 million.

Intermediary. HealthSouth Affiliate in Australia.

Foreign Official. The Director General of a Saudi Arabian Foundation.

FCPA Statutory Provision.

- **Robert Thompson**. Conspiracy (Books-and-Records); Books-and-Records.
- **James Reilly**. Conspiracy (Books-and-Records); Books-and-Records.

Other Statutory Provision.

- **Robert Thompson**. Conspiracy (Travel Act); Travel Act.
- **James Reilly**. Conspiracy (Travel Act); Travel Act.

Disposition.

- **Robert Thompson**. Dismissed.
- **James Reilly**. Dismissed.

Defendant Jurisdictional Basis.

- **Robert Thompson**. Conspiracy; Agent of Issuer.
- **James Reilly**. Conspiracy; Agent of Issuer.

Defendant's Citizenship.

- **Robert Thompson**. United States.
- **James Reilly**. United States.

Total Sanction.

- **Robert Thompson**. None.
- **James Reilly**. None.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

31. UNITED STATES V. ABB VETCO GRAY, INC. AND ABB VETCO GRAY U.K. LTD. (S.D. TEX. 2004)

NATURE OF THE BUSINESS

Provision of power and automation technologies, including oil and gas projects, by ABB, Ltd. ("ABB"), a Swiss corporation, which has a number of direct and indirect subsidiaries that do business in the United States and in 100 foreign countries. Among its subsidiaries is ABB Vetco Gray, Inc., a Texas corporation, and ABB Vetco Gray U.K., Ltd., a British corporation (the "Subsidiaries").

INFLUENCE TO BE OBTAINED

To assist the Subsidiaries in obtaining and retaining business in Nigeria, Angola, and Kazakhstan. From 1998 through 2003, the Subsidiaries did business in Nigeria, Angola, and Kazakhstan, and offered and made illicit payments totaling over $1.1 million to government officials in those countries. In Nigeria, the Subsidiaries made improper payments (directly and through an intermediary) to officials of the National Petroleum Investment Management Service, the state-owned agency that oversees investment in petroleum, to secure oil and gas projects in Nigeria. In Angola, the Subsidiaries made improper payments in the form of three training trips to Sonangol (state-owned oil company) engineers to secure contracts. Finally, in Kazakhstan, one of the Subsidiaries made payments to companies owned by a former employee of the subsidiary who was a government official to secure Kazakhstan government business for that subsidiary.

ENFORCEMENT

The Subsidiaries pleaded guilty to two felony counts of violating the FCPA and agreed to pay a $10.5 million fine. In the SEC proceeding, in July 2004, without admitting or denying the allegations in the SEC's complaint, ABB agreed to pay $5.9 million in disgorgement and prejudgment interest, a $10.5 million civil penalty (which was deemed to be satisfied by the SEC as a result of two of the Subsidiaries' payments of criminal fines totaling the same amount in a parallel DOJ proceeding), and to retain an outside FCPA compliance consultant.

See DOJ Digest Number B-75 and B-47.
See SEC Digest Numbers D-26 and D-17.
See DOJ FCPA Opinion Procedure Release Digest Number E-41.
See Parallel Litigation Digest Number H-E5.

KEY FACTS

Citation. *United States v. ABB Vetco Gray, Inc.*, No. 4:04-cr-00279 (S.D. Tex. 2004).

Date Filed. June 22, 2004.

Country. Nigeria.

Date of Conduct. 1998 – 2003.

Amount of the Value. Over $1.1 million.

Amount of Business Related to the Payment. At least $5,501,157 in profits.

Intermediary. None.

Foreign Official. Unnamed Nigerian Government Officials.

FCPA Statutory Provision.

- **ABB Vetco Gray, Inc.** Anti-Bribery.
- **ABB Vetco Gray U.K. Ltd.** Anti-Bribery.

Other Statutory Provision. None.

Disposition.

- **ABB Vetco Gray, Inc.** Plea Agreement.
- **ABB Vetco Gray U.K. Ltd.** Plea Agreement.

Defendant Jurisdictional Basis.

- **ABB Vetco Gray, Inc.** Domestic Concern.
- **ABB Vetco Gray U.K. Ltd.** Territorial Jurisdiction.

Defendant's Citizenship.

- **ABB Vetco Gray, Inc.** United States.
- **ABB Vetco Gray U.K. Ltd.** United Kingdom.

Total Sanction. $10,500,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *SEC v. ABB Ltd*.

Total Combined Sanction. $16,405,415.64.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

30. UNITED STATES V. JAMES GIFFEN (S.D.N.Y. 2003)
UNITED STATES V. J. BRYAN WILLIAMS (S.D.N.Y. 2003)
UNITED STATES V. THE MERCATOR CORP. (S.D.N.Y. 2010)

NATURE OF THE BUSINESS

Exploration and production of vast reserves of crude oil by Exxon-Mobil located in the Republic of Kazakhstan. Giffen, a merchant banker, was chairman of Mercator, a New York-based merchant bank that represented Kazakhstan in connection with the sale of interests in Kazakh oil fields and pipelines. Williams, an attorney in Virginia, was at the time a former executive at Mobil Oil Corporation (now Exxon-Mobil) and a personal friend of Giffen. Williams was responsible for Mobil's trading operations in the former Soviet Union, including Kazakhstan, and he negotiated a transaction by which Mobil would acquire an interest in the Tengiz oil field and in return received a $2 million kickback from Giffen.

INFLUENCE TO BE OBTAINED

Assist Exxon-Mobil in securing rights to oil fields in Kazakhstan.

ENFORCEMENT

After a lengthy investigation, Giffen was indicted on March 28, 2003 for violating the FCPA. In addition, on March 15, 2004, federal prosecutors in New York charged Giffen with filing false tax returns by omitting $2 million in income related to his relationship with Mercator.

On September 18, 2003, Williams pled guilty to conspiracy and tax evasion and was sentenced to 46 months in prison. Williams was also ordered to pay a $25,000 fine, restitution in the amount of $3,512,000, and taxes on the $2 million kickback he received.

Giffen challenged subpoenas issued by the United States seeking certain foreign bank records in the possession of Giffen's attorneys based upon the attorney work product doctrine. The United States District Court rejected the claim of privilege and ordered that the records be produced. Giffen appealed, and, on January 28, 2003, the United States Court of Appeals for the Second Circuit affirmed the lower court's decision. In November 2004, the District Court granted Giffen's request to access CIA documents to determine whether he had a viable public authority defense based on his claim that he was essentially a CIA asset when he made the payments in question. In October 2005, the District Court denied the government's motion in limine to preclude Giffen from advancing a public authority defense and using classified documents to support that defense. The government filed an interlocutory appeal of this denial, and, in December 2006, the Second Circuit refused to hear the appeal on the ground that it was prematurely filed although it severely criticized in dicta the District Court's interpretation of the public authority defense. Giffen's trial had been scheduled for February 2007, but remained mired in discovery-related issues.

On August 6, 2010, the government filed a superseding information, dropping all charges against Giffen except for one count of filing a false tax return based on Giffen's failure to disclose an interest in certain Swiss bank accounts. Giffen pleaded guilty to the tax-related misdemeanor charge pursuant to an agreement with the DOJ and was ordered to pay a penalty of $25. Under the plea agreement, Giffen relinquished any claims to funds in or taken from

KEY FACTS

Citation. *United States v. Giffen*, No. 03-cr-663 (S.D.N.Y. 2003); *United States v. Giffen*, No. 03-cr-404 (S.D.N.Y. 2003); *United States v. Williams*, No. 03-cr-406 (S.D.N.Y. 2003); *United States v. The Mercator Corp.*, No. 03-cr-404 (S.D.N.Y. 2010).

Date Filed. March 28, 2003 (Giffen); April 2, 2003 (Williams); August 5, 2010 (Mercator).

Country. Kazakhstan.

Date of Conduct. 1995 – 2000.

Amount of the Value. $78 million.

Amount of Business Related to the Payment. Millions of dollars.

Intermediary. Foreign Shell Organizations.

Foreign Official. Senior Kazakh Government Officials.

FCPA Statutory Provision.

- **James Giffen**. None.
- **Bryan Williams**. None.
- **Mercator Corp.** Anti-Bribery.

Other Statutory Provision.

- **James Giffen**. Tax Fraud.
- **Bryan Williams**. Conspiracy (Defrauding United States); Tax Evasion.

Disposition.

- **James Giffen**. Plea Agreement.
- **Bryan Williams**. Plea Agreement.
- **Mercator Corp.** Plea Agreement.

Defendant Jurisdictional Basis.

- **James Giffen**. Not Applicable.
- **Bryan Williams**. Not Applicable.
- **Mercator Corp.** Domestic Concern.

Defendant's Citizenship.

- **James Giffen**. United States.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

certain Swiss bank accounts, including the one funding charitable projects in Kazakhstan and nine other accounts in the names of various corporate entities.

Separately, on May 3, 2007, the government filed a civil forfeiture action against approximately $84 million, plus interest, on deposit in a Swiss bank account belonging to the government of Kazakhstan, alleging that the money in the account included the approximately $51.7 million in proceeds of the FCPA violations and wire frauds charged against Giffen. On May 31, 2009 the court granted the U.S. government's application for a Stipulation and Order, which set forth its agreement with Kazakhstan to use the money to fund three programs to benefit Kazakhstan: one for programs to benefit poor children; the second to improve public financial management; and the third to implement a comprehensive strategy for transparency in the oil, gas, and mining industries there.

Related Case. *U.S. v. The Mercator Corporation*

The Mercator Corporation ("Mercator"), a merchant bank chaired by James Giffen, is headquartered and incorporated in New York. On August 6, 2010, Mercator pleaded guilty to violating the anti-bribery provision of the FCPA. Mercator entered into an agreement with the Kazakh Ministry of Oil and Gas Industries to assist the Ministry in developing a strategy for foreign investment in the oil and gas sector and coordinating the negotiation of numerous oil and gas transactions with foreign partners.

Under the agreement, Mercator stood to receive "success fees" that would be paid only if the transactions successfully closed. Between 1995 and 2000, Kazakhstan paid Mercator approximately $67 million in success fees for its work. Out of the success fees, James Giffen, on behalf of Mercator, directly and through intermediaries made unlawful payments to three senior officials of the Kazakh government. The information notes specifically that two snowmobiles were given to a Kazakh official and it broadly alleges improper payments and luxury gifts to the three Kazakh officials. The unlawful payments ensured that Mercator and Giffen obtained and retained business with Kazakhstan, and they remained in a position from which they could divert large sums from oil transactions into accounts for the benefit of senior Kazakh officials and Giffen personally. Because senior Kazakh officials had the authority to hire Mercator and to pay Mercator substantial success fees if the transactions closed, Mercator was dependent upon the goodwill of these officials to maintain its position as a consultant to the Kazakh government. The scheme defrauded the Kazakh government of funds from oil transactions to which it was entitled.

On November 19, 2010, the court imposed a criminal fine of $32,000 on Mercator and a $400 special assessment. Through a plea agreement, Mercator also relinquished any claims to funds in or taken from certain Swiss bank accounts, including the one funding charitable projects in Kazakhstan and nine other accounts in the names of various corporate entities.

- **Bryan Williams**. United States.
- **Mercator Corp.** United States.

Total Sanction.

- **James Giffen**. Time Served.
- **Bryan Williams**. 46-Months; $25,000 Criminal Fine; $3,512,000 in Restitution.
- **Mercator Corp.** $32,000 Criminal Fine.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

29. UNITED STATES V. RICHARD G. PITCHFORD (D.D.C. 2002)

NATURE OF THE BUSINESS

Former vice-president of a special fund created by U.S. Congress for the development of the private sector in Central Asia received illegal kickbacks in several different schemes. One scheme provided Pitchford a payment for assisting a British company to acquire a contract to do business in Turkmenistan. In exchange for cash, Pitchford provided a British government official confidential bid information on a contract in Turkmenistan that enabled the British company to underbid its competitors. In another scheme, Pitchford and a co-conspirator, Patrick Dickey, at the Central Asia American Enterprise Fund ("Enterprise Fund") arranged for the investment by the Enterprise Fund in clothing companies in Turkmenistan. Pitchford and his co-conspirator then arranged for a Pakistani individual to purchase goods from those companies at an inflated price. The excess funds were transferred back to Pitchford and his co-conspirator.

INFLUENCE TO BE OBTAINED

Assist in obtaining contracts from the Central Asia American Enterprise Fund for Turkmenistan.

ENFORCEMENT

Pitchford pleaded guilty to conspiracy, theft from a government program, and a violation of the FCPA and was sentenced to a year and a day in prison, to be followed by 3 years supervised release, $400,000 in Restitution, forfeiture of $142,797.95 from bank accounts in New York and a luxury yacht, and 200 hours of community service.

KEY FACTS

Citation. *United States. v. Pitchford*, No. 1:02-cr-00365 (D.D.C. 2002).

Date Filed. September 3, 2002.

Country. Turkmenistan.

Date of Conduct. 1997 – 1998.

Amount of the Value. Approximately $400,000.

Amount of Business Related to the Payment. Approximately $6 million.

Intermediary. A Pakistani Citizen.

Foreign Official. A British Government Official.

FCPA Statutory Provision. Conspiracy; Anti-Bribery.

Other Statutory Provision. Conspiracy (Theft from a Federal Program); Theft from a Federal Program.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern; Agent of Domestic Concern; Conspiracy.

Defendant's Citizenship. United States.

Total Sanction. 12-Months and 1-Day Imprisonment, $400,000 in Restitution; $142,797.95 Criminal Forfeiture.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

28. UNITED STATES V. SYNCOR TAIWAN, INC. (C.D. CAL. 2002)

NATURE OF THE BUSINESS

Syncor Taiwan, Inc. ("Syncor Taiwan") is a Taiwan corporation engaged in providing radio-pharmacy services and outpatient medical imaging services. Syncor Taiwan is a wholly-owned subsidiary of Syncor International Corporation ("Syncor"), a Delaware corporation.

INFLUENCE TO BE OBTAINED

1) Obtaining and retaining business from those hospitals, 2) the purchase and sale of unit dosages of certain radiopharmaceuticals, and 3) referrals of patients to medical imaging centers owned by Syncor Taiwan.

ENFORCEMENT

On December 3, 2003, Syncor Taiwan pleaded guilty to violating the FCPA's anti-bribery provision and agreed to pay a $2 million fine, the maximum criminal fine for a corporation under the FCPA. Notably, this matter was discovered in the course of due diligence in connection with the acquisition of Syncor Taiwan's parent.

See SEC Digest Numbers D-40 and D-15.
See Parallel Litigation Digest Numbers H-A2 and H-B1.

KEY FACTS

Citation. *United States v. Syncor Taiwan, Inc.*, No. 02-cr-1244 (C.D. Cal. 2002).

Date Filed. December 5, 2002.

Country. Taiwan.

Date of Conduct. 1997 – 2002.

Amount of the Value. At least $457,117.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign Official. Physicians Employed by State-Owned Hospitals.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Territorial Jurisdiction.

Defendant's Citizenship. Taiwan.

Total Sanction. $2,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *SEC v. Syncor Int'l*

Total Combined Sanction. $2,500,000.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

27. UNITED STATES V. GAUTAM SENGUPTA (D.D.C. 2002) UNITED STATES V. RAMENDRA BASU (D.D.C. 2002)

NATURE OF THE BUSINESS

Securing World Bank financing for projects in Africa.

INFLUENCE TO BE OBTAINED

Gautam Sengupta and Ramendra Basu (the "Defendants") worked at the World Bank as task managers. Their role was to select consultants who would conduct feasibility studies on proposed World Bank projects. A World Bank trust fund manager introduced the idea that all parties could benefit by awarding contracts to the Swedish consultant. The Defendants consequently caused three contracts to be awarded to the consultant, including one for an urban transport program in Kenya. A Kenyan government official heading this World Bank project contacted the Defendants requesting a bribe. Under the Defendants' direction, the money was transferred to an account in Kenya for the benefit of the official from an account controlled by the Swedish consultant.

ENFORCEMENT

In 2002, the Defendants pleaded guilty to a two-count information including conspiracy to commit wire fraud and a violation of the FCPA. Basu and Sengupta agreed to restitution in the amount of $127,000. In May 2006, Basu filed a motion to withdraw the plea of guilty. The motion was denied on January 23, 2008, on the grounds that the plea was entered voluntarily, and that Basu's claim of innocence lacked evidentiary support. On April 25, 2008, Basu was sentenced to 15 months in prison, 2 years supervised release, and 50 hours of community service. In February 2006, Sengupta was sentenced to 2 months imprisonment and a fine of $6,000.

KEY FACTS

Citation. *United States v. Sengupta*, No. 02-cr-40 (D.D.C. 2002); *United States v. Basu*, No. 02-cr-475 (D.D.C. 2002).

Date Filed. January 30, 2002 (Sengupta); November 26, 2002 (Basu).

Country. Kenya.

Date of Conduct. 1999.

Amount of the Value. $127,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Swedish Consultant.

Foreign Official. Unnamed Kenyan Government Official.

FCPA Statutory Provision.

- **Gautam Sengupta**. Anti-Bribery.
- **Ramendra Basu**. Anti-Bribery.

Other Statutory Provision.

- **Gautam Sengupta**. Conspiracy (Wire Fraud).
- **Ramendra Basu**. Conspiracy (Wire Fraud).

Disposition.

- **Gautam Sengupta**. Plea Agreement.
- **Ramendra Basu**. Plea Agreement.

Defendant Jurisdictional Basis.

- **Gautam Sengupta**. Territorial Jurisdiction.
- **Ramendra Basu**. Territorial Jurisdiction.

Defendant's Citizenship.

- **Gautam Sengupta**. Not Stated.
- **Ramendra Basu**. India.

Total Sanction.

- **Gautam Sengupta**. 2-Months Imprisonment; $6,000 Criminal Fine.
- **Ramendra Basu**. 15-Months Imprisonment.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

26. UNITED STATES V. DAVID KAY AND DOUGLAS MURPHY (S.D. TEX. 2002)

NATURE OF THE BUSINESS

American Rice, Inc. ("ARI") has a Haitian subsidiary, Rice Corporation of Haiti ("RCH"), engaged in the import of rice to Haiti. ARI is a Texas corporation and a U.S. issuer. Douglas A. Murphy is the former president of American Rice, and David Kay is the former vice president. Lawrence H. Theriot is a former consultant to American Rice.

INFLUENCE TO BE OBTAINED

False shipping documents reducing the amount of customs duties and sales taxes due to Haitian authorities.

ENFORCEMENT

As vice president of marketing for ARI, David Kay was responsible for supervising sales and marketing in Haiti. Kay was charged with twelve counts of violating the FCPA. Douglas Murphy, as president of ARI, was also charged with twelve counts of violating the FCPA. In May of 2002, U.S. District Judge David Hittner dismissed the indictments against Murphy and Kay.

On February 11, 2004, the United States Court of Appeals for the Fifth Circuit overturned the district court decision and ruled that: 1) the FCPA is sufficiently broad to include violations of the FCPA designed to obtain a tax benefit; and 2) since the business nexus[89] element of the FCPA does not go to the core of criminality under the statute, the fact that the indictment only tracks the language of the statute does not render it facially insufficient.

However, since the indictment in the instant matter only paraphrased the language in the statute with regard to the element of intent, the court suggested that on remand, the defendants may wish to submit a motion to the district court seeking to compel the government to allege more specific details demonstrating: 1) what business was sought to be obtained or retained; and 2) how the intended quid pro quo was meant to assist in obtaining or retaining such business. Upon such a motion, the district court would then have to determine: 1) whether merely quoting or paraphrasing the statute as to that element is sufficient; or 2) whether the government must allege such additional facts.

On July 15, 2004, the government filed a superseding indictment which, in addition to adding charges of conspiracy and obstruction of justice, amended the original indictment to include the following: "The defendants believed that if American Rice Inc. and Rice Corporation of Haiti were required to pay the full amount of duties and taxes that should have been paid on the imported rice they would not have been able to sell the rice at a competitive price, would have lost sales to competitors and would not have realized an operating profit, thus putting at risk American Rice Inc.'s and Rice Corporation of Haiti's business operations in Haiti."

A jury trial was held in September/October 2004 and the jury found Kay and Murphy guilty on all counts. Both defendants subsequently filed motions for new trials, which were denied. On June 19, 2005, Kay was sentenced to 37 months incarceration, to be followed by a two-year term of supervised release.

KEY FACTS

Citation. *United States v. Kay*, No. 4:01-cr-914 (S.D. Tex. 2002).

Date Filed. December 12, 2012.

Country. Haiti.

Date of Conduct. 1998 – 1999.

Amount of the Value. The alleged bribes ranged from $25,000 to $72,000 and totaled more than $528,000.

Amount of Business Related to the Payment. The alleged bribes saved the company more than $1.5 million in Haitian import tax.

Intermediary. None.

Foreign Official. Haitian Customs and Tax Officials.

FCPA Statutory Provision.

- **David Kay**. Anti-Bribery; Conspiracy (Anti-Bribery); Aiding and Abetting (Anti-Bribery).
- **Douglas Murphy**. Anti-Bribery; Conspiracy (Anti-Bribery); Aiding and Abetting (Anti-Bribery).

Other Statutory Provision. None.

Disposition.

- **David Kay**. Plea Agreement.
- **Douglas Murphy**. Plea Agreement.

Defendant Jurisdictional Basis.

- **David Kay**. Domestic Concern; Agent of Issuer; Conspiracy; Aiding and Abetting.
- **Douglas Murphy**. Domestic Concern; Agent of Issuer; Conspiracy; Aiding and Abetting.

Defendant's Citizenship.

- **David Kay**. United States.
- **Douglas Murphy**. United States.

Total Sanction.

[89] As defined by the Court, the "business nexus" element of the FCPA refers to exactly how a payment of a bribe would assist (or is meant to assist) in obtaining or retaining business.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

Kay must also pay a fine of $1,300. Murphy was sentenced to 63 months incarceration and ordered to pay $1,400 in penalties. Both defendants appealed their convictions on several grounds, and in October 2007, the United States Court of Appeals for the Fifth Circuit upheld the convictions.

Defendants argued on appeal that the FCPA was void for vagueness due to its alleged ambiguity in not expressly stating that payments to lower taxes are related to "obtaining or retaining business." The Fifth Circuit disagreed, holding that "[a]ll [elements of the FCPA] are phrased in terms that are reasonably clear so as to allow the common interpreter to understand their meaning. Defendants have, rather than showing vagueness, raised a technical interpretive question as to the exact meaning of 'obtaining or retaining' business. Whether 'obtaining or retaining' business covers the general activities that an entity undertakes to ensure continued success of a business or Defendants' more limited definition of contractual business is an ambiguity but not one that rises to the level of vagueness and unfair notice."

The court further noted that although the company did not make the corrupt payments to guarantee the success of one particular contract, "ARI ensured, through bribery, that it could continue to sell its rice without having to pay the full tax and customs duties demanded of it. Trial testimony indicates that ARI believed these payments were necessary to compete with other companies that paid lower or no taxes on similar imports – in other words, to retain business in Haiti, the company took measures to keep up with competitors. The fact that other companies were guilty of similar bribery during the 1990's does not excuse ARI's actions; multiple violations of a law do not make those violations legal or create vagueness in the law."

Defendants also argued that the government had failed to satisfy the interstate commerce element of the FCPA as the cash bribes occurred in Haiti, using local bank accounts, and the statute requires the use of interstate commerce in the furtherance of the bribe itself. The Fifth Circuit disagreed and read the statute more broadly as including activities that support the bribe, in this case, the sending of false shipping documents through interstate commerce.

Defendants also argued that the district court's jury instructions on the intent element of the statute were insufficient. The Fifth Circuit held that the intent element of the FCPA did not require a showing that the defendants specifically knew that they were violating the FCPA, but only that the defendants "acted corruptly, with an 'unlawful end or result,' and committed 'intentional' and 'knowing' acts with a bad motive." Defendants filed a petition with the Fifth Circuit for Rehearing en Banc on this issue and the court denied the petition on January 8, 2008, holding that the district court's instructions – which, "as a whole and considered in the context of a trial required a finding that Defendants knew their conduct was unlawful" – were satisfactory.

On April 9, 2008, Kay and Murphy filed a writ of certiorari to the U.S. Supreme Court which was denied on October 6, 2008.

Related Cases. SEC v. Douglas A. Murphy, David G. Kay and Lawrence H. Theriot.

On July 30, 2002, the SEC, with assistance from the DOJ, filed a civil injunctive action in the United States District Court for the Southern District of Texas against Murphy, Kay and Theriot. The SEC suit makes essentially the same allegations as the Justice Department lawsuit. On December 30, 2005, the court entered a final judgment against Theriot ordering him to pay the full $11,000 civil penalty the SEC sought. The actions against Kay and Murphy, in

- **David Kay**. 37-Months Imprisonment.
- **Douglas Murphy**. 63-Months Imprisonment.

Related Enforcement Actions. *SEC v. Murphy*.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

which the SEC asks that each pay $187,000 in civil penalties, are still pending. *See* SEC Digest Number D-13.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

25. UNITED STATES V. RICHARD K. HALFORD (W.D. MO. 2001)
UNITED STATES V. ALBERT FRANKLIN REITZ (W.D. MO. 2001)
UNITED STATES V. ROBERT RICHARD KING AND PABLO BARQUERO HERNANDEZ (W.D. MO. 2001)

NATURE OF THE BUSINESS

Development of port facilities, international airport, resort, marina, residential estates, quarry, salvage operation and dry canal in Costa Rica by OSI Proyectos, the Costa Rican subsidiary of Owl Securities and Investment Ltd. ("OSI Ltd."). OSI Ltd. has its principal place of business in Kansas City, Missouri and is a domestic concern.

Richard K. Halford was a stockholder and chief financial officer of OSI Ltd. and as such was both a domestic concern and acting on behalf of a domestic concern. Albert Franklin Reitz was the vice president and secretary, stockholder and employee of OSI Ltd. responsible for the solicitation of investors. As such, Reitz was a domestic concern and acting on behalf of a domestic concern. Robert Richard King and Pablo Barquero Hernandez, a Costa Rican citizen, were also employed by OSI Ltd. King was a stockholder of OSI Ltd., and as such was both a domestic concern and acting on behalf of a domestic concern. Hernandez was a Costa Rican national employed by OSI Ltd. and in that capacity was an agent of a domestic concern

INFLUENCE TO BE OBTAINED

Land concession to construct, develop and operate the multi-use facility described above and to obtain favorable changes to Costa Rican law and regulations.

ENFORCEMENT

Individuals charged and their relationship with the business. Richard K. Halford was a stockholder and chief financial officer of OSI Ltd. and as such was both a domestic concern and acting on behalf of a domestic concern. Halford pleaded guilty to one count of conspiracy to violate the FCPA.

Albert Franklin Reitz was the vice president and secretary, stockholder and employee of OSI Ltd. responsible for the solicitation of investors. As such, Reitz was a domestic concern and acting on behalf of a domestic concern. Reitz also pleaded guilty to one count of conspiracy to violate the FCPA.

Robert Richard King and Pablo Barquero Hernandez, a Costa Rican citizen, were also employed by OSI Ltd. King was a stockholder of OSI Ltd., and as such was both a domestic concern and acting on behalf of a domestic concern. Hernandez was a Costa Rican national employed by OSI Ltd. and in that capacity was an agent of a domestic concern. In June 2001, both were indicted on seven counts of FCPA violations. The indictment alleges that King was responsible for soliciting investors in the United States for the Costa Rican project. The indictment further alleges that Hernandez was the Costa Rican intermediary for the bribe payments. Hernandez remains a fugitive and there is a warrant for his arrest. The United States has requested either his extradition or prosecution by Costa Rica. In June 2002, following a one-week trial, King was convicted of conspiracy and four counts of violations of the FCPA.

Other crimes charged. Halford pled guilty to three counts of willful tax evasion. Reitz pled guilty to two counts of mail fraud and using a fictitious

KEY FACTS

Citation. *United States v. Halford*, No. 01-cr-221 (W.D. Mo. 2001); *United States v. Reitz*, No. 01-cr-222 (W.D. Mo. 2001); *United States v. King*, No. 01-cr-190 (W.D. Mo. 2001).

Date Filed. June 27, 2001 (Hernandez); August 3, 2001 (Halford; King; Reitz).

Country. Costa Rica.

Date of Conduct. 1995 - 2000.

Amount of the Value. Conspirators agreed to pay an unspecified total amount, which included one payment of $1,500,000.

Amount of Business Related to the Payment. Not Stated

Intermediary. OSI's Costa Rican Agent.

Foreign Official. Costa Rican Politicians, Party Officials and Candidates for Political Office.

FCPA Statutory Provision.

- **Richard Halford**. Conspiracy (Anti-Bribery).
- **Albert Reitz**. Conspiracy (Anti-Bribery).
- **Robert King**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Pablo Barquero Hernandez**. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision.

- **Richard Halford**. Tax Fraud.
- **Albert Reitz**. Mail Fraud; False Statements; Tax Fraud.
- **Robert King**. RICO.
- **Pablo Barquero Hernandez**. RICO.

Disposition.

- **Richard Halford**. Plea Agreement.
- **Albert Reitz**. Plea Agreement.
- **Robert King**. Convicted.
- **Pablo Barquero Hernandez**. Fugitive.

Defendant Jurisdictional Basis.

- **Richard Halford**. Domestic Concern; Agent of Domestic Concern.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

name and address as part of his conduct of making false and fraudulent representations and omissions of fact to solicit investors in OSI Ltd., knowing that a prior cease-and-desist order prohibited the offer and sale of OSI Ltd. securities in Missouri. Reitz was also charged with three counts of making false and fraudulent statements to an investigating agent of the United States government, and four counts of making fraudulent and false statements on a federal tax return. King and Hernandez were indicted on two counts of racketeering and one count of conspiracy to defraud the United States.

Sentencing. Halford was placed on probation for a term of five years with the special conditions that he (1) provide financial information as requested, (2) cooperate with the IRS in repayment of all monies, and (3) complete 1,000 hours of community service. Similarly, Reitz was sentenced to probation for five years, a fine of $400, home detention for six months and 1,000 hours of community service, and is obligated to cooperate to repay the IRS and provide any financial information that is requested. King was sentenced to 30 months in prison and fined $60,000. The United States Court of Appeals for the Eighth Circuit affirmed the District Court's conviction and sentencing of King. Hernandez remains a fugitive and is believed to be in his home country, Costa Rica, which does not extradite its own citizens to the United States.

- **Albert Reitz**. Domestic Concern; Agent of Domestic Concern.
- **Robert King**. Domestic Concern; Agent of Domestic Concern.
- **Pablo Barquero Hernandez**. Agent of Domestic Concern.

Defendant's Citizenship.

- **Richard Halford**. United States.
- **Albert Reitz**. United States.
- **Robert King**. United States.
- **Pablo Barquero Hernandez**. Costa Rica.

Total Sanction.

- **Richard Halford**. 5-Years Probation.
- **Albert Reitz**. 5-Years Probation.
- **Robert King**. 30-Months Imprisonment; $60,000 Criminal Fine.
- **Pablo Barquero Hernandez**. Pending.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

24. UNITED STATES V. DANIEL RAY ROTHROCK (W.D. TEX. 2001)

NATURE OF THE BUSINESS

Sale of approximately 20 work-over oil rigs to RVO Zarubezhneftestroy ("Nestro"), a Russian government-owned purchasing agency, by The Cooper Division of Allied Products Corporation ("Allied"). Allied is a Delaware corporation based in Chicago, Illinois, and a U.S. issuer.

INFLUENCE TO BE OBTAINED

Rothrock was charged with one count of causing the issuer, Allied, to keep false books and records\to conceal a payment to the Director General of Nestro to secure the oil rig sale contract.

ENFORCEMENT

Daniel Ray Rothrock, vice president of Allied's Cooper Division with responsibility for international sales, was charged with one count of causing the issuer, Allied, to keep false books and records and so violating the FCPA. Rothrock pled guilty and was sentenced to one year's unsupervised probation and a $100 special assessment.

KEY FACTS

Citation. *United States. v. Rothrock*, No. 5:01-cr-00343 (W.D. Tex. 2001).

Date Filed. September 3, 2002.

Country. Russia.

Date of Conduct. 1992 – 1993.

Amount of the Value. $300,000.

Amount of Business Related to the Payment. $5.5 million, plus other unstated amounts.

Intermediary. Trading & Business Services, Ltd.

Foreign Official. Officials of the Government Owned Purchasing Agency.

FCPA Statutory Provision. Books-and-Records.

Other Statutory Provision. None.

Disposition. Guilty Plea.

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. United States.

Total Sanction. 1-Year Probation.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

23. UNITED STATES V. JOSHUA C. CANTOR (S.D.N.Y. 2001)

NATURE OF THE BUSINESS

Sale of approximately 20 work-over oil rigs to RVO Zarubezhneftestroy ("Nestro"), a Russian government-owned purchasing agency, by The Cooper Division of Allied Products Corporation ("Allied"). Allied is a Delaware corporation based in Chicago, Illinois, and a U.S. issuer.

INFLUENCE TO BE OBTAINED

Rothrock was charged with one count of causing the issuer, Allied, to keep false books and records\to conceal a payment to the Director General of Nestro to secure the oil rig sale contract.

ENFORCEMENT

Daniel Ray Rothrock, vice president of Allied's Cooper Division with responsibility for international sales, was charged with one count of causing the issuer, Allied, to keep false books and records and so violating the FCPA. Rothrock pled guilty and was sentenced to one year's unsupervised probation and a $100 special assessment.

See SEC Digest Number D-10.

KEY FACTS

Citation. *United States v. Cantor*, No. 01-cr-687 (S.D.N.Y. 2001).

Date Filed. July 17, 2001.

Country. Saudi Arabia.

Date of Conduct. 1998 – 1999.

Amount of the Value. $239,000.

Amount of Business Related to the Payment. Approximately $597,500 (bribe was 40% of the contract's value).

Intermediary. Foreign Agent of American Bank Note.

Foreign Official. Saudi Arabian Government Officials.

FCPA Statutory Provision. Conspiracy; Books-and-Records.

Other Statutory Provision. Conspiracy (Securities Fraud); False Statements to Auditors.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Agent of Issuer; Agent of Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. Time Served.

Related Enforcement Actions. *SEC v. Cantor*.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

22. UNITED STATES V. INT'L MATERIAL SOLUTIONS CORP. AND THOMAS K. QUALEY (S.D. OHIO 1999)

NATURE OF THE BUSINESS

Sale of ten forklift trucks.

INFLUENCE TO BE OBTAINED

Approval of a bid to sell ten forklift trucks.

ENFORCEMENT

In 1995 and 1996, Mr. Qualey prepared and submitted bids to a Lieutenant Colonel in the Brazilian Air Force (BAF), who was the Foreign Liaison Officer for the BAF at Wright-Patterson Air Force Base, to sell forklifts to the BAF and to service them. At the Lt. Colonel's suggestion, Mr. Qualey and International Materials Solutions paid over $67,000 in bribes to the Lt. Colonel in order to obtain said business.

In 1999, International Materials Solutions pleaded guilty pursuant to a plea agreement to one count of foreign bribery by a domestic concern and one count of conspiracy to commit foreign bribery.

In 1999, Mr. Qualey pleaded guilty pursuant to a plea agreement, to one count of foreign bribery by a domestic concern and one count of conspiracy to commit foreign bribery.

KEY FACTS

Citation. *United States v. Int'l Material Solutions Corp.*, No. 3:99-cr-008 (S.D. Ohio 1999).

Date Filed. February 8, 1999.

Country. Brazil.

Date of Conduct. 1995 – 1996.

Amount of the Value. $67,563.

Amount of Business Related to the Payment. $392,250.

Intermediary. None.

Foreign Official. Lt. Col. in the Brazilian Air Force.

FCPA Statutory Provision.

- **Int'l Material Solutions Corp.** Conspiracy (Anti-Bribery); Anti-Bribery.
- **Thomas Qualey**. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision. None.

Disposition.

- **Int'l Material Solutions Corp.** Plea Agreement.
- **Thomas Qualey**. Plea Agreement.

Defendant Jurisdictional Basis.

- **Int'l Material Solutions Corp.** Domestic Concern.
- **Thomas Qualey**. Domestic Concern.

Defendant's Citizenship.

- **Int'l Material Solutions Corp.** United States.
- **Thomas Qualey**. United States.

Total Sanction.

- **Int'l Material Solutions Corp.** 1-Year Probation; $1,000 Criminal Fine.
- **Thomas Qualey**. 3-Year Probation; $2,500 Criminal Fine.

Related Enforcement Actions. *SEC v. Murphy*.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

21. UNITED STATES V. CONTROL SYSTEMS SPECIALIST, INC. AND DARROLD RICHARD CRITES (S.D. OHIO 1998)

NATURE OF THE BUSINESS

Purchase, repair and resale of surplus military equipment by Control Systems Specialist, Inc., an Ohio corporation and domestic concern.

INFLUENCE TO BE OBTAINED

To obtain a contract for Control Systems Specialist, Inc. to sell surplus U.S. military equipment, including two gas turbine power units, to the BAC.

ENFORCEMENT

Control Systems Specialist, Inc. ("CSS") is an Ohio corporation that buys and repairs surplus military equipment for resale. Darrold Richard Crites was the President of CSS. Company Y was another Ohio corporation in the business of buying and repairing surplus military equipment for resale. Businessman X was the President of Company Y. Brazilian Air Force Lt. Colonel Z ("Colonel Z") was an employee of the Brazilian government who was authorized to purchase military equipment. Command Country Manager for Brazil ("Country Manager") was an employee of the U.S. Air Force and his official duties involved the sale of U.S. military equipment to foreign countries. In 1994, CSS and Crites bid on a contract to supply the Brazilian government with repaired military equipment. CSS and Crites agreed to pay bribes to Colonel Z to ensure that they would be selected for the contract. Between November 1994 and December 1995, CSS and Crites issued 21 checks to Colonel Z which approximately totaled $189,576.00. In addition, Crites sought assistance from Businessman X to help make additional payments to Colonel Z. As a result of this solicitation, Businessman X incorporated company Y in 1995, purchased additional repairable military equipment and paid Colonel Z approximately $67,563.00. CSS and Crites also agreed to pay bribes to the Country Manager of Brazil in exchange for information about the location of repairable parts that could be sold to the Brazilian Air Force. Country Manager provided Crites and CSS with this information and in exchange, the Country Manager received $66,000.00. As a result of these bribes, CSS was awarded the contract with the Brazilian Air Force and received approximately $672,298.00 upon performance.

In 1998, the U.S. Attorney's office indicted Crites and CSS for conspiracy to violate the Foreign Corrupt Practices Act, violations of the FCPA and bribery of a U.S. public official. Crites pled guilty to a three count information charging a conspiracy to violate the FCPA, violation of the FCPA and bribery of a U.S. public official. Pursuant to the plea agreement, Crites must pay a special assessment of $50.00 for the conspiracy and FCPA violation counts and $100.00 for the bribery of a U.S. public official count. Crites also agreed to make complete restitution for all damage that resulted from his violations. The plea agreement did not specify the length of a prison term and he was sentenced to three years' probation and 150 hours of community service. Crites also entered into a cooperation agreement with the DOJ.

CSS also pled guilty to conspiracy to violate the FCPA, a substantive violation of the FCPA, and bribery of a U.S. public official. CSS was subsequently ordered to pay a $1,500 Criminal Fine.

KEY FACTS

Citation. *United States v. Control Sys. Specialist, Inc.*, No. 3:98-cr-00073 (S.D. Ohio 1998).

Date Filed. August 19, 1998.

Country. Brazil.

Date of Conduct. 1994 – 1996.

Amount of the Value. $257,139, disguised as consultant fees, paid to a Brazilian Air Force Lieutenant Colonel ("BAF/Lt. Col. Z") for each bid accepted by BAF/Lt. Col. Z on behalf of the Brazilian Aeronautical Commission ("BAC").

Amount of Business Related to the Payment. At least 44 purchases of surplus U.S. military equipment for repair and resale to the BAC.

Intermediary. None.

Foreign Official. BAF/Lt. Col. Z, who was authorized to make purchases of military equipment on behalf of the BAC.

FCPA Statutory Provision.

- **Control Systems Specialist, Inc.** Conspiracy (Anti-Bribery); Anti-Bribery.
- **Darrold Crites**. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision.

- **Control Systems Specialist, Inc.** Bribery of a U.S. Public Official.
- **Darrold Crites**. Bribery of a U.S. Public Official.

Disposition.

- **Control Systems Specialist, Inc.** Plea Agreement.
- **Darrold Crites**. Plea Agreement.

Defendant Jurisdictional Basis.

- **Control Systems Specialist, Inc.** Domestic Concern.
- **Darrold Crites**. Domestic Concern; Agent of Domestic Concern.

Defendant's Citizenship.

- **Control Systems Specialist, Inc.** United States.
- **Darrold Crites**. United States.

Total Sanction.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

	• **Control Systems Specialist, Inc.** $1,500 Criminal Fine. • **Darrold Crites**. 36-Months Probation; $150 Criminal Fine. **Related Enforcement Actions.** None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

20. UNITED STATES V. HERBERT TANNENBAUM (S.D.N.Y. 1998)

NATURE OF THE BUSINESS

Garbage incinerator manufacturer, Tanner Management Corporation ("Tanner").

INFLUENCE TO BE OBTAINED

To obtain a contract for sale of a garbage incinerator to the government of Argentina.

ENFORCEMENT

Tannenbaum, as President of Tanner Management Corporation, attempted to procure sales to the Argentine government for his company's garbage incinerators. Tannenbaum offered to make secret payments to an undercover agent posing as a procurement officer for Argentina in order to induce the agent to purchase the incinerators. To mask the illegal payments, Tannenbaum incorporated a fictitious entity named Cybernet USA and opened a bank account in the same name. Herbert Tannenbaum pled guilty to conspiring to violate the FCPA and was sentenced to confinement for a year and a day and a fine of $15,000.

KEY FACTS

Citation. *United States v. Tannenbaum*, No. 98-cr-784 (S.D.N.Y. 1998).

Date Filed. July 17, 2001.

Country. Argentina.

Date of Conduct. 1996 – 1998.

Amount of the Value. $16,000 paid to an undercover agent posing as an Argentinean government official.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Incorporation of a fictitious entity, Cybernet USA, to disguise the secret payment to the agent of the government of Argentina.

Foreign Official. An undercover agent posing as a procurement officer of the government of Argentina.

FCPA Statutory Provision. Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition. Guilty Plea.

Defendant Jurisdictional Basis. Domestic Concern; Conspiracy.

Defendant's Citizenship. United States.

Total Sanction. 1-Year Imprisonment; $15,000 Criminal Fine.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

19. UNITED STATES V. SAYBOLT NORTH AMERICA INC. AND SAYBOLT INC. (D. MASS. 1998) UNITED STATES V. DAVID H. MEAD AND FRERIK PLUIMERS (D.N.J. 1998)

NATURE OF THE BUSINESS

Provision of executive management, financial management and administrative services to Saybolt-related companies in the western hemisphere, which perform quantitative and qualitative bulk commodities testing, by Saybolt Inc., Saybolt Western Hemisphere, Saybolt North America Inc., and Saybolt de Panama, S.A., each domestic concerns.

INFLUENCE TO BE OBTAINED

To obtain the following: (i) contracts for Saybolt de Panama and its affiliates to perform import control and inventory inspections for the government of the Republic of Panama's Ministry of Hydrocarbons and the Ministry of Commerce and Industries; (ii) expedited tax benefits for Saybolt de Panama and its affiliates from the government of the Republic of Panama, including exemptions from import taxes on oil materials and equipment and reductions in annual profit taxes; (iii) a secure and commercially attractive operating location for an inspection facility in Panama; and (iv) a lock-out of Saybolt's competitors by retaining possession and control of Saybolt de Panama's existing location in Panama.

ENFORCEMENT

Amount of fine. For its data falsification violations, Saybolt Inc. was given a five-year probation term and ordered to pay a $3,400,000 fine and an $800 special assessment. For their FCPA violations, Saybolt Inc. and Saybolt North America Inc. each were given a five-year probation term, held jointly and severally liable for a $1,500,000 fine, and ordered to pay an $800 special assessment. Saybolt Inc. must also establish and maintain an effective compliance program regarding the operation of its qualitative inspection and testing services, subject to the Environmental Protection Agency's review and approval. Saybolt Inc. also entered into a cooperation agreement with the DOJ, promising its full cooperation in the investigation and prosecution of individuals responsible for its criminal conduct. Furthermore, Saybolt was required to advertise in petroleum industry trade publications the terms of its guilty plea to data falsification charges. David H. Mead was convicted and sentenced to four months of confinement, four months' home detention, three years' supervised probation and a $20,000 fine. Frerik Pluimers is a fugitive.

Individuals charged and their relationship with the business. David H. Mead, a resident alien of the United States, was a president (Saybolt Inc.), a chief executive officer (Saybolt Inc. and Saybolt Western Hemisphere), a chief executive (Saybolt North America Inc.) and an executive vice president (Saybolt North America Inc.). Frerik Pluimers, a national and resident of The Netherlands, was a chairman of the board of directors (Saybolt Inc. and Saybolt North America Inc.), a president (Saybolt North America Inc. and Saybolt International) and a chief executive officer (Saybolt International).

Other crimes charged. Saybolt Inc. was also charged with conspiracy to falsify Clean Air Act reports and falsify test results, conspiracy to violate the FCPA and wire fraud. In addition to violating the FCPA, Saybolt North America Inc. was charged with conspiracy to violate the FCPA. Mead and Pluimers were

KEY FACTS

Citation. *United States v. Saybolt N. Am. Inc.*, No. 98-cr-10266 (D. Mass. 1998); *United States v. Mead*, No. 98-cr-240 (D.N.J. 1998).

Date Filed. April 17, 1998.

Country. Panama.

Date of Conduct. 1994 – 1995.

Amount of the Value. $50,000 from funds controlled by Saybolt International (The Netherlands) to fund the payment to an intermediary of Republic of Panama government officials.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Person acting as an intermediary for senior officials of the government of the Republic of Panama.

Foreign Official. Officials of the government of the Republic of Panama.

FCPA Statutory Provision.

- **Saybolt North America**. Conspiracy (Anti-Bribery); Anti-Bribery.
- **Saybolt Inc.** Conspiracy (Anti-Bribery); Anti-Bribery.
- **David Mead**. Conspiracy (Anti-Bribery); Anti-Bribery; Aiding and Abetting (Anti-Bribery).
- **Frerik Pluimers**. Conspiracy (Anti-Bribery); Anti-Bribery; Aiding and Abetting (Anti-Bribery).

Other Statutory Provision.

- **Saybolt Inc.** Conspiracy (Destroy, Falsify, or Alter Records); Wire Fraud.
- **David Mead**. Conspiracy (Travel Act); Aiding and Abetting (Travel Act); Travel Act.
- **Frerik Pluimers**. Conspiracy (Travel Act); Aiding and Abetting (Travel Act); Travel Act.

Disposition.

- **Saybolt North America**. Plea Agreement.
- **Saybolt Inc.** Plea Agreement.
- **David Mead**. Conviction.
- **Frerik Pluimers**. Dismissed.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

charged with conspiracy to violate the FCPA, use of facility in foreign commerce in aid of racketeering, and aiding and abetting.

See Parallel Litigation Digest Number H-A1.

Defendant Jurisdictional Basis.

- **Saybolt North America**. Domestic Concern; Conspiracy; Aiding and Abetting.
- **Saybolt Inc.** Domestic Concern; Conspiracy.
- **David Mead**. Domestic Concern; Agent of Domestic Concern; Conspiracy; Aiding and Abetting.
- **Frerik Pluimers**. Agent of Domestic Concern; Conspiracy; Aiding and Abetting.

Defendant's Citizenship.

- **Saybolt North America**. United States.
- **Saybolt Inc.** United States.
- **David Mead**. United States; United Kingdom.
- **Frerik Pluimers**. Netherlands.

Total Sanction.

- **Saybolt North America**. $1,500,800.
- **Saybolt Inc.** $4,901,600
- **David Mead**. 4-Months Imprisonment; $20,000 Criminal Fine.
- **Frerik Pluimers**. None.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

18. UNITED STATES V. LOCKHEED CORP., ALLEN R. LOVE AND SULEIMAN A. NASSAR (N.D. GA. 1994)

NATURE OF THE BUSINESS

Manufacture of aircraft and associated components (primarily for sale to the U.S. Department of Defense and to foreign governments) by Lockheed Corp. ("Lockheed"), a Delaware corporation and an issuer.

INFLUENCE TO BE OBTAINED

To obtain a contract for the sale of three C-130 Hercules aircraft to Egypt in 1989.

ENFORCEMENT

Amount of fine. Lockheed pled guilty to conspiracy to violate the FCPA bribery section, agreed to cooperate and paid a $21.8 million fine and a $3 million civil settlement. The $24.8 million total penalty was calculated under the alternative fine provisions, based on twice the gain to the defendant.

Individuals charged and their relationship with the business. Nassar, a regional vice president (for Lockheed International), and Love, a sales director (for Lockheed Aeronautical). In a related case, Love pled guilty to a single count and was fined $20,000. Nassar pled guilty to two counts and was sentenced to one and a half years in prison.

Other crimes charged. Conspiracy to defraud the U.S. government's foreign military funds programs. The final count charged Love, the sales director, with perjury.

KEY FACTS

Citation. *United States v. Lockheed Corp.*, No. 1:94-cr-00226 (N.D. Ga. 1994).

Date Filed. June 22, 1994.

Country. Egypt.

Date of Conduct. 1987 – 1990.

Amount of the Value. $600,000 for each C-130 aircraft sold to Egypt; a total of $1 million was transferred.

Amount of Business Related to the Payment. A $79 Million Contract for Three Aircraft.

Intermediary. The Foreign Official's Husband.

Foreign Official. Lockheed's consultant in Egypt between 1980 and 1990 (responsible for the development of markets and sales prospects for Lockheed), who then became a member of the Egyptian Parliament from 1987 through 1990 and used her influence with the Egyptian Ministry of Defense to direct business to Lockheed.

FCPA Statutory Provision.

- **Lockheed Corp.** Conspiracy (Anti-Bribery); Conspiracy (Books-and-Records).
- **Allen Love**. Conspiracy (Anti-Bribery); Conspiracy (Books-and-Records); Aiding and Abetting (Books-and-Records).
- **Suleiman Nassar**. Conspiracy (Anti-Bribery); Conspiracy (Books-and-Records); Aiding and Abetting (Books-and-Records).

Other Statutory Provision.

- **Lockheed Corp.** Conspiracy (Anti-Bribery); Anti-Bribery.
- **Allen Love**. Perjury; Conspiracy (Wire Fraud).
- **Suleiman Nassar**. Conspiracy (Wire Fraud).

Disposition.

- **Lockheed Corp.** Plea Agreement.
- **Allen Love**. Guilty Plea.
- **Suleiman Nassar**. Guilty Plea.

Defendant Jurisdictional Basis.

- **Lockheed Corp.** Issuer; Conspiracy; Aiding and Abetting.
- **Allen Love**. Agent of Issuer.
- **Suleiman Nassar**. Agent of Issuer; Conspiracy;

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

	Aiding and Abetting. **Defendant's Citizenship**. • **Lockheed Corp.** United States. • **Allen Love**. United States. • **Suleiman Nassar**. Switzerland. **Total Sanction**. • **Lockheed Corp.** $24,800,200. • **Allen Love**. 36-Months Probation; $20,025 Criminal Fine. • **Suleiman Nassar**. 18-Months Imprisonment; $125,050 Criminal Fine. **Compliance Monitor/Reporting Requirements.** None. **Related Enforcement Actions.** None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

17. UNITED STATES V. VITUSA CORP. (D.N.J. 1994)
UNITED STATES V. DENNY J. HERZBERG (D.N.J. 1994)

NATURE OF THE BUSINESS

Sale of milk powder to the government of the Dominican Republic by Vitusa Corp. ("Vitusa"), a New Jersey corporation and a domestic concern.

INFLUENCE TO BE OBTAINED

To obtain an outstanding balance due to Vitusa on an earlier contract to sell milk powder to the government of the Dominican Republic.

ENFORCEMENT

Amount of fine. Vitusa pled guilty to a single count violation of the FCPA, agreed to cooperate and was fined $20,000.

Individuals charged and their relationship with the business. Herzberg, president, chief executive officer and sole stockholder of Vitusa, pleaded guilty to the single count of violating the FCPA, was sentenced to two years' unsupervised probation and was fined $5,000.

KEY FACTS

Citation. *United States v. Vitusa Corp.*, No. 94-cr-253 (D.N.J. 1994); *United States v. Herzberg*, No. 94-cr-254 (D.N.J. 1994).

Date Filed. April 13, 1994.

Country. Dominican Republic.

Date of Conduct. 1992.

Amount of the Value. $20,000.

Amount of Business Related to the Payment. Collecting a debt of $163,000.

Intermediary. Vitusa's agent, Horizontes Dominicanos, a broker located in the Dominican Republic, owned and operated by Mancebo, a resident of the Dominican Republic.

Foreign Official. An unnamed senior official of the government of the Dominican Republic, with power to authorize the government to release the balance due to Vitusa.

FCPA Statutory Provision.

- **Vitusa Corp.** Anti-Bribery; Aiding and Abetting (Anti-Bribery).
- **Denny Herzberg**. Anti-Bribery; Aiding and Abetting (Anti-Bribery).

Other Statutory Provision. None.

Disposition.

- **Vitusa Corp.** Plea Agreement.
- **Denny Herzberg**. Plea Agreement.

Defendant Jurisdictional Basis.

- **Vitusa Corp.** Domestic Concern; Aiding and Abetting.
- **Denny Herzberg**. Domestic Concern; Aiding and Abetting.

Defendant's Citizenship.

- **Vitusa Corp.** United States.
- **Denny Herzberg**. United States.

Total Sanction.

- **Vitusa Corp.** $20,000.
- **Denny Herzberg**. 24-Months Probation; $5,000 Criminal Fine.

Compliance Monitor/Reporting Requirements.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

	None. **Related Enforcement Actions.** None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

16. UNITED STATES V. HERBERT B. STEINDLER, RAMI DOTAN AND HAROLD KATZ (S.D. OHIO 1994)

NATURE OF THE BUSINESS

Manufacture and sale of aircraft engines and related products and services by General Electric Co. ("GE"), a corporation and an issuer.

INFLUENCE TO BE OBTAINED

To obtain business with the Israeli government for aircraft engines and related services.

ENFORCEMENT

In an 89-count indictment, the grand jury charged Steindler, the international sales manager of GE, with six counts of violating the FCPA bribery section. Steindler and Dotan, an Israeli citizen, were charged with one count of violating the books and records sections of the FCPA. One count alleged that Steindler, Dotan and Katz, an Israeli and U.S. citizen, conspired to divert U.S. funds from contracts with the Israeli Air Force to their personal accounts. Sixteen counts addressed mail fraud, six alleged wire fraud, and 57 counts charged the three individuals with money laundering. Steindler pled guilty to three counts of conspiracy, wire fraud and money laundering and was sentenced to 84 months' incarceration and a forfeiture of $1,741,453. Dotan and Katz remain fugitives.

See SEC Digest Number D-75.

KEY FACTS

Citation. *United States v. Steindler*, No. 1:94-cr-29 (S.D. Ohio 1994).

Date Filed. March 17, 1998

Country. Israel.

Date of Conduct. 1984 – 1990.

Amount of the Value. $7.875 million.

Amount of Business Related to the Payment. Contracts exceeding $300 million.

Intermediary. Harold Katz, an Israeli attorney, set up an elaborate scheme of transferring funds into cash and smuggling them across the Swiss-German border to deposit them in Swiss bank accounts.

Foreign Official. Rami Dotan, an Israeli Air Force ("IAF") officer, who oversaw the purchase and maintenance of the IAF's aircraft engines.

FCPA Statutory Provision.

- **Herbert Steindler**. Anti-Bribery; Books-and-Records; Aiding and Abetting (Anti-Bribery); Aiding and Abetting (Books-and-Records).
- **Rami Dotan**. Books-and-Records; Aiding and Abetting (Books-and-Records).
- **Harold Katz**. None.

Other Statutory Provision.

- **Herbert Steindler**. Conspiracy (Wire Fraud); Conspiracy (Mail Fraud); Conspiracy (Money Laundering); Aiding and Abetting (Wire Fraud); Aiding and Abetting (Money Laundering); Aiding and Abetting (Mail Fraud); Aiding and Abetting (False Statements); Aiding and Abetting (Travel Act); Wire Fraud; Money Laundering; Mail Fraud; False Statements; Travel Act; Criminal Forfeiture.
- **Rami Dotan**. Conspiracy (Wire Fraud); Conspiracy (Mail Fraud); Conspiracy (Money Laundering); Aiding and Abetting (Wire Fraud); Aiding and Abetting (Money Laundering); Aiding and Abetting (Mail Fraud); Wire Fraud; Money Laundering; Mail Fraud; Criminal Forfeiture.
- **Harold Katz**. Conspiracy (Wire Fraud); Conspiracy (Mail Fraud); Conspiracy (Money Laundering); Aiding and Abetting (Wire Fraud); Aiding and Abetting (Money Laundering); Aiding and Abetting (Mail Fraud); Wire Fraud; Money Laundering; Mail Fraud; Criminal Forfeiture.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

Disposition.

- **Herbert Steindler**. Plea Agreement.
- **Rami Dotan**. Dismissed.
- **Harold Katz**. Fugitive

Defendant Jurisdictional Basis.

- **Herbert Steindler**. Agent of Issuer; Aiding and Abetting.
- **Rami Dotan**. Agent of Issuer; Aiding and Abetting.
- **Harold Katz**. Not Applicable.

Defendant's Citizenship.

- **Herbert Steindler**. United States.
- **Rami Dotan**. Israel.
- **Harold Katz**. United States; Israel.

Total Sanction.

- **Herbert Steindler**. 84 Months' Imprisonment; $1,741,653 Criminal Fine.
- **Rami Dotan**. None.
- **Harold Katz**. Pending.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

15. UNITED STATES V. HARRIS CORP., JOHN D. IACOBUCCI, AND RONALD I. SCHULTZ (N.D. CAL. 1990)

NATURE OF THE BUSINESS

Manufacture of telephone switching systems by Harris Corp. ("Harris"), a Delaware corporation and an issuer, through its Digital Telephone Systems ("Digital Telephone") division.

INFLUENCE TO BE OBTAINED

Defendant Harris Corporation, a Delaware corporation and a manufacturer of telephone switching systems, defendant John D. Iacobucci, Vice President and General Manager of Harris Corporation's Digital Telephone Systems ("DTS") division, and defendant Ronald L. Schultz, Director of Human Relations and later Director of Administration at DTS, sought to obtain telecommunications contracts from the Empresa Nacional de Telecomunicaciones, an instrumentality of the Colombian government. Defendants allegedly conspired to use an intermediary—a consultant, doing business as Polo Associates Corporation, Inc., a Delaware corporation engaged in advising telecommunications companies of ways to obtain business in Latin American countries—to pay a member of the national legislature of Colombia, who had some influence in the award of government telecommunications contracts.

ENFORCEMENT

Following a hearing concerning the government's evidence, the trial judge granted a motion for judgment of acquittal.

KEY FACTS

Citation. *United States. v. Harris Corp.*, No. 90-cr-0456 (N.D. Cal. 1990).

Date Filed. August 31, 1990.

Country. Colombia.

Date of Conduct. 1989.

Amount of the Value. $22,845.

Amount of Business Related to the Payment. Not Stated.

Intermediary. A consultant, doing business as Polo, a Delaware corporation engaged in advising telecommunications companies of ways to obtain business in Latin American countries, and a local Colombian company owned in part by a foreign official.

Foreign Official. A member of the Cámara de Representativos, the national legislature of Colombia, who had some influence in the award of government telecommunications contracts.

FCPA Statutory Provision.

- **Harris Corp.** Conspiracy (Anti-Bribery); Conspiracy (Books-and-Records); Aiding and Abetting (Anti-Bribery); Aiding and Abetting (Books-and-Records); Anti-Bribery; Books-and-Records.
- **John Iacobucci**. Conspiracy (Anti-Bribery); Conspiracy (Books-and-Records); Aiding and Abetting (Anti-Bribery); Aiding and Abetting (Books-and-Records); Anti-Bribery; Books-and-Records.
- **Ronald Schultz**. Conspiracy (Anti-Bribery); Conspiracy (Books-and-Records); Aiding and Abetting (Anti-Bribery); Aiding and Abetting (Books-and-Records); Anti-Bribery; Books-and-Records.

Other Statutory Provision. None.

Disposition.

- **Harris Corp.** Acquittal.
- **John Iacobucci**. Acquittal.
- **Ronald Schultz**. Acquittal.

Defendant Jurisdictional Basis.

- **Harris Corp.** Issuer; Conspiracy; Aiding and Abetting.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

	• **John Iacobucci**. Agent of Issuer; Conspiracy; Aiding and Abetting. • **Ronald Schultz**. Agent of Issuer; Conspiracy; Aiding and Abetting. **Defendant's Citizenship**. • **Harris Corp.** United States. • **John Iacobucci**. United States. • **Ronald Schultz**. United States. **Total Sanction**. None. **Related Enforcement Actions.** None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

14. UNITED STATES V. F.G. MASON ENGINEERING, INC. AND FRANCIS G. MASON (D. CONN. 1990)

NATURE OF THE BUSINESS

Mason Engineering, Inc. ("MEI") is a Connecticut corporation that manufactures, develops, and sells technical security countermeasure (TSCM) equipment, or "anti-bugging" devices used to detect the presence of electronic surveillance. Co-defendant Francis Mason is the founder, sole-owner, and President of MEI.

INFLUENCE TO BE OBTAINED

MEI started selling TSCM equipment and related products to the German military intelligence service (known as "MAD"), in the 1960s. The sales were made through a middleman from the mid 1970s. In or around April 1983, Dirk Ekkehard Zoeller, an officer of MAD, contacted Mason seeking to eliminate the middleman. Zoeller was responsible for procurement, testing, inspection and acceptance of TSCM equipment on behalf of MAD. On July 13, 1984, MEI and Zoeller entered into a written contract, which provided that MEI would pay Zoeller a 13.3% commission on every sale of MEI equipment to MAD. Three years later, Zoeller and Mason also agreed that MAD would grant exclusive "general alignment" service contracts to MEI in exchange for a 50-50 fee split.

Over a period of five years, Zoeller granted MEI over $1.4 million in equipment and service contracts and received over $225,000 in return. During the course of the conspiracy, Zoeller also provided information and guidance on the amount MEI should charge to MAD for its equipment and services. MEI used this information to artificially inflate its prices to MAD.

ENFORCEMENT

MEI pleaded guilty to a single count of conspiracy to violate the FCPA, agreed to cooperate, was fined $75,000 (jointly with its president, Mason) and agreed to pay restitution of $160,000 to the West German government. Mason pleaded guilty to a single count of conspiracy to violate the FCPA, was sentenced to five years' probation, and was fined $75,000 jointly with Mason Engineering.

KEY FACTS

Citation. *United States. v. F.G. Mason Eng'g Inc.*, No. B-90-29 (D. Conn. 1990).

Date Filed. June 1, 1990.

Country. Germany.

Date of Conduct. 1983 - 1989.

Amount of the Value. 13.3% commission, an aggregate of $225,688.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign Official. An official responsible for selection, procurement and testing of Technical Security equipment for the then West German Military Intelligence Service ("MAD"), an agency of the West German government.

FCPA Statutory Provision.

- **F.G. Mason Engineering**. Conspiracy (Anti-Bribery).
- **Francis Mason**. Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition.

- **F.G. Mason Engineering**. Plea Agreement.
- **Francis Mason**. Plea Agreement.

Defendant Jurisdictional Basis.

- **F.G. Mason Engineering**. Domestic Concern; Conspiracy.
- **Francis Mason**. Agent of Domestic Concern; Conspiracy.

Defendant's Citizenship. United States (F.G. Mason Engineering and Francis Mason).

Total Sanction.

- **F.G. Mason Engineering**. $235,000.
- **Francis Mason**. 60-Months Probation; $235,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

13. UNITED STATES V. GEORGE V. MORTON (N.D. TEX. 1990)
UNITED STATES V. JOHN BLONDEK, VERNON R. TULL, DONALD CASTLE AND DARRELL W.T. LOWRY (N.D. TEX. 1990)
UNITED STATES V. EAGLE BUS MANUFACTURING, INC. (S.D. TEX. 1991)

NATURE OF THE BUSINESS

Manufacture and sale of buses by Eagle Bus Mfg. Co. ("Eagle"), a subsidiary of Greyhound Lines Inc., a Texas corporation and an issuer.

INFLUENCE TO BE OBTAINED

Beginning in or about July 1989 and continuing through February 1990, John Blondek and Vernon Tull, both former employees of Eagle Bus Manufacturing, Inc., allegedly participated in a bribery scheme to pay foreign officials of Saskatchewan $50,000 CAD in connection with the sale of 11 buses to be used by the province. According to the facts alleged in the indictment, Darrell Lowry and Donald Castle, the respective Vice-President and President of the Saskatchewan Transportation Company ("STC"), an instrumentality of the Canadian government, requested payment in the sum of approximately two percent of the purchase price to ensure Eagle's receipt of the contract. Thereafter, George Morton, Eagle's Canadian agent, caused a check for $52,000 CAD to be issued to his own Canadian corporation. As alleged, Morton then delivered $50,000 CAD in cash to Castle and, in an effort to conceal such payment and pursuant to Tull's instructions, prepared a letter on the letterhead of Eagle Ontario Bus Industries, Inc., the Canadian firm assisting Eagle in the sale, falsely stating that STC had been granted a "volume discount" amounting to US $43,940.

ENFORCEMENT

Morton, a Canadian national and the Canadian agent of Eagle, pleaded guilty to the single count of conspiracy to violate the FCPA and was sentenced to three years' probation. In a related case, Blondek and Tull, president and vice president of Eagle, respectively, and Castle and Lowry, the Canadian foreign officials, were charged with a single count of conspiracy to violate the FCPA. The court dismissed the count as to Castle and Lowry on the basis that foreign officials may not be prosecuted for conspiring to violate the FCPA. Blondek and Tull were later acquitted at trial. In a civil action, Eagle consented to entry of a permanent injunction prohibiting future violations of the FCPA.

Citation. *United States v. Morton*, No. 3:90-cr-061 (N.D. Tex. 1990); *U.S. v. Blondek*, 741 F. Supp. 116 (N.D. Tex. 1990); *U.S. v. Eagle Bus Mfg. Inc.*, No. B-91-171 (S.D. Tex. 1991).

Date Filed. October 2, 1991.

Country. Canada.

Date of Conduct. 1989 – 1990.

Amount of the Value. Canadian $50,000, equal to 2% of price of 11 buses.

Amount of Business Related to the Payment. Valued at $2.77 million.

Intermediary. Morton, the Canadian agent of Eagle, used a Canadian corporation (owned and controlled by Morton) to help conceal the bribe.

Foreign Official. Castle, the president, and Lowry, the vice president of the Saskatchewan Transp. Co., a Canadian Crown corporation (the "STC").

FCPA Statutory Provision.

- **George Morton**. Conspiracy (Anti-Bribery).
- **John Blondek**. Conspiracy (Anti-Bribery); Aiding-and-Abetting (Anti-Bribery); Anti-Bribery.
- **Vernon Tull**. Conspiracy (Anti-Bribery); Aiding-and-Abetting (Anti-Bribery); Anti-Bribery.
- **Donald Castle**. Conspiracy (Anti-Bribery).
- **Darrell Lowry**. Conspiracy (Anti-Bribery).
- **Eagle Bus Manufacturing**. Anti-Bribery.

Defendant's Citizenship.

- **George Morton**. Canada.
- **John Blondek**. United States.
- **Vernon Tull**. United States.
- **Donald Castle**. Canada.
- **Darrell Lowry**. Canada.
- **Eagle Bus Manufacturing**. United States.

Other Statutory Provision.

- **John Blondek**. Aiding and Abetting (Travel Act); Travel Act.
- **Vernon Tull**. Aiding and Abetting (Travel Act); Travel Act.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

	• **Donald Castle**. Aiding and Abetting (Travel Act); Travel Act. • **Darrell Lowry**. Aiding and Abetting (Travel Act); Travel Act. **Disposition**. • **George Morton**. Plea Agreement. • **John Blondek**. Acquitted. • **Vernon Tull**. Acquitted. • **Donald Castle**. Dismissed. • **Darrell Lowry**. Dismissed. • **Eagle Bus Manufacturing**. Consent Agreement. **Defendant Jurisdictional Basis.** • **George Morton**. Agent of Issuer; Conspiracy. • **John Blondek**. Agent of Issuer; Conspiracy. • **Vernon Tull**. Agent of Issuer; Conspiracy. • **Donald Ca**stle. Conspiracy. • **Darrell Lowry**. Conspiracy. • **Eagle Bus Manufacturing**. Domestic Concern. **Total Sanction.** • **George Morton**. 36-Months Probation. • **John Blondek**. None. • **Vernon Tull**. None. • **Donald Castle**. None. • **Darrell Lowry**. None. • **Eagle Bus Manufacturing**. Permanent Injunction. **Compliance Monitor/Reporting Requirements.** None. **Related Enforcement Actions.** None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

12. UNITED STATES V. YOUNG & RUBICAM, INC., ARTHUR R. KLEIN, THOMAS SPANGENBERG, ARNOLD FOOTE, JR., ERIC ANTHONY ABRAHAMS, STEVEN M. MCKENNA (D. CONN. 1990)

NATURE OF THE BUSINESS

Advertising and marketing by Young & Rubicam, Inc. ("Y&R"), a New York corporation and a domestic concern.

INFLUENCE TO BE OBTAINED

Young & Rubicam (Y & R), Arthur R. Klein (Executive Vice-President), and Thomas Spangenberg (Vice-President and Account Executive) made various payments from 1891 to 1986 to Arnold Foote, Jr. and Eric Anthony Abrahams to influence them to use their positions and influence with the Jamaica Tourist Board to obtain and retain Y & R as their advertising agency. A company, Ad Ventures, was set up on Grand Cayman Island to hide the kickback scheme.

ENFORCEMENT

Y&R pleaded guilty to a one-count information charging conspiracy to bribe a foreign official and was fined $500,000. Klein, Spangenberg, Foote, Abrahams, and McKenna were charged with violations of the FCPA and RICO. Those charges against the individual defendants were subsequently dismissed.

See Parallel Litigation Digest Number H-C6.

KEY FACTS

Citation. *United States v. Young & Rubicam, Inc.*, 741 F. Supp. 334 (D. Conn. 1990).

Date Filed. October 2, 1989.

Country. Jamaica.

Date of Conduct. 1981 – 1986.

Amount of the Value. 15% of the commission that Y&R received for the advertising budget of the Jamaica Tourist Board (about $180,000 per year).

Amount of Business Related to the Payment. $3.75 million.

Intermediary. A company, Ad Ventures, was set up on Grand Cayman Island by the advisor to the Jamaica Tourist Board and an associate to hide the kickback scheme.

Foreign Official. An advisor to the Jamaica Tourist Board and the Jamaican Minister of Tourism.

FCPA Statutory Provision.

- **Young & Rubicam**. Conspiracy (Anti-Bribery).
- **Arthur Klein**. Conspiracy (Anti-Bribery).
- **Thomas Spangenberg**. Conspiracy (Anti-Bribery).
- **Arnold Foote**. None.
- **Eric Abrahams**. None.
- **Steven McKenna**. None.

Other Statutory Provision.

- **Young & Rubicam**. RICO; Aiding and Abetting (RICO).
- **Arthur Klein**. RICO; Aiding and Abetting (RICO).
- **Thomas Spangenberg**. RICO; Aiding and Abetting (RICO).
- **Arnold Foote**. RICO; Aiding and Abetting (RICO).
- **Eric Abrahams**. RICO; Aiding and Abetting (RICO).
- **Steven McKenna**. Perjury.

Disposition.

- **Young & Rubicam**. Plea Agreement.
- **Arthur Klein**. Dismissed.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

	• **Thomas Spangenberg**. Dismissed. • **Arnold Foote**. Dismissed. • **Eric Abrahams**. Pending. • **Steven McKenna**. Pending. **Defendant Jurisdictional Basis.** • **Young & Rubicam**. Domestic Concern; Conspiracy. • **Arthur Klein**. Agent of Domestic Concern; Conspiracy. • **Thomas Spangenberg**. Agent of Domestic Concern; Conspiracy. **Defendant's Citizenship**. • **Young & Rubicam**. United States. • **Arthur Klein**. United States. • **Thomas Spangenberg**. United States. • **Arnold Foote**. Jamaica. • **Eric Abrahams**. Jamaica. • **Steven McKenna**. United States. **Total Sanction**. • **Young & Rubicam**. $500,000. • **Arthur Klein**. None. • **Thomas Spangenberg**. None • **Arnold Foote**. None • **Eric Abrahams**. None • **Steven McKenna**. None **Compliance Monitor/Reporting Requirements.** None. **Related Enforcement Actions.** None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

11. UNITED STATES V. JOAQUIN POU, ALFREDO G. DURAN AND JOSE GUARSCH (S.D. FLA. 1989) UNITED STATES V. ROBERT GUIRN (S.D. FLA. 1990)

NATURE OF THE BUSINESS

Florida company, a domestic concern, engaged in business of recovering seized aircraft.

INFLUENCE TO BE OBTAINED

Release of airplane confiscated for use in drug trafficking.

ENFORCEMENT

Following a sting operation, Robert Gurin, president and sole shareholder of the company, pled guilty to one count of conspiracy to violate the FCPA. Duran and Pou were each indicted on one count of conspiracy to violate the FCPA. Pou breached his bail conditions and returned to the Dominican Republic. In the trial of Duran (a former chairman of the Florida Democratic Party), the court excluded evidence relating to his original codefendant, Pou, and after presentation of the prosecution's case, Duran was acquitted for lack of evidence.

Citation. *United States v. Pou*, No. 1:89 cr 00802 (S.D. Fla. 1989); *United States v. Gurin*, No. 1:89-cr-00802 (S.D. Fla. 1989).

Date Filed. November 21, 1989 (Pou; Duran; Guarsch); March 23, 1990 (Gurin).

Country. Dominican Republic.

Date of Conduct. 1989.

Amount of the Value. $20,000 $30,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Alfredo Duran, Miami lawyer, General Joaquin Pou (Dominican Republic Army, retired) and his Miami agent, Jose Guarsch.

Foreign Official. Unnamed officials from the Dominican Republic.

FCPA Statutory Provision.

- **Joaquin Pou**. Conspiracy (Anti-Bribery).
- **Alfredo G. Duran**. Conspiracy (Anti-Bribery).
- **Jose Guarsch**. Conspiracy (Anti-Bribery).
- **Robert Gurin**. Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition.

- **Joaquin Pou**. Fugitive.
- **Alfredo G. Duran**. Acquitted.
- **Jose Guarsch**. Plea Agreement.
- **Robert Gurin**. Plea Agreement.

Defendant Jurisdictional Basis.

- **Joaquin Pou**. Agent of Domestic Concern; Conspiracy.
- **Alfredo G. Duran**. Agent of Domestic Concern; Conspiracy.
- **Jose Guarsch**. Agent of Domestic Concern; Conspiracy.
- **Robert Gurin**. Domestic Concern; Conspiracy.

Defendant's Citizenship.

- **Joaquin Pou**. Dominican Republic.
- **Alfredo G. Duran**. United States.
- **Jose Guarsch**. United States.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

	• **Robert Gurin**. United States. **Total Sanction**. • **Joaquin Pou**. Pending. • **Alfredo G. Duran**. None. • **Jose Guarsch**. 48-Months Probation. • **Robert Gurin**. 60-Months Probation. **Compliance Monitor/Reporting Requirements.** None. **Related Enforcement Actions.** None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

10. UNITED STATES V. GOODYEAR INT'L CORP. (D.D.C. 1989)

NATURE OF THE BUSINESS

Marketing of car and truck tires to the Iraqi government by Goodyear Int'l Corp. ("Goodyear"), a Delaware corporation and a domestic concern.

INFLUENCE TO BE OBTAINED

In early 1978, an employee (the Employee) of the Middle East regional export manager for Goodyear International Corp. (GIC), met with officials of the Iraqi state-owned trading organization, Iraqi Trading Company (ITC), which purchases virtually all of the tires for sale in Iraq. In a private meeting with the Employee, one of the ITC officials, Mohammed Jassem, informed the Employee that GIC's competitors in France, Korea, and Japan had been willing to pay cash commissions to ensure "good relationships" with ITC and that it would only get a limited amount of business with ITC without such payments. The Employee initially declined but, after getting pressured from his superiors to get the business despite ITC's request, later negotiated a 7% cash commission for the ITC officials. Following this agreement, GIC received over $19 million worth of business from ITC through three transactions.

The Employee and other GIC officials used advertising agencies to cover the cash commissions to be paid to the ITC officials. In one instance, they engaged a Greek company to conduct "marketing studies," who provided a very superficial report. The invoiced amount was deposited into the Greek company's bank account in the Union Bank of Switzerland (UBS). The Employee opened an account under his name in the same bank, and a substantial portion of the invoiced amount was then transferred to the Employee's account. The Employee withdrew money from this account to pay the ITC officials. In another instance, the Employee and other GIC officials had false invoices prepared on the letterhead of a defunct advertising agency for purportedly placing Arabic advertisements in Baghdad newspapers. The invoiced amounts were deposited into an account in UBS which was opened under the name of the defunct advertising agency for this specific purpose. The Employee then transferred the money into his account at UBS.

ENFORCEMENT

As a result of the conduct described above, Goodyear pled guilty to the single count of violating the FCPA bribery section and was fined $250,000.

KEY FACTS

Citation. *United States v. Goodyear Int'l Corp.*, No. 89-cr-0156 (D.D.C. 1989).

Date Filed. May 11, 1989.

Country. Iraq.

Date of Conduct. 1978 - 1984.

Amount of the Value. $981,124, a 7% payment on sale of tires.

Amount of Business Related to the Payment. $10 million in business.

Intermediary. Use of a Greek company and Goodyear's advertising manager for Greece to prepare bogus advertising and marketing studies to conceal payments of cash to representatives of Iraqi foreign officials in Switzerland.

Foreign Official. An official of the Iraqi Trading Company, an Iraqi state-owned trading organization, through which the Iraqi government purchased virtually all of the tires for sale in Iraq.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. $250,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

9. UNITED STATES V. NAPCO INT'L, INC. AND VENTURIAN CORP. (D. MINN. 1989) UNITED STATES V. RICHARD H. LIEBO (D. MINN. 1989)

NATURE OF THE BUSINESS

Sale of military equipment and supplies by Venturian Corp. ("Venturian"), a Minnesota corporation and an issuer, and by its wholly-owned subsidiary, Napco Int'l, Inc. ("Napco"), a Minnesota corporation and a domestic concern. Richard Liebo was the vice president of the Aerospace Division of Napco,

INFLUENCE TO BE OBTAINED

To obtain certain Foreign Military Service contracts for spare parts and maintenance for C-130 military aircraft from the Niger Ministry of Defense.

ENFORCEMENT

Napco and Venturian pleaded guilty to a three-count information, including one count charging bribery of a foreign official, and were fined $785,000 in the aggregate. Liebo was convicted of an FCPA bribery violation and of false statements and sentenced to 18 months' incarceration, suspended with three years' probation, which included 60 days of home confinement and 600 hours of community service.

See DOJ Parallel Litigation Digest Number H-C3.

KEY FACTS

Citation. *United States v. NAPCO Int'l, Inc.*, No. 4-89-65 (D. Minn. 1989); *United States v. Liebo*, No. 4-89-76 (D. Minn. 1989).

Date Filed. April 20, 1989.

Country. Niger.

Date of Conduct. 1983 – 1987.

Amount of the Value. $130,813.83, equaling 10% of the net revenues on contracts.

Amount of Business Related to the Payment. $3.2 million in contracts.

Intermediary. Two relatives of the Chief of Supply for the Niger Air Force, falsely posing as agents of Napco in Niger, were used to conceal the bribes.

Foreign Official. Two officials of the Niger government, the First Counselor of the Embassy in Washington, D.C. and the Chief of Supply for the Niger Air Force.

FCPA Statutory Provision.

- **Napco Int'l**. Conspiracy (Anti-Bribery); Conspiracy (Books-and-Records); Conspiracy (Internal Controls); Aiding and Abetting (Anti-Bribery); Books-and-Records.
- **Venturian Corp.** Conspiracy (Anti-Bribery); Conspiracy (Books-and-Records); Conspiracy (Internal Controls); Aiding and Abetting (Anti-Bribery); Books-and-Records.
- **Richard Liebo**. Conspiracy (Anti-Bribery); Conspiracy (Books-and-Records); Conspiracy (Internal Controls); Anti-Bribery; Aiding and Abetting (Anti-Bribery); Aiding and Abetting (Books-and-Records); Books-and-Records.

Other Statutory Provision.

- **Napco Int'l.** False Statements.
- **Venturian Corp.** False Statements.
- **Richard Liebo**. False Statements; Aiding and Abetting (False Statements).

Disposition.

- **Napco Int'l**. Plea Agreement.
- **Venturian Corp.** Plea Agreement.
- **Richard Liebo**. Conviction.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

Defendant Jurisdictional Basis.

- **Napco Int'l.** Domestic Concern; Conspiracy.
- **Venturian Corp.** Issuer; Conspiracy.
- **Richard Liebo**. Agent of Domestic Concern; Agent of Issuer; Conspiracy; Aiding and Abetting.

Defendant's Citizenship.

- **Napco Int'l**. United States.
- **Venturian Corp.** United States.
- **Richard Liebo**. United States.

Total Sanction.

- **Napco Int'l**. $785,000.
- **Venturian Corp.** $0.
- **Richard Liebo**. 18-Months Imprisonment.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

8. UNITED STATES V. SILICON CONTRACTORS, INC., DIVERSIFIED GROUP, INC., HERBERT D. HUGHES, RONALD R. RICHARDSON, RICHARD L. NOBLE AND JOHN SHERMAN (E.D. LA. 1985)

NATURE OF THE BUSINESS

Manufacture, sale and installation of radiation and fire-stop penetration seals for use in nuclear power plants by Silicon Contractors, Inc. ("Silicon"), a Texas corporation and a domestic concern.

INFLUENCE TO BE OBTAINED

The award of a certain contract to manufacture and install radiation and fire-stop penetration seals for a nuclear power plant in Laguna Verde, Mexico.

ENFORCEMENT

Silicon pled guilty to a single count of bribery under the FCPA and agreed to the entry of a permanent injunction prohibiting future violations of the FCPA. In addition, it was fined $150,000.

Hughes, Richardson and Noble, officers of Silicon. Sherman, a resident of England, and Diversified Group, Inc. (which acquired the stock ownership of Silicon) were also named in a civil injunctive action and agreed to the entry of permanent injunctions prohibiting future violations of the FCPA.

KEY FACTS

Citation. *United States v. Silicon Contractors, Inc.*, No. 85-cr-00251 (E.D. La. 1985).

Date Filed. June 27, 1985.

Country. Mexico.

Date of Conduct. 1980.

Amount of the Value. $132,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign Official. Mexican officials at the Comisión Federal de Electricidad, a Mexican government agency.

FCPA Statutory Provision.

- **Silicon Contractors, Inc.** Anti-Bribery.
- **Diversified Group, Inc.** Anti-Bribery.
- **Herbert Hughes**. Anti-Bribery; Aiding and Abetting (Anti-Bribery).
- **Ronald Richardson**. Anti-Bribery; Aiding and Abetting (Anti-Bribery).
- **Richard Noble**. Anti-Bribery; Aiding and Abetting (Anti-Bribery).
- **John Sherman**. Anti-Bribery; Aiding and Abetting (Anti-Bribery).

Other Statutory Provision. None.

Disposition.

- **Silicon Contractors, Inc.** Plea Agreement.
- **Diversified Group, Inc.** Consent Agreement.
- **Herbert Hughes**. Consent Agreement.
- **Ronald Richardson**. Consent Agreement.
- **Richard Noble**. Consent Agreement.
- **John Sherman**. Consent Agreement.

Defendant Jurisdictional Basis.

- **Silicon Contractors, Inc.** Domestic Concern.
- **Diversified Group, Inc.** Not Stated.
- **Herbert Hughes**. Domestic Concern; Agent of Domestic Concern.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

	• **Ronald Richardson**. Domestic Concern. • **Richard Noble**. Not Stated. • **John Sherman**. Not Stated. **Defendant's Citizenship**. • **Silicon Contractors, Inc.** United States. • **Diversified Group, Inc.** United States. • **Herbert Hughes**. United States. • **Ronald Richardson**. United States. • **Richard Noble**. United States. • **John Sherman**. United States; United Kingdom. **Total Sanction**. • **Silicon Contractors, Inc.** Permanent Injunction; $150,000 Criminal Fine. • **Diversified Group, Inc.** Permanent Injunction. • **Herbert Hughes**. Permanent Injunction. • **Ronald Richardson**. Permanent Injunction. • **Richard Noble**. Permanent Injunction. • **John Sherman**. Permanent Injunction. **Compliance Monitor/Reporting Requirements.** None. **Related Enforcement Actions.** None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

7. UNITED STATES V. HARRY G. CARPENTER AND W.S. KIRKPATRICK & CO., INC. (D.N.J. 1985)

NATURE OF THE BUSINESS

Sale of Aero medical equipment consisting of ejection-seat trainers, disorientation simulators and other devices to the Nigerian government by W.S. Kirkpatrick, Inc. ("Kirkpatrick"), a New Jersey corporation and a domestic concern.

INFLUENCE TO BE OBTAINED

To obtain a $10.8 million contract from the Nigerian government to furnish equipment for an Aero Medical Center at Kaduna Air Force Base in Nigeria.

ENFORCEMENT

Kirkpatrick pleaded guilty to the single count of bribery under the FCPA and was fined $75,000, to be paid over a five-year period. Carpenter, former chairman of the board and chief executive officer of Kirkpatrick, pleaded guilty to the single count of bribery of a foreign official under the FCPA. He received a suspended sentence, was placed on probation for three years, was required to do community service work and was fined $10,000.

See Parallel Litigation Digest Number H-C3.

KEY FACTS

Citation. *United States v. W.S. Kirkpatrick & Co*, No. 85-cr-00353 (D.N.J. 1985).

Date Filed. November 18, 1985.

Country. Nigeria.

Date of Conduct. 1982.

Amount of the Value. $1.7 million, 20% of the contract value.

Amount of Business Related to the Payment. $10.8 million contract.

Intermediary. Kirkpatrick's local agent in Nigeria, an entrepreneur who negotiated with various Nigerian officials and set up and controlled two Panamanian bearer share corporations, Deriks and Los, to receive the bribe payments from Kirkpatrick.

Foreign Official. Various Nigerian political and military officials in the Air Force, the National Party, the Medical Group, the Defense Minister and other key defense personnel.

FCPA Statutory Provision.

- **Harry Carpenter**. Anti-Bribery.
- **W.S. Kirkpatrick & Co.** Anti-Bribery.

Other Statutory Provision. None.

Disposition.

- **Harry Carpenter**. Plea Agreement.
- **W.S. Kirkpatrick & Co.** Plea Agreement.

Defendant Jurisdictional Basis.

- **Harry Carpenter**. Agent of Domestic Concern.
- **W.S. Kirkpatrick & Co.** Domestic Concern.

Defendant's Citizenship.

- **Harry Carpenter**. United States.
- **W.S. Kirkpatrick & Co.** United States.

Total Sanction.

- **Harry Carpenter**. 36 Months' Probation; $10,000 Criminal Fine.
- **W.S. Kirkpatrick & Co.** $75,000.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

6. UNITED STATES V. APPLIED PROCESS PRODUCTS OVERSEAS, INC. (D.D.C. 1983) UNITED STATES V. GARY D. BATEMAN (D.D.C. 1983)

NATURE OF THE BUSINESS

Representing U.S. companies in the sale of spare parts and other smaller compression-related equipment to Petroleos Mexicanos ("Pemex"), the national oil company of Mexico, by Applied Process Products Overseas, Inc. ("Applied"), a Texas corporation and a domestic concern.

INFLUENCE TO BE OBTAINED

To obtain and retain contracts from Pemex for compression-related equipment and spare parts.

ENFORCEMENT

Applied entered into a cooperation agreement, pled guilty to the single bribery count under the FCPA, consented to a permanent injunction prohibiting future violations and was fined $5,000.

Bateman, chairman of the board, president and sole stockholder of Applied, entered into a cooperation agreement, consented to a permanent injunction and pled guilty to the five count misdemeanor violations of the Currency and Foreign Transactions Reporting Act in connection with the bribery scheme. He was sentenced to probation for three years. In addition, he paid a civil penalty of $229,512, civil tax payments of $300,000, and civil reimbursement of costs related to his prosecution of $5,000.

KEY FACTS

Citation. *United States v. Applied Process Prods. Overseas, Inc.*, No. 83-cr-00004 (D.D.C. 1983).

Date Filed. May 27, 1981.

Country. Mexico.

Date of Conduct. 1979 - 1981.

Amount of the Value. $342,000 (representing 30% of Applied's gross profit derived from Pemex contracts).

Amount of Business Related to the Payment. $5 million in purchase orders from Pemex.

Intermediary. None.

Foreign Official. The Administrative Secretary to the Chief of Purchasing at Pemex and other Pemex officials.

FCPA Statutory Provision.

- **Applied Process Products**. Anti-Bribery.
- **Gary Bateman**. None.

Other Statutory Provision.

- **Gary Bateman**. Violation of Currency and Foreign Transactions Reporting Act.

Disposition.

- **Applied Process Products**. Plea Agreement.
- **Gary Bateman**. Plea Agreement.

Defendant Jurisdictional Basis.

- **Applied Process Products**. Domestic Concern.

Defendant's Citizenship.

- **Applied Process Products**. United States.
- **Gary Bateman**. United States.

Total Sanction.

- **Applied Process Products**. United States.
- **Gary Bateman**. 3-Years Probation; $534,215 Civil Sanctions.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

5. UNITED STATES V. INTERNATIONAL HARVESTER CO. (S.D. TEX. 1982) UNITED STATES V. GEORGE S. MCLEAN AND LUIS A. URIARTE (5TH CIR. 1984)

NATURE OF THE BUSINESS

Supplier and a sub-contractor for Crawford Enterprises, Inc. ("Crawford") in sales of turbine compression equipment to Petroleos Mexicanos ("Pemex"), the national oil company of Mexico, by Solar Turbines Int'l ("Solar"), a division of International Harvester Co. ("Harvester"), a Delaware corporation and an issuer.

INFLUENCE TO BE OBTAINED

To obtain from Pemex purchase orders for turbine compression systems and related equipment for Solar and Crawford.

ENFORCEMENT

Harvester pled guilty to a single count of conspiracy to violate the FCPA, was fined $10,000, and paid prosecution costs of $40,000. McLean, vice president of Solar, and Uriarte, the Latin American regional manager of Solar, were indicted in the Crawford prosecution and charged with conspiracy and aiding and abetting. The court held that to convict an employee under the FCPA for acts committed for the benefit of his employer, the government must first convict the employer. Because the government did not convict McLean's employer, Harvester, the FCPA barred McLean's prosecution on the substantive counts of FCPA violations. Uriarte pled guilty and was sentenced to one year, suspended with unsupervised probation.

KEY FACTS

Citation. *United States v. Int'l Harvester Co.*, No. 82-cr-00244 (S.D. Tex., Nov. 1982); *United States v. McLean*, 738 F.2d 655 (5th Cir. 1984), cert. denied, 470 U.S. 1050 (1985).

Date Filed. November 16, 1982.

Country. Mexico.

Date of Conduct. 1977 – 1980.

Amount of the Value. 5% of each Pemex purchase order, a total of $9.9 million.

Amount of Business Related to the Payment. $112 million in contracts.

Intermediary. Grupo Delta, a Mexican corporation, which held itself out as Crawford's sales representative in Mexico while actually acting as the conduit for the bribe payments to the Pemex officials.

Foreign Official. Two sub-directors of Pemex: one was responsible for the purchase of goods and equipment, the other was responsible for the exploration and production of Mexican oil and natural gas.

FCPA Statutory Provision.

- **International Harvester Co.** Conspiracy (Anti-Bribery).
- **George McLean**. Conspiracy (Anti-Bribery).
- **Luis Uriarte**. Conspiracy (Anti-Bribery).

Other Statutory Provision. None.

Disposition.

- **International Harvester Co.** Plea Agreement.
- **George McLean**. Dismissed.
- **Luis Uriarte**. Plea Agreement.

Defendant Jurisdictional Basis.

- **International Harvester Co.** Domestic Concern.
- **George McLean**. Unknown.
- **Luis Uriarte**. Unknown.

Defendant's Citizenship.

- **International Harvester Co.** United States.
- **George McLean**. Unknown.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

	• **Luis Uriarte**. Unknown. **Total Sanction**. • **International Harvester Co.** $50,000 Criminal Sanctions. • **George McLean**. None. • **Luis Uriarte**. 1-Year Probation. **Related Enforcement Actions.** None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

4. UNITED STATES V. RUSTON GAS TURBINES, INC. (S.D. TEX. 1982)

NATURE OF THE BUSINESS

Manufacture and sale of turbine (but not process) compression equipment to Petroleos Mexicanos ("Pemex"), Mexico's national oil company, by Ruston Gas Turbines, Inc. ("Ruston"), a Texas corporation and a domestic concern.

INFLUENCE TO BE OBTAINED

To obtain purchase orders from Pemex for turbine compression systems and related equipment for Ruston and Crawford.

ENFORCEMENT

Ruston pled guilty to one count charging a bribery violation of the FCPA and was fined $750,000.

KEY FACTS

Citation. *United States v. Ruston Gas Turbines, Inc.*, No. 82-cr-00207 (S.D. Tex. 1982).

Date Filed. September 22, 1982.

Country. Mexico.

Date of Conduct. 1977 - 1980.

Amount of the Value. 5% of the contract price, plus $200,000.

Amount of Business Related to the Payment. Ruston and other companies involved received $225 million in purchase orders from Pemex.

Intermediary. Grupo Delta, a Mexican corporation, which held itself out as Crawford Enterprises, Inc.'s ("Crawford") sales representative in Mexico while actually acting as the conduit for the bribe payments to the Pemex officials.

Foreign Official. Two sub-directors of Pemex: one was responsible for the purchase of goods and equipment, the other was responsible for the exploration and production of Mexican oil and natural gas.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. $750,000 Criminal Fine.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

3. UNITED STATES V. C.E. MILLER CORP. AND CHARLES E. MILLER (C.D. CAL. 1982) UNITED STATES V. MARQUIS D. KING (D.D.C. 1983)

NATURE OF THE BUSINESS

Process fabrication subcontract work for Crawford Enterprises, Inc. ("Crawford") on sales of turbine compression systems to Petroleos Mexicanos ("Pemex"), Mexico's national oil company, by C.E. Miller Corp. ("C.E. Miller"), a California corporation and a domestic concern.

INFLUENCE TO BE OBTAINED

To obtain purchase orders from Pemex for turbine compression systems and related equipment for C.E. Miller and Crawford.

ENFORCEMENT

C.E. Miller pled guilty to one count of an FCPA bribery violation and was fined $20,000. Miller, president, chairman and majority stockholder of C.E. Miller, pled guilty to one bribery count and was sentenced to three years' probation with 500 hours of community service. Marquis King, an officer and director of C.E. Miller, entered into a cooperation agreement and was, therefore, charged only with violations of the Currency and Foreign Transactions Reporting Act. He was sentenced to 14 months' probation and paid prosecution costs of $5,000.

KEY FACTS

Citation. *United States v. C.E. Miller Corp.*, No. 82-cr-788 (C.D. Cal. 1982); *United States v. King*, No. 83-cr-00020 (D.D.C. 1983).

Date Filed. September 16, 1982.

Country. Mexico.

Date of Conduct. 1977 – 1979.

Amount of the Value. 5% of each Pemex purchase order.

Amount of Business Related to the Payment. A $79 million contract for three aircraft.

Intermediary. Grupo Delta, a Mexican corporation, which held itself out as Crawford's sales representative in Mexico while actually acting as the conduit for the bribe payments to the Pemex officials.

Foreign Official. Two sub-directors of Pemex: one was responsible for the purchase of goods and equipment, the other was responsible for the exploration and production of Mexican oil and gas.

FCPA Statutory Provision.

- **C.E. Miller Corp.** Anti-Bribery.
- **Charles Miller**. Anti-Bribery; Aiding and Abetting (Anti-Bribery).
- **Marquis King**. None.

Other Statutory Provision.

- **Marquis King**. Violations of Currency and Foreign Transactions Reporting Act.

Disposition. Plea Agreement (C.E. Miller Corp., Charles Miller, and Marquis King).

Defendant Jurisdictional Basis.

- **C.E. Miller Corp.** Domestic Concern.
- **Charles Miller**. Domestic Concern; Aiding and Abetting.

Defendant's Citizenship. United States (C.E. Miller Corp., Charles Miller, and Marquis King).

Total Sanction.

- **C.E. Miller Corp.** $20,000 Criminal Fine.
- **Charles Miller**. 36-Months Probation.
- **Marquis King**. 14-Months Probation.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

2. UNITED STATES V. CRAWFORD ENTERPRISES, INC., DONALD G. CRAWFORD, WILLIAM E. HALL, MARIO S. GONZALEZ, RICARDO G. BELTRAN, ANDRES I. GARCIA, GEORGE S. MCLEAN, LUIS A. URIARTE, AL L. EYSTER, JAMES R. SMITH (S.D. TEX. 1982)

NATURE OF THE BUSINESS

Sale of gas compression systems to Petroleos Mexicanos ("Pemex"), the national oil company of Mexico, by Crawford Enterprises, Inc. ("Crawford"), a Texas corporation and a domestic concern.

INFLUENCE TO BE OBTAINED

To obtain purchase orders from Pemex for turbine compression systems and related equipment.

ENFORCEMENT

In a 49 count indictment, Crawford and nine individuals were charged with conspiracy and multiple counts of bribery of foreign officials. Crawford pled no contest and was fined $3,450,000. Crawford, the president and owner of Crawford, pled no contest and was fined $309,000. Hall, executive vice president of CEI, pled no contest and was fined $150,000. Garcia, who assisted Grupo Delta, pled no contest and was fined $75,000. Eyster and Smith were fined $5,000 each. Beltran and Gonzalez, associated with Grupo Delta, are fugitives. McLean's and Uriarte's substantive charges were dismissed, and McLean was acquitted of conspiracy.

KEY FACTS

Citation. *United States v. Crawford Enters., Inc.*, No. 82-cr-00224 (S.D. Tex. 1982).

Date Filed. June 30, 1982.

Country. Mexico.

Date of Conduct. 1977 – 1980.

Amount of the Value. 4.5% of each Pemex purchase order in which Crawford was involved. Total of $9.9 million.

Amount of Business Related to the Payment. Crawford, and other companies involved, received $225 million in purchase orders from Pemex.

Intermediary. Grupo Delta, a Mexican corporation, which held itself out as Crawford's sales representative in Mexico while actually acting as the conduit for the bribe payments to the Pemex officials.

Foreign Official. Two sub-directors of Pemex: one was responsible for the purchase of goods and equipment, the other was responsible for the exploration and production of Mexican oil and gas.

FCPA Statutory Provision.

- **Crawford Enterprises, Inc.** Conspiracy (Anti-Bribery); Anti-Bribery; Aiding and Abetting (Anti-Bribery).
- **Donald Crawford**. Conspiracy (Anti-Bribery); Anti-Bribery; Aiding and Abetting (Anti-Bribery).
- **William Hall**. Conspiracy (Anti-Bribery); Anti-Bribery; Aiding and Abetting (Anti-Bribery).
- **Mario Gonzalez**. Conspiracy (Anti-Bribery); Anti-Bribery; Aiding and Abetting (Anti-Bribery).
- **Ricardo Beltran**. Conspiracy (Anti-Bribery); Anti-Bribery; Aiding and Abetting (Anti-Bribery).
- **Andres Garcia**. Conspiracy (Anti-Bribery); Anti-Bribery; Aiding and Abetting (Anti-Bribery).
- **George McLean**. Conspiracy (Anti-Bribery).
- **Luis Uriarte**. Conspiracy (Anti-Bribery).
- **Al Eyster**. Conspiracy (Anti-Bribery); Anti-Bribery; Aiding and Abetting (Anti-Bribery).
- **James Smith**. Conspiracy (Anti-Bribery); Anti-Bribery; Aiding and Abetting (Anti-Bribery).

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

Defendant Jurisdictional Basis (Cont.).

- **Andres Garcia**. Domestic Concern; Conspiracy; Aiding and Abetting.
- **George McLean**. Domestic Concern; Conspiracy; Aiding and Abetting.
- **Luis Uriarte**. Domestic Concern; Conspiracy; Aiding and Abetting.
- **Al Eyster**. Domestic Concern; Conspiracy; Aiding and Abetting.
- **James Smith**. Domestic Concern; Conspiracy; Aiding and Abetting.

Defendant's Citizenship.

- **Crawford Enterprises, Inc.** United States.
- **Donald Crawford**. United States.
- **William Hall**. United States.
- **Mario Gonzalez**. Unknown.
- **Ricardo Beltran**. Mexico.
- **Andres Garcia**. Unknown.
- **George McLean**. United States.
- **Luis Uriarte**. Unknown.
- **Al Eyster**. United States.
- **James Smith**. United States.

Other Statutory Provision.

- **Crawford Enterprises, Inc.** Obstruction of Justice; Aiding and Abetting (Obstruction of Justice).
- **Donald Crawford**. Obstruction of Justice; Aiding and Abetting (Obstruction of Justice).
- **William Hall**. Obstruction of Justice; Aiding and Abetting (Obstruction of Justice).

Disposition.

- **Crawford Enterprises, Inc.** Plea Agreement.
- **Donald Crawford**. Plea Agreement.
- **William Hall**. Plea Agreement.
- **Mario Gonzalez**. Fugitive.
- **Ricardo Beltran**. Fugitive.
- **Andres Garcia**. Plea Agreement.
- **George McLean**. Acquitted.
- **Luis Uriarte**. Plea Agreement.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

	• **Al Eyster**. Plea Agreement. • **James Smith**. Plea Agreement. **Defendant Jurisdictional Basis.** • **Crawford Enterprises, Inc.** Domestic Concern; Conspiracy; Aiding and Abetting. • **Donald Crawford**. Domestic Concern; Agent of Domestic Concern; Conspiracy; Aiding and Abetting. • **William Hall**. Agent of Domestic Concern; Conspiracy; Aiding and Abetting. • **Mario Gonzalez**. Domestic Concern; Conspiracy; Aiding and Abetting. • **Ricardo Beltran**. Agent of Domestic Concern; Conspiracy; Aiding and Abetting. **Total Sanction**. • **Crawford Enterprises, Inc.** $3,460,000. • **Donald Crawford**. $309,000 Criminal Fine. • **William Ha**ll. $150,000 Criminal Fine. • **Mario Gonzalez**. Pending. • **Ricardo Beltran**. Pending. • **Andres Garcia**. $75,000 Criminal Fine. • **George McLean**. None. • **Luis Uriarte**. 12-Months Probation. • **Al Eyster**. $5,000 Criminal Fine. • **James Smith**. $5,000 Criminal Fine. **Compliance Monitor/Reporting Requirements.** None. **Related Enforcement Actions.** None.

B. FOREIGN BRIBERY CRIMINAL PROSECUTION UNDER THE FCPA

1. UNITED STATES V. FINBAR B. KENNY AND KENNY INTERNATIONAL CORP. (D.D.C. 1979)

NATURE OF THE BUSINESS

Distribution and sale of Cook Islands postage stamps by Kenny Int'l Corp. ("Kenny Int'l"), a New York corporation and a domestic concern.

INFLUENCE TO BE OBTAINED

To secure the renewal of a stamp distribution agreement, whereby Kenny Int'l obtained exclusive rights to the promotion, distribution and sale of Cook Islands postage stamps throughout the world.

ENFORCEMENT

Kenny Int'l pled guilty to a single count of a bribery FCPA violation, consented to the entry of a final judgment of permanent injunction against further FCPA violations, and agreed to pay a criminal fine of $50,000. Kenny, chairman of the board and president and majority shareholder of Kenny Int'l, pled guilty to a criminal charge in the High Court of the Cook Islands, consented in the United States District Court for the District of Columbia to the entry of a final judgment of permanent injunction against further violations, paid restitution to the government of the Cook Islands in the amount of NZ $337,000, and agreed to cooperate with the government of the Cook Islands whenever requested.

KEY FACTS

Citation. *United States v. Kenny Int'l Corp.*, No. 79-cr-00372 (D.D.C. 1979); *United States v. Kenny*, No. 79-cv-02038 (D.D.C. 1979).

Date Filed. August 2, 1979.

Country. Cook Islands.

Date of Conduct. 1978.

Amount of the Value. Financial assistance (worth NZ $337,000) in connection with an election; i.e., chartering an aircraft to fly voters from New Zealand to the Cook Islands to reelect the then-Premier, Sir Albert Henry.

Amount of Business Related to the Payment. Postage stamp sales worth approximately $1.5 million per year (50% of which was shared with the government of the Cook Islands).

Intermediary. Shell corporations were created to transfer the funds.

Foreign Official. Sir Albert Henry and The Cook Islands Party (the then-majority political party in The Cook Islands Legislative Assembly).

FCPA Statutory Provision.

- **Finbar Kenny**. Anti-Bribery.
- **Kenny International Corp.** Anti-Bribery.

Other Statutory Provision. None.

Disposition.

- **Finbar Kenny**. Plea Agreement.
- **Kenny International Corp.** Plea Agreement.

Defendant Jurisdictional Basis.

- **Finbar Kenny**. Agent of Domestic Concern.
- **Kenny International Corp.** Domestic Concern.

Defendant's Citizenship. United States (Finbar Kenny and Kenny International Corp.).

Total Sanction.

- **Finbar Kenny**. None.
- **Kenny International Corp.** $50,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

C. FOREIGN BRIBERY CIVIL ACTIONS INSTITUTED BY THE DEPARTMENT OF JUSTICE UNDER THE FCPA

C. FOREIGN BRIBERY CIVIL ACTIONS INSTITUTED BY THE DEPARTMENT OF JUSTICE UNDER THE FCPA

5. UNITED STATES V. METCALF & EDDY (D. MA. 1999)[90]

Nature of the Business. Architectural and engineering services to a municipal sanitary and drainage organization.

Business Location. Egypt.

Payment.

1. **Amount of the Value.** Unspecified travel advances and accommodation upgrades for the organization's chairman, his wife and two children for two trips to Europe and the United States.
2. **Amount of Business Related to the Payment.** $36 million.
3. Intermediary. None.
4. The foreign official. Chairman of the sanitary and drainage organization.

Influence to be Obtained. The chairman's influence over subordinate officials involved in the technical review of bids and directly with the funding source (U.S.AID).

Enforcement. Metcalf & Eddy consented to an injunction to:

1. Implement a specified compliance program.
2. Implement financial and accounting controls.
3. Promptly investigate and report alleged FCPA violations in the future.
4. Include in future joint venture agreements a representation and undertaking by each partner as to FCPA matters.
5. For five years conduct annual audits and provide compliance certificates as to FCPA matters.
6. Conduct periodic reviews of its FCPA policies and programs at least every five years.
7. Cooperate with a further investigation.
8. Pay a fine of $400,000 and costs of investigation of $50,000.
9. Be permanently enjoined from FCPA violations.

[90] *U.S. v. Metcalf & Eddy*, No. 99-cv-12566 (D. Mass. 1999).

C. FOREIGN BRIBERY CIVIL ACTIONS INSTITUTED BY THE DEPARTMENT OF JUSTICE UNDER THE FCPA

4. UNITED STATES V. AMERICAN TOTALISATOR CO. INC. (D. MD. 1993)[91]

Nature of the Business. Manufacture and sale of totalisator systems by American Totalisator Co. ("American Totalisator"), a Delaware corporation and a domestic concern.

Business Location. Greece.

Payment.

1. **Amount of the Value.** Amount of payments not stated.
2. **Amount of Business Related to the Payment.** Not stated.
3. Intermediary. ATC's Greek agent.
4. The foreign official. Officials of The Horse Races Administration of Greece ("ODIE"), an instrumentality of the Greek government.

Influence to be Obtained. To secure a contract for the sale of a totalisator system and spare parts to ODIE for the Phaleron racetrack in Athens.

Enforcement. American Totalisator consented to the entry of a permanent injunction prohibiting future violations of the FCPA.

[91] *U.S. v. Am. Totalisator Co*. No 93-cv-00161 (D. Md. 1993).

C. FOREIGN BRIBERY CIVIL ACTIONS INSTITUTED BY THE DEPARTMENT OF JUSTICE UNDER THE FCPA

3. UNITED STATES V. DORNIER GMBH (D. MINN. 1990)[92]

Nature of the Business. Maintenance and supply of spare parts for military aircraft by Dornier GmbH, a domestic concern, as a subcontractor for Napco.

Business Location. Republic of Niger.

Payment.

1. **Amount of the Value.** $175,000 (5% of funds received).
2. **Amount of Business Related to the Payment.** $3,518,315.
3. Intermediary. None.
4. The foreign official. Chief of Supply for Niger Air Force.

Influence to be Obtained. To secure a contract for spare parts and maintenance of military aircraft.

Enforcement. Permanent injunction against future FCPA violations.

See DOJ Digest Number B 9.

[92] U.S. v. Dornier GmbH (D. Minn. 1990).

C. FOREIGN BRIBERY CIVIL ACTIONS INSTITUTED BY THE DEPARTMENT OF JUSTICE UNDER THE FCPA

2. UNITED STATES V. SAM P. WALLACE CO., INC. (D.P.R. 1983)[93] UNITED STATES V. ALFONSO A. RODRIGUEZ (D.P.R. 1983)[94]

Nature of the Business. Mechanical, electrical and civil construction by Sam P. Wallace Co. ("Wallace Co."), a Texas corporation and an issuer.

Business Location. Trinidad and Tobago.

Payment.

1. **Amount of the Value.** Series of payments, totaling $1.391 million.
2. **Amount of Business Related to the Payment.** Not stated.
3. Intermediary. None.
4. The foreign official. The Chairman of the Trinidad and Tobago Racing Authority ("TTRA"), an agency of the government of Trinidad and Tobago.

Influence to be Obtained. To obtain and retain a contract from TTRA to construct the grandstand and receiving building of the Caroni Racetrack project in Trinidad.

Enforcement.

1. Amount of fine. Wallace Co. pled guilty to three counts under the accounting sections of the FCPA and was fined $30,000.
2. Individuals charged and their relationship with the business. Rodriguez, president of Wallace Co., pled guilty to the single count of bribery of a foreign official under the FCPA and received a sentence of three years' probation and a $10,000 fine.
3. Other crimes charged. Wallace Co. pled guilty to one count under the Currency and Foreign Transactions Reporting Act and was fined $500,000. The SEC also brought actions against Wallace Co. and Rodriguez.

See SEC Digest Number D 5.

[93] *U.S. v. Sam P. Wallace Co.*, No. 83-cr-0034 (D.P.R. 1983).

[94] *U.S. v. Rodriguez*, No. 83-cr-0044 (D.P.R. 1983).

C. FOREIGN BRIBERY CIVIL ACTIONS INSTITUTED BY THE DEPARTMENT OF JUSTICE UNDER THE FCPA

1. UNITED STATES V. ROY J. CARVER AND R. EUGENE HOLLEY (S.D. FLA. 1979)[95]

Nature of the Business. Oil drilling in Qatar by Holcar Oil Corp. ("Holcar").

Business Location. Emirate of Qatar.

Payment.

1. **Amount of the Value.** $1.5 million.
2. **Amount of Business Related to the Payment.** Not stated.
3. Intermediary. None.
4. The foreign official. Qatar government official, who was the Director of Petroleum Affairs and had authority to approve the concession agreement.

Influence to be Obtained. An oil drilling concession agreement in Qatar.

Enforcement. Carver and Holley, officers and shareholders of Holcar, consented to the entry of permanent injunctions prohibiting future violations of the FCPA.

[95] *U.S. v. Carver* (S.D. Fla. 1979).

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

189. IN THE MATTER OF POLYCOM, INC. (2018)

NATURE OF THE BUSINESS.

Polycom, Inc., a Delaware corporation headquartered in California, sells communications products and services. Before Polycom was acquired by a private equity firm in 2016, the company maintained a class of securities registered with the SEC pursuant to Section 12(b) of the Securities Exchange Act. In 2018, Polycom was acquired by Plantronics, Inc., a U.S.-based manufacturer of communications headsets, as a wholly-owned subsidiary. Plantronics has a class of stock registered with the SEC pursuant to Section 12(b) of the Exchange Act.

Polycom Communications Solutions ("Polycom China") was a wholly owned subsidiary of Polycom based in China that sold Polycom's communications products and services to users in China through distributors and resellers.

INFLUENCE TO BE OBTAINED.

According to the SEC, from 2006 to 2014, Polycom's Vice President of China engaged in a scheme to obtain business from customers in the public sector by paying bribes to Chinese government officials through distributors in China.

Before paying a bribe, distributors requested a discount on communications products from Polycom China. The SEC alleges that senior managers at Polycom China provided the discount even though they knew the discount was intended to cover the cost of bribes. After receiving the discount from Polycom China, distributors made cash payments to government officials who had the ability to influence the purchase decisions of government agencies and state-owned companies.

The SEC further alleges that under the direction of Polycom's Vice President of China, senior managers created a sales management system to record the bribe payments made by distributors. Sales personnel at Polycom China were instructed to enter the payments into the secret management system instead of Polycom's approved customer relations management system. Senior managers then recorded the deals with distributors in the approved management system by characterizing the bribe payments as legitimate discounts given to prevent customers from buying from a competing communications provider.

Polycom China personnel were also instructed to use non-company email addresses when communicating with the distributors to conceal the deals from Polycom personnel outside of China.

ENFORCEMENT.

On December 26, 2018, the SEC settled its enforcement action against Polycom for violations of the FCPA's books-and-records and internal controls provisions. According to the cease-and-desist order, Polycom agreed to pay $10,672,926 in disgorgement, $1,833,410 in prejudgment interest, and a $3.8 million civil penalty—totaling $16,306,336 in sanctions.

On December 20, 2018, the DOJ issued a declination letter to Polycom stating that it would decline prosecution under the FCPA Corporate Enforcement Policy. The DOJ recognized Polycom's identification of the misconduct, voluntary disclosure, internal investigation, cooperation with the DOJ's investigation, and remediation, including improving the compliance program and disciplining employees. Pursuant to the declination letter, Polycom agreed to pay $30,978,000 in disgorgement, with the DOJ crediting the

KEY FACTS

Citation. *In the Matter of Polycom*, Admin. Proc. File No. 3-18964 (Dec. 26, 2018).

Date Filed. December 26, 2018.

Country. China.

Date of Conduct. 2006 – 2014.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Approximately $10.7 million in profits.

Intermediary. Subsidiary.

Foreign Official. Unnamed government officials in China.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $16,306,336.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In re Polycom, Inc.*

Total Combined Sanction. $36,611,410.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

disgorgement paid to the SEC. *See* DOJ Digest Number B-207.	

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

188. IN THE MATTER OF CENTRAIS ELÉTRICAS BRASILEIRAS S.A. (2018)

NATURE OF THE BUSINESS.

Centrais Elétricas Brasileiras S.A. ("Eletrobras") is a state-controlled Brazilian power generation, transmission, and distribution company based in Rio de Janeiro, Brazil. Eletrobras maintains stock that is registered with the SEC under Section 12(b) of the Exchange Act and traded on the New York Stock Exchange. The Brazilian federal government currently owns a 51% stake in Eletrobras. Eletrobras has a 99 percent ownership stake in Termonuclear S.A. ("Eletronuclear"), a nuclear power generation company.

INFLUENCE TO BE OBTAINED.

According to the SEC, from approximately 2009 through 2015, officers at Eletronuclear allegedly engaged in a bid-rigging and bribery scheme involving the construction of a nuclear power plant. After receiving bribes from Brazilian construction company executives, Eletronuclear officers, including the former president of Eletronuclear, allegedly rigged bids in favor of certain private Brazilian construction companies and thus inflated the costs of the nuclear power plant project. The former president of Eletronuclear allegedly received up to $4.1 million relating to the construction of the plant. Further, construction company executives allegedly agreed to pay two of Brazil's largest political parties one percent of the power plant contract value each.

The SEC further alleged that Eletrobras did not effectively maintain a sufficient system of internal accounting controls over Eletronuclear's financial reporting, which allowed this bid-rigging and bribery scheme to occur. Eletronuclear recorded these payments made to contractors, a percentage of which was used for bribes, as legitimate expenditures. As a result of this alleged failure of internal accounting control, Eletrobras's books and records inaccurately reflected their transactions on this project.

ENFORCEMENT.

On December 26, 2018, the SEC settled its enforcement action against Eletrobras for violations of the FCPA's books-and-records and internal controls provisions. According to the cease-and-desist order, Eletrobras agreed to pay a civil monetary penalty of $2,500,000.

Eletrobras reported that the DOJ had closed its investigation of Eletrobras.

KEY FACTS

Citation. *In the Matter of Centrais Elétricas Brasileiras S.A.*, Admin. Proc. File No. 3-18962 (Dec. 26, 2018).

Date Filed. December 26, 2018.

Country. Brazil.

Date of Conduct. 2009 – 2015.

Amount of the Value. $9 million.

Amount of Business Related to the Payment. Not stated.

Intermediary. Officials of Subsidiary Company.

Foreign Official. Brazilian government officials, including the former Eletronuclear president, and Brazilian political parties.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Brazil.

Total Sanction. $2,500,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $2,500,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

187. IN THE MATTER OF VANTAGE DRILLING INTERNATIONAL (2018)

NATURE OF THE BUSINESS

Vantage Drilling International ("Vantage") is an offshore drilling company headquartered in Houston, Texas and organized under the laws of the Cayman Islands. Until February 2016, Vantage was a subsidiary of Vantage Drilling Company ("VDC") and currently Vantage owns and controls all of the tangible assets and operations of VDC.

VDC is headquartered in Houston, Texas and is organized under the laws of the Cayman Islands. Until December 2015, the company maintained common stock that was registered with the SEC under Section 12(b) of the Exchange Act and traded on the New York Stock Exchange. VDC commended liquidation proceedings in December 2015 in the Cayman Islands.

INFLUENCE TO BE OBTAINED

According to the SEC, VDC failed to create a system of internal accounting controls to monitor transactions it entered into with its only supplier of drilling assets who was also its largest shareholder and outside director ("Director A"). The SEC alleged that VDC's lack of proper internal accounting controls put VDC at risk of providing or reimbursing Director A with funds it intended to use towards improper payments.

VDC and Director A entered into an agreement whereby Director A would retain ownership of a drillship and VDC would be authorized to market the ship to potential clients. VDC's CEO contacted a Brazilian third-party agent for assistance with marketing VDC to Petroleo Brasileiro SA Petrobras ("Petrobras"), a Brazilian state-owned oil and gas company. The agent assisted VDC in responding to a marketing inquiry by Petrobras' International Division ("PBID") seeking proposals from drilling operators who could provide an ultra-deepwater drillship. A senior official from PBID reached out to the agent during the bidding process to inform the agent that the official would award the contract to VDC in return for a monetary payment—some of which was earmarked for Brazilian politicians. In a private conversation with Director A, the agent notified the director of the monetary conditions, which Director A agreed to. In total, Director A agreed to pay $31 million from his personal funds in order to secure an 8-year drilling contract (with an approximate value of $1.8 billion) for VDC unbeknownst to the CEO and another director. In 2009 and 2010 he went on to make some of the improper payments to the third-party marketing agent and official at PBID. The SEC alleged that VDC did not effectively respond to red flags that indicated Director A had made improper payments to obtain the contract. In 2012, a contractor working with Director A had hinted to VDC that Director A expected VDC to reimburse him for his "payment to P." Additionally, in 2013 VDC's CEO and marketing department received an email from a Brazilian reporter asking about the alleged payments from Director A. The SEC alleged that despite these red flags, VDC did not take steps to determine if payments it made to Director A were utilized to fund or reimburse the improper payments.

The SEC also alleged that VDC failed to properly implement internal accounting controls when interacting with a third-party marketing agent. Specifically, it alleged that VDC failed to conduct due diligence and implement prudent safeguards consistent with its internal policies when interacting with an agent acting on its behalf with foreign government officials.

KEY FACTS

Citation. *In the Matter of Vantage Drilling International,* Admin. Proc. File No. 3-18899 (Nov. 19, 2018).

Date Filed. November 19, 2018.

Country. Brazil.

Date of Conduct. 2007 – 2013.

Amount of the Value. Approximately $21.7 million.

Amount of Business Related to the Payment. Approximately $1.8 billion.

Intermediary. Agent.

Foreign Official. Unnamed senior official from Petrobras' International Division.

FCPA Statutory Provision. Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $5,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $5,000,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

ENFORCEMENT

On November 19, 2018, the SEC settled its enforcement action against Vantage for violations of the FCPA's internal controls provision. According to the cease-and-desist order, Vantage agreed to pay $5,000,000 in disgorgement.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

186. IN THE MATTER OF STRYKER CORPORATION (2018)

NATURE OF THE BUSINESS

Stryker Corporation, a Michigan corporation, is a global manufacturer and distributor of medical devices and products. It maintains a class of stock that is traded on the New York Stock Exchange and is registered pursuant to Section 12(b) of the Exchange Act. Stryker has subsidiaries and affiliates around the world, including wholly owned subsidiaries in India ("Stryker India"), China ("Stryker China"), and Netherlands ("EMEA Supply Chain Services").

INFLUENCE TO BE OBTAINED

India

According to the SEC, from 2010 to December 2015, Stryker India conducted approximately 85% of its business through third-party dealers in India. The SEC alleged that Stryker failed to maintain adequate oversight of its dealers, as audits and financial reviews revealed that deficiencies in the dealers' internal controls and recordkeeping practices, inflation of invoices, and falsified or missing documentation to support payments and expenses. According to the SEC, Stryker became aware of these problems in a few of its dealers, but failed to properly review and remediate the deficiencies.

China

According to the SEC, from 2015 through 2017, Stryker China sold its products to a state-owned distributor in China, which, in turn, on-sold the products to sub-distributors. Allegedly, Stryker did not conduct due diligence or approve some of the sub-distributors, although Stryker China employees were directly involved in operations with some of the unauthorized sub-distributors. In some sales, the SEC alleged that the products passed through five tiers of sub-distributors before reaching the final client.

Kuwait

Stryker's wholly owned subsidiary, EMEA Supply Chain Services, operates in Dubai, United Arab Emirates through dealers in several countries, including Kuwait. In Kuwait, Stryker had a main distributor ("Kuwaiti Distributor"), which sold its products to the Kuwait Ministry of Health. According to the SEC, from 2015 to 2017, Stryker hosted events for healthcare professionals, and the Kuwaiti Distributor paid at least $32,000 to Kuwaiti HCPs to attend the events. These payments were categorized as covering "per diem" expenses and were in addition to the lodging, meals, and transportation costs for the guests that were paid directly by Stryker. When Stryker attempted to audit the Kuwaiti Distributor, the Distributor refused.

ENFORCEMENT

On September 28, 2018, the SEC issued a cease-and-desist order against Stryker for violations of the books-and-records and internal controls provisions of the FCPA. Pursuant to the order, Sanofi agreed to pay a civil monetary penalty of $7,800,000 and retain an Independent Consultant for eighteen months.

In 2013, the SEC filed a cease-and-desist order against Stryker for unrelated FCPA violations.

KEY FACTS

Citation. *In the Matter of Stryker Corp.*, Admin. Proc. File No. 3-18853 (Sept. 28, 2018).

Date Filed. September 28, 2018.

Country. India, China, Kuwait.

Date of Conduct. 2010 – 2017.

Amount of the Value. Not stated.

Amount of Business Related to the Payment. Not stated.

Intermediary. Distributors.

Foreign Official. Not stated.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $7,800,000.

Compliance Monitor/Reporting Requirements. Eighteen-month Independent Consultant.

Related Enforcement Actions. *In the Matter of Stryker Corp.*, Admin Proc. File No. 3-15587 (2013).

Total Combined Sanction. $7,800,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

185. IN THE MATTER OF PETRÓLEO BRASILEIRO S.A. – PETROBRAS (2018)

NATURE OF THE BUSINESS.

Petróleo Brasileiro S.A. – Petrobras ("Petrobras") is a Brazilian government-controlled oil and gas company. Petrobras' stock is registered with the Securities and Exchange Commission under Section 12(b) of the Exchange Act and trades on the New York Stock Exchange as American Depositary Shares ("ADSs"). Petrobras is headquartered in Rio de Janeiro, Brazil.

INFLUENCE TO BE OBTAINED.

According to the SEC, Petrobras' senior executives rigged the bidding process for numerous major infrastructure projects in favor of certain contractors, which included providing insider information. They inflated the cost of the contractors' projects and received kickbacks worth one to three percent of the contract's value. The Petrobras executives also received bribes from companies that did not go through the bidding process in an effort to win contracts. The executives kept a portion of the corrupt payments and passed along a portion to Brazilian politicians and political parties that helped the executives secure their positions at Petrobras.

Petrobras filed false statements with the SEC—including in connection with its $10 billion ADSs offering in 2010. The preparation for the filing of the 2010 offering included materially false and misleading information and documents about Petrobras' assets (which were overstated as a result of the inflated contracts). Petrobras also filed annual reports with the SEC that had inaccurate financial statements and omissions about the nature of the executives' relationships with various interested parties.

According to the SEC, the Petrobras failed to implement internal controls and keep accurate books and records. Petrobras failed to train employees on anti-corruption and anti-fraud compliance, lacked protocols to deter influence by politicians, and lacked procedures to ensure candidates for senior roles were free of potential conflicts of interest.

ENFORCEMENT.

The SEC settled its enforcement action against Petrobras on September 27, 2018 for violations of the FCPA's internal controls and books-and-records provisions, as well as violations related to misstatements in its SEC filings. Petrobras agreed to pay $933,473,797—consisting of $711,000,000 in disgorgement and $222,473,797 in prejudgment interest. This amount will be reduced by any payment made to the class action Settlement Fund in the matter of *In re Petrobras Securities Litigation*, No. 14-cv-9662 (S.D.N.Y.).

Petrobras also agreed to pay a monetary penalty of $853,200,000, ten percent of which will be paid pursuant to the non-prosecution agreement Petrobras entered into with the DOJ. Petrobras will also receive credit for up to $682,560,000 for any payment it makes to Brazilian authorities in connection with this matter.

See DOJ Digest Number B-206.
See Parallel Litigation Numbers H-A19, H-C32.

KEY FACTS

Citation. *In the Matter of Petróleo Brasileiro S.A. – Petrobras*, Admin. Proc. File No. 3-18843 (Sep. 27, 2018).

Date Filed. September 27, 2018.

Country. Brazil.

Date of Conduct. 2002 – 2014.

Amount of the Value. Approximately $1 billion.

Amount of Business Related to the Payment. Not stated.

Intermediary. None.

Foreign Official. Senior executives at Petrobras, Brazil's government-controlled oil and gas company.

FCPA Statutory Provision. Internal Controls; Books-and-Records.

Other Statutory Provision. Sections 17(a)(2) and 17(a)(3) of the Securities Act; Section 13(a), and Rules 13a-1 and 12b-20 of the Exchange Act.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Brazil.

Total Sanction. $933,473,797.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In re Petróleo Brasileiro S.A. – Petrobras* (2018) (non-prosecution agreement).

Total Combined Sanction. $1,786,673,797.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

184. IN THE MATTER OF UNITED TECHNOLOGIES CORPORATION (2018)

NATURE OF THE BUSINESS

United Technologies Corporation ("UTC"), a Delaware corporation, manufactures and maintains elevators, escalators, and moving walkways. It maintains a class of stock that is registered pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

Russia and Azerbaijan

According to the SEC, from 2012 to 2013, UTC's wholly owned subsidiary, Otis Elevator Company, incorporated in Russia and operating in Azerbaijan, made improper payments to a municipal entity to secure sales of elevators and elevator equipment. As part of the alleged scheme, Otis Russia sold elevator equipment to Baku Liftremont, a municipal-owned entity, using subcontractors and intermediaries. Otis Russia failed to conduct due diligence or meaning contract review for any of the subcontractors or intermediaries, and there was no evidence that they performed the services for which they were paid. On one occasion, the SEC alleged that the contract value for the subcontractor was worth 44% of the total contract value, even though it performed no meaningful work. On another occasion, the scheme allegedly involved making sales of elevator equipment through intermediaries, for which Otis Russia did not conduct any due diligence. In both these schemes, the SEC alleged that the intermediaries passed the funds Otis Russia paid to the Liftremont officials. Otis Russia's JV partner raised concerns about potential corruption to the Regional President, but the improper payments continued.

China

According to the SEC, in one scheme, UTC's joint venture, International Aero Engines ("IAE"), engaged a sales agent to help procure a competitive bid for a contract with the Chinese state-owned airline, Air China Limited. The agent requested a $2 million advance to conduct an "office expansion," which was provided. Subsequently, the agent allegedly received proprietary and confidential information about the Air China tender, and IAE modified its bid accordingly. The SEC noted that the agent had no background in the market.

In another scheme, IAE arranged a golf event for senior executives of Chinese state-owned airlines, paid $30,000 extra to an agent for the event without verifying its use. IAE also provided lucrative gifts, such as iPads and luggage to the officials.

Finally, the SEC alleged that an employee at UTC's Chinese subsidiary, Otis China, was approached by an official from a Chinese state-owned bank seeking to buy elevator units. The official requested a kickback if Otis China won the bid, and the Otis China employee agreed, suggesting using a distributor to conceal the payment.

Leisure Travel

According to the SEC, UTC paid for travel and entertainment for foreign officials from several countries, including China, Kuwait, South Korea, Pakistan, Thailand, and Indonesia, and these expenses were not properly recorded or approved. Instead of submitting the leisure expenses to the Legal Department for approval, as required by UTC's policies, UTC employees included the travel as a cost component in the contract and thus avoided the approval

KEY FACTS

Citation. *In the Matter of United Technologies Corp.*, Admin. Proc. File No. 3-18745 (Sept. 12, 2018).

Date Filed. September 12, 2018.

Country. Azerbaijan; China; Kuwait, South Korea, Pakistan, Thailand, and Indonesia.

Date of Conduct. 2009 – 2015.

Amount of the Value. Not stated.

Amount of Business Related to the Payment. Not stated.

Intermediary. Intermediary companies; Subcontractors; Agent; Distributor.

Foreign Official. Municipal officials at Baku Liftremont in Azerbaijan; unnamed executives of state-owned commercial airlines in China; unnamed government officials in China, Kuwait, South Korea, Pakistan, Thailand, and Indonesia.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $13,986,534.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $13,986,534.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

process. The SEC alleged UTC recorded these payments as regular business expenses.

ENFORCEMENT

On September 12, 2018, the SEC settled its enforcement action against UTC for violations of the FCPA's anti-bribery, books-and-records, and internal controls provisions. According to the cease-and-desist order, UTC agreed to pay $9,986,534 in disgorgement and prejudgment interest, as well as a civil monetary penalty of $4,000,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

183. IN THE MATTER OF JOO HYUN BAHN, A/K/A DENNIS BAHN (2018)

NATURE OF THE BUSINESS

Joo Hyun Bahn, a citizen of South Korea and a permanent resident of the U.S., was a commercial real estate broker at Colliers International Group Inc. Colliers, a Canadian corporation, maintained a class of securities listed on the NASDAQ stock exchange and registered pursuant to Exchange Act Section 12(b).

INFLUENCE TO BE OBTAINED

According to the SEC, from 2013 to 2015, Bahn engaged in a scheme to make an improper payment to influence an official at a foreign sovereign wealth fund of an unnamed country in the Middle East ("the Fund") to buy property Bahn had been hired to sell. The property was a commercial office building in Vietnam known as Landmark 72. Specifically, the SEC alleged that Bahn was contacted by an unnamed accomplice, who represented to Bahn that he had connections to the government officials with the authority to make the Fund acquire Landmark 72. The SEC alleged that Bahn's accomplice claimed that a foreign official at the Fund required a payment of approximately $1 million USD, some of which would be paid before the transaction, with the rest following the sale. Bahn and his accomplice allegedly used the code word "roses" to denote the amount requested, in thousands of dollars.

To facilitate the scheme, the SEC alleged that Bahn created two versions of the brokerage services agreement, in which the price to the property owners and Bahn's brokerage firm differed by $100 million USD. Bahn also allegedly borrowed money from an acquaintance to fund the improper payment through Bahn's accomplice to the foreign official, who agreed to finance the deal after Bahn was able to secure $500,000 from the property owner to Collier by misrepresenting the purpose of the payment.

According to the SEC, on April 16, 2014, Bahn caused a payment to be made to an entity controlled by the accomplice, with the intent that it would be forwarded to the official to secure the property purchase. However, the accomplice allegedly kept the payment himself and never was in contact with government officials or the Fund. Bahn also falsely represented that the sale of Landmark 72 had closed, which, in turn, caused Colliers to recognize the revenue in contradiction to its accounting practices. The Fund has officially maintained its lack of interest in purchasing Landmark 72 and delivered a cease-and-desist letter to Bahn.

ENFORCEMENT

On September 6, 2018, the SEC issued a cease-and-desist order against Bahn for violations of the FCPA's anti-bribery and books-and-records provisions. Pursuant to the order, Bahn must pay $225,000 in disgorgement, although this amount can be reduced by any payments Bahn might make as part of any restitution or forfeiture order in the criminal case against him.

Separately, on January 5, 2018, Bahn pleaded guilty to criminal charges brought against him by the DOJ.

See DOJ Digest Number B-184.

KEY FACTS

Citation. *In the Matter of Joo Hyun Bahn*, Admin. Proc. File No. 3-18728 (Sept. 6, 2018).

Date Filed. September 6, 2018.

Country. Korea; Middle East.

Date of Conduct. 2013 – 2015.

Amount of the Value. $500,000.

Amount of Business Related to the Payment. Not stated.

Intermediary. Unnamed accomplice.

Foreign Official. Unnamed foreign official related to sovereign wealth fund of an unnamed Middle Eastern country.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. South Korea.

Total Sanction. Pending.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Bahn et al.*, No. 1:16-cr-00831 (S.D.N.Y. 2016); *United States v. Woo*, No. 1:17-mj-00139 (S.D.N.Y. 2017).

Total Combined Sanction. Pending.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

182. IN THE MATTER OF SANOFI (2018)

NATURE OF THE BUSINESS

Sanofi, a French corporation, is a multinational pharmaceutical company. Sanofi maintains a class of securities on the New York Stock Exchange and registered pursuant to Section 12(b) of the Securities Exchange Act. Sanofi-Aventis Kazakhstan LLP ("Sanofi KZ"), Sanofi-Aventis Liban S.A.L. ("Sanofi Levant"), and Sanofi Aventis Gulf FZE ("Sanofi Gulf") are Sanofi-affiliated companies organized in Kazakhstan, Lebanon, and the United Arab Emirates, respectively.

INFLUENCE TO BE OBTAINED

Kazakhstan

According to the SEC, from 2007 to 2011, Sanofi KZ engaged in an improper payment scheme to secure public tenders for pharmaceuticals. Sanofi KZ allegedly provided discounts to a distributor, which had won a bid for a public tender for pharmaceuticals. Using that discount, the distributor would kick money back to Sanofi KZ employees, who allegedly then provided the funds to Kazakh officials. From the scheme, Sanofi earned $11,580,099 in profits.

The SEC alleged that Sanofi did not provide sufficient controls or policies over the distributor discounts.

Levant

According to the SEC, from 2011 to 2013, Sanofi Levant provided improper sponsorships, gifts, donations, product samples, and consulting, speaking, and clinical trial fees to healthcare providers at publicly and privately owned hospitals in Jordan and other countries. The SEC alleged that the products and services were not properly documented or approved and were intended to induce the health-care providers to increase their purchase and prescription of Sanofi products, and the scheme resulted in approximately $4.2 million in profits.

The Gulf Region

According to the SEC, from 2012 to 2015, Sanofi Gulf engaged in a scheme to submit false expense claims, which were pooled and used to make improper payments to healthcare providers in the private sector to induce them to increase their purchases of Sanofi products.

The SEC alleged that Sanofi Gulf would fabricate or doctor receipts for travel and entertainment expenses that never occurred. The receipts were submitted as legitimate business expenses, which were then pooled and distributed to healthcare providers. From this scheme, Sanofi earned approximately $1.75 million in profits.

ENFORCEMENT

On September 4, 2018, the SEC issued a cease-and-desist order against Sanofi for violations of the books-and-records and internal controls provisions of the FCPA. Pursuant to the order, Sanofi agreed to pay $20,206,145 in disgorgement and prejudgment interest, as well as $5,000,000 in civil monetary penalty.

KEY FACTS

Citation. *In the Matter of Sanofi*, Admin. Proc. File No. 3-18708 (Sept. 4, 2018).

Date Filed. September 4, 2018.

Country. Kazakhstan, Lebanon, Jordan, Bahrain, Kuwait, Qatar, Yemen, Oman, United Arab Emirates.

Date of Conduct. 2007 – 2015.

Amount of the Value. Not stated.

Amount of Business Related to the Payment. Approximately $17,531,666 million in profits.

Intermediary. Vendors.

Foreign Official. Unnamed healthcare providers at foreign state-owned hospitals.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. France.

Total Sanction. $25,206,145.

Compliance Monitor/Reporting Requirements. Two-year reporting requirement.

Related Enforcement Actions. None.

Total Combined Sanction. $25,206,145.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

181. IN THE MATTER OF LEGG MASON, INC. (2018)

NATURE OF THE BUSINESS

Legg Mason, a U.S. corporation, is an investment management firm headquartered in Baltimore, Maryland. Legg Mason maintains a class of securities on the New York Stock Exchange which are registered pursuant to Section 12(b) of the Securities Exchange Act. Permal Group Inc. was a Legg Mason asset management subsidiary headquartered in the U.S. Société Générale is a global financial services company headquartered in Paris, France.

INFLUENCE TO BE OBTAINED

According to the SEC, from 2004 to 2010, Permal worked with Société Générale to obtain investments from state-owned Libyan financial institutions through a Libyan intermediary purportedly hired to provide introductory services. Société Générale sold the financial institutions seven structured notes valued at approximately $950 million, and some of the assets invested were placed in funds managed by Permal. Permal earned approximately $31.6 million in fees for the seven transactions. After each transaction, Société Générale paid a company controlled by the intermediary a commission. The SEC alleges that the payments made to the intermediary's company were actually used to pay bribes to Libyan government officials to secure investments from the financial institutions.

The SEC further alleges that two former Permal employees were aware that the intermediary was paying bribes to government officials but continued to use the intermediary, and at least one of the Permal employees was aware that Société Générale employees were concealing the intermediary's payments from the financial institutions.

ENFORCEMENT

On August 27, 2018, the SEC issued a cease-and-desist order against Legg Mason for violations of the internal controls provisions of the FCPA. Pursuant to the order, Legg Mason agreed to pay approximately $27.6 million in disgorgement and $6.9 million in prejudgment interest. Legg Mason previously entered a non-prosecution agreement with the DOJ on June 4, 2018 and agreed to pay a $33 million criminal fine.

See DOJ Digest Numbers B-203, B-202

KEY FACTS

Citation. *In the Matter of Legg Mason*, Admin. Proc. File No. 3-18684 (Aug. 27, 2018).

Date Filed. August 27, 2018.

Country. Libya.

Date of Conduct. 2004 – 2010.

Amount of the Value. Approximately $26.25 million.

Amount of Business Related to the Payment. Approximately $31.6 million in net revenues.

Intermediary. Broker.

Foreign Official. Libyan government officials.

FCPA Statutory Provision. Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $34,502,494.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In re Legg Mason, Inc.*; *United States v. Société Générale S.A.*; *United States v. SGA Société Générale Acceptance, N.V.*

Total Combined Sanction. $67,127,494.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

180. IN THE MATTER OF CREDIT SUISSE GROUP AG (2018)

NATURE OF THE BUSINESS

Credit Suisse Group AG is a Swiss holding company and multinational financial services company. Credit Suisse issues a class of stock registered with the SEC under Section 12(b) of the Exchange Act and traded on the New York Stock Exchange. Credit Suisse (Hong Kong) Limited ("CSHK") is Credit Suisse's wholly owned subsidiary incorporated in Hong Kong that provides securities products and financial advisory services in the Asian-Pacific region.

INFLUENCE TO BE OBTAINED

According to the SEC, from 2007 to at least 2013, CSHK engaged in corrupt hiring practices to obtain and retain business in China. The SEC alleged that CSHK hired and promoted more than 60 individuals related to Chinese government officials and executives at state-owned enterprises, even though these individuals were less qualified for the positions. In exchange for the employment of their relatives, government officials would direct or maintain business with CSHK, bringing in tens of millions of dollars in revenue, and the officials also provided advice and assistance to CSHK in obtaining regulatory approvals for its business. CSHK engaged in these corrupt hiring practices even though it was aware of the FCPA compliance risks and the practices violated Credit Suisse's Global Anti-Bribery Policy. To avoid detection, CSHK attempted to portray the hires as merit-based and it did not adhere to Credit Suisse's policy requirement that government-related hires must be reviewed by the bank's Legal and Compliance department.

The SEC alleged that senior CSHK managers were aware of the hiring practices, as well as the compliance risks associated with them, but failed to take adequate steps to prevent or mitigate the risks, resulting in violations of the FCPA's anti-bribery and internal controls provisions.

ENFORCEMENT

On July 5, 2018, the SEC settled its enforcement action against Credit Suisse Group for violations of the FCPA's anti-bribery and internal controls provisions. According to the cease-and-desist order, Credit Suisse Group AG agreed to pay $29,823,804 in disgorgement and prejudgment interest. The SEC did not impose a monetary penalty in light of the criminal penalty imposed by the DOJ.

In a related action, CSHK entered into a non-prosecution agreement with the DOJ on May 24, 2018 in which it agreed to pay a monetary penalty of $47,029,916 to settle the charges against it.

See DOJ Digest Number B-201 .

KEY FACTS

Citation. *In the Matter of Credit Suisse Group AG*, Admin. Proc. File No. 3-18571 (July 5, 2018).

Date Filed. July 5, 2018.

Country. China.

Date of Conduct. 2007 – 2013.

Amount of the Value. Not stated.

Amount of Business Related to the Payment. Not stated.

Intermediary. None.

Foreign Official. Unnamed executives of state-owned enterprises and government officials in China.

FCPA Statutory Provision. Anti-Bribery; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Switzerland.

Total Sanction. $29,823,804.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In re Credit Suisse (Hong Kong) Limited* (2018).

Total Combined Sanction. $76,853,720.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

179. IN THE MATTER OF BEAM INC. (2018)

NATURE OF THE BUSINESS

Beam Inc., formerly a Delaware corporation with its headquarters in Chicago, Illinois, is a global manufacturer and seller of alcoholic beverages. Until May 2014, Beam maintained stock that was registered with the SEC under Section 12(b) of the Exchange Act and traded on the New York Stock Exchange. After April 2014, Beam was acquired by Suntory Holdings Limited, a Japanese corporation. Beam Global Spirits & Wine (India) Private Limited ("Beam India"), which was acquired by Beam in 2006, bottled and sold Beam products in India.

INFLUENCE TO BE OBTAINED

According to the SEC, from at least 2006 through 2012, Beam India made improper payments to Indian government officials to obtain or retain business in the highly regulated Indian alcohol market. The SEC alleged that Beam India made payments to lower level and senior level government officials to increase government purchases for government-run retail and distribution channels, obtain better positioning of Beam's products, and expedite label licenses and other registrations. Beam India allegedly used third parties, such as promoters who marketed the products, to facilitate the payments to government officials, and the promoters would then submit inflated or fabricated invoices to Beam India for compensation.

The SEC alleged that senior managers at Beam India, as well as certain senior management at Beam Inc., were aware of the practices, particularly after a 2010 internal investigation revealed risks of improper payments. However, the SEC claimed that Beam did not adequately address the known risks to prevent continued payments in contravention of the FCPA.

ENFORCEMENT

On July 2, 2018, the SEC settled its enforcement action against Beam Inc. for violations of the FCPA's books-and-records and internal controls provisions. According to the cease-and-desist order, Beam Inc. agreed to pay $5,264,340 in disgorgement, $917,498 in prejudgment interest, and civil monetary penalty of $2,000,000, for a total penalty of $8,181,838.

KEY FACTS

Citation. *In the Matter of Beam Inc.*, Admin. Proc. File No. 3-18568 (July 2, 2018).

Date Filed. July 2, 2018.

Country. India.

Date of Conduct. 2006 – 2012.

Amount of the Value. Not stated.

Amount of Business Related to the Payment. Not stated.

Intermediary. Promoters.

Foreign Official. Unnamed Indian government officials regulating alcoholic beverages.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Japan.

Total Sanction. $8,181,838.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $8,181,838.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

178. IN THE MATTER OF PANASONIC CORPORATION (2018)
IN THE MATTER OF TAKESHI "TYRONE" UONAGA (2018)
IN THE MATTER OF PAUL A. MARGIS (2018)

NATURE OF THE BUSINESS

Panasonic Corporation, a Japanese corporation, is a multinational corporation that manufactures and sells electronics in the consumer, housing, and automotive industries. Until 2013, the company maintained stock that was registered with the SEC under Section 12(b) of the Exchange Act and traded on the New York Stock Exchange. From May 1, 2015 to June 20, 2016, Panasonic's securities were registered with the Commission under Section 12(g) of the Exchange Act.

Panasonic's wholly owned subsidiary, Panasonic Avionics Corporation ("PAC"), is a Delaware corporation that designs, engineers, manufactures, sells, and installs in-flight entertainment systems and global communication services to airlines. PAC's books and records were consolidated with Panasonic's during the relevant time.

Paul A. Margis served as the President and Chief Executive Officer at PAC. Beginning June 2012, Margis also held concurrent positions at Panasonic Corporation, including serving as executive officer of the Panasonic business segment, AVC Networks Company ("AVC Networks"). Takeshi "Tyrone" Uonaga was PAC's Chief Financial Officer, and held a concurrent position within the accounting group of AVC Networks.

INFLUENCE TO BE OBTAINED

According to the SEC, PAC made improper payments to an executive of a foreign state-owned airline. The SEC alleged that PAC employed a sales representative ("Sales Representative") for all its sales to fifty airlines in the Middle East, Africa, and Central and South Asia, many of which were state-owned. One of the Sales Representative's customers was an unnamed government airline ("Government Airline"), which had a ten-year Master Product Supply Agreement with PAC that grossed over $1 billion USD. One of the Government Airline's executives ("Government Official") served as the lead negotiator for agreements with PAC. During negotiations for an amendment to the contract for additional business, PAC's Sales Representative, allegedly with the knowledge of senior PAC executives, offered the Government Official "a position as a PAC consultant for $200,000 per year plus travel expenses, which would be effective after his retirement from the Government Airline." The Government Official, in turn, provided PAC with confidential internal information from the Government Airline to give PAC an improper advantage in obtaining and retaining business. Once installed in his position with PAC, the SEC alleged that the Government Official "provided little to no services" for PAC.

The SEC also alleged that PAC falsely recorded payments to the Government Official and other consultants providing little to no services as legitimate expenses. The improper payments were allegedly made from the "Office of the President budget," which was controlled by one executive at PAC and was not reviewed or controlled by any other Panasonic or PAC personnel or subject to other reasonable internal controls. The SEC further alleged that PAC failed to implement an adequate due diligence procedure to prevent improper payments and activity involving its sales agents, and that it failed to act on or actively sought to conceal red flags of improper behavior relating to

KEY FACTS

Citation. *In the Matter of Panasonic Corp.*, Admin. Proc. File No. 3-18459 (Apr. 30, 2018); *In the Matter of Margis*, Admin. Proc. File No. 3-18938 (Dec. 18, 2018); *In the Matter of Takeshi Uonaga*, Admin. Proc. File No. 3-18939 (Dec. 18, 2018).

Date Filed. April 30, 2018 (Panasonic); December 18, 2018 (Margis; Uonaga).

Country. Not stated.

Date of Conduct. 2007 – 2016.

Amount of the Value. Approximately $875,000.

Amount of Business Related to the Payment. Not stated.

Intermediary. Sales agent.

Foreign Official. Unnamed executive of foreign state-owned airline in unspecified country.

FCPA Statutory Provision.

- Anti-Bribery; Books-and-Records; Internal Controls.
- **Margis**. Anti-Bribery; Books-and-Records; Internal Controls.
- **Uonaga**. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision.

- **Panasonic.** Section 10(b) of the Exchange Act (Material Misstatement); Section 13(a) of the Exchange Act (Filing False Reports).
- **Margis.** None.
- **Uonaga.** None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer (Panasonic); Agent of Issuer (Margis; Uonaga).

Defendant's Citizenship. Japan (Panasonic); Not stated (Margis; Uonaga).

Total Sanction. $143,199,019 (PAC); $75,000 (Margis); $50,000 (Uonaga).

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Panasonic Avionics Corporation*, 18-cr-00118 (Apr. 30, 2018) (deferred prosecution agreement).

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

its sales agents.

Finally, the SEC alleged that, in connection with an amendment to its contract with Government Airline, PAC prematurely recognized income in violation of standard accounting procedures and Panasonic's stated accounting policies.

According to the SEC, Margis and Uonaga personally approved several of the transactions in which improper payments were made, circumventing PAC's system of internal accounting controls and knowingly falsifying the company's books and records. Margis further made false representations to external auditors.

ENFORCEMENT

On April 30, 2018, the SEC settled its enforcement action against Panasonic for violations of the FCPA's anti-bribery, books-and-records, and internal controls provisions. According to the cease-and-desist order, Panasonic agreed to pay $143,199,019 in disgorgement and prejudgment interest. In addition, on December 18, 2018 Margis was required to pay total sanction of $75,000. On the same date, the SEC ordered Uonaga to cease and desist from future violations, and to pay a civil money penalty of $50,000.

On April 30, 2018, the Department of Justice announced a deferred prosecution agreement against PAC, pursuant to which it would pay a $137,403,812 criminal penalty.

See DOJ Digest Number B-200.

Total Combined Sanction. $280,602,831.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

177. IN THE MATTER OF KINROSS GOLD CORPORATION

NATURE OF THE BUSINESS

Kinross Gold Corporation is a Toronto, Canada-headquartered gold mining company. The company maintains stock that is registered with the SEC under Section 12(b) of the Exchange Act and trades on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to the SEC, Kinross purchased two mining subsidiaries, based in Mauritania and Ghana, in 2010. Kinross allegedly purchased these subsidiaries with full knowledge that they lacked anti-corruption compliance programs and associated internal accounting controls. Indeed, low-level employees in Mauritania and Ghana routinely contracted with vendors and made payments with petty cash without appropriate controls.

The SEC alleges that Kinross became aware of suspicious payments at the Ghanaian and Mauritanian subsidiaries after the company conducted an internal audit. That audit allegedly revealed numerous payments—sometimes reoccurring for a period of years—without reasonable assurances that the payments were for their stated purpose. For example, Kinross allegedly paid a Ghanaian government customs officer for his weekly expenses in traveling to a mine to sign necessary papers, even when that officer did not travel to the mine. Moreover, Kinross allegedly paid a former Ghanaian employee to expedite the visa process for its employees. According to the SEC, Kinross paid that employee $1,000 per visa, even though there was no evidence of actual services rendered.

Even after Kinross developed an internal controls program, the company allegedly failed to maintain those controls. According to the SEC, Kinross devised controls to contract only with parties offering the lowest price and the highest quality. In April 2014, Kinross prepared to execute a contract with an international shipping company and identified a low-cost, high-quality bidder. However, a high-level Mauritanian government official allegedly expressed displeasure with Kinross's choice, insofar as the bidder was controlled by persons active with the political opposition. Accordingly, Kinross allegedly selected a more expensive bidder that was controlled by persons with ties to the Mauritanian official. The SEC alleges that Kinross also engaged a Mauritanian consultant with ties to high-level government officials without performing the requisite degree of due diligence on the consultant. Kinross allegedly paid the consultant $715,000 in the span of eleven months.

ENFORCEMENT

On March 26, 2018, the SEC settled its enforcement action against Kinross for violations of the FCPA's books-and-records and internal controls provisions. According to the cease-and-desist order, Kinross agreed to pay a $950,000 penalty and to report on its remedial measures for a period of one year.

KEY FACTS

Citation. *In the Matter of Kinross Gold Corporation,* Admin. Proc. File No. 3-18407 (Mar. 26, 2018).

Date Filed. March 26, 2018.

Country. Mauritania, Ghana.

Date of Conduct. 2010 – 2014.

Amount of the Value. Not stated.

Amount of Business Related to the Payment. Not stated.

Intermediary. None.

Foreign Official. Unnamed Ghanaian and Mauritian government officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Canada.

Total Sanction. $950,000.

Compliance Monitor/Reporting Requirements. Reporting Requirement (12 months).

Related Enforcement Actions. None.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

176. IN THE MATTER OF ELBIT IMAGING (2018)

NATURE OF THE BUSINESS

Elbit Imaging, an Israeli corporation, is an international holding company with direct and indirect subsidiaries focused on real estate investment and development. Elbit maintains a class of securities on the NASDAQ and registered pursuant to Section 12(b) of the Securities Exchange Act. Plaza Centers NV, a Dutch corporation that develops shopping and entertainment centers, was one of Elbit's majority-owned indirect subsidiaries.

INFLUENCE TO BE OBTAINED

According to the SEC, from 2007 to 2012, Elbit and Plaza paid third-party consultants and sales agents for services related to real estate transactions without verifying that the services had been provided. The contracted services related to gaining government approval for the Casa Radio Project, a development project in Romania, and assistance with the sale of a portfolio of shopping centers in the U.S. However, there are no documents suggesting that the consultants performed tasks related to government approvals for the Casa Radio Project or that the sales agents provided Elbit and Plaza with financial advice related to the portfolio sale. The SEC alleges that payments made to the consultants and sales agents recorded as business expenses were actually used to bribe Romanian government officials or were misappropriated.

ENFORCEMENT

On March 9, 2018, the SEC issued a cease-and-desist order against Elbit for violations of the books-and-records and internal controls provisions of the FCPA. Pursuant to the order, Elbit agreed to pay a $500,000 civil monetary penalty.

KEY FACTS

Citation. *In the Matter of Elbit Imaging Ltd.*, Admin. Proc. File No. 3-18397 (Mar. 9, 2018).

Date Filed. March 9, 2018.

Country. Romania.

Date of Conduct. 2007 – 2012.

Amount of the Value. $27 million.

Amount of Business Related to the Payment. Not stated.

Intermediary. Consultants; Sales agents.

Foreign Official. Unnamed Romanian government officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Israel.

Total Sanction. $500,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $500,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

175. IN THE MATTER OF DUN AND BRADSTREET CORPORATION (2018)

NATURE OF THE BUSINESS

Dun and Bradstreet Corporation ("D&B"), a Delaware corporation headquartered in Short Hills, New Jersey, is a provider of business financial information about companies worldwide. It sells commercial data to businesses and entities through subscriptions and reports about credit history, sales and marketing, counterparty risk exposure, and other business data information products. The company maintains stock that is registered with the SEC under Section 12(b) of the Exchange Act and trades on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

The alleged misconduct occurred in the midst of D&B's efforts to expand its China-based operations through a series of mergers, acquisitions, and joint ventures. Between 2006 and 2012, two of D&B's indirect subsidiaries allegedly made improper payments to obtain confidential business information and personal data from Chinese government authorities.

In 2006, D&B entered into a joint venture with Chinese company Huaxia International Credit Consulting Co. Limited, together referred to as HDBC. Huaxia was targeted as a partner because of its connections to the Chinese government. In its due diligence, D&B discovered that Huaxia was sourcing information about Chinese businesses from various government agencies rather than publicly available sources. Business information, such as the type integral to D&B business model, is kept on file at Chinese government agencies. Access to such data is highly regulated under Chinese law, is granted in only limited circumstances, and there are express prohibitions against using the files for commercial activities. According to the SEC, D&B's management in China knew of these restrictions, but knew it could obtain this information by bribing Chinese government officials. To circumvent the legal restrictions on confidential business information, HDBC engaged third-party agents to make improper payments to government officials, believing that the use of third-parties would shield the company from legal liability. HDBC falsely recorded the illicit payments as legitimate data acquisition expenses.

In addition, the SEC alleges that D&B knowingly engaged an indirect subsidiary to obtain personal data on Chinese citizens in violation of Chinese law. Specifically, Roadway, an indirect subsidiary of D&B and a provider of direct marketing services in China, violated provisions of the FCPA by making improper payments to officials to obtain the non-public personal data, which D&B then used for its business operations. According to the SEC, D&B knew that Chinese law forbids obtaining citizens' private data from Chinese government entities or organizations. D&B also knew through its due diligence that Roadway obtained much of its information from third-parties, and that Roadway could not certify that no "rebates" were paid in connection with obtaining personal data. D&B is alleged to have conducted insufficient due diligence as to the legality of the Roadway-acquired data or potential rebates paid to third-parties for providing the data.

ENFORCEMENT

On April 23, 2018, the SEC settled its enforcement action against Dun and Bradstreet for violations of the FCPA's books-and-records and internal controls provisions. According to the cease-and-desist order, Dun and Bradstreet agreed to pay $6,077,820 in disgorgement, $1,143,664 in prejudgment interest,

KEY FACTS

Citation. *In the Matter of Dun and Bradstreet Corporation*, Admin. Proc. File No. 3-18446 (April 23, 2018).

Date Filed. April 28, 2018.

Country. China

Date of Conduct. 2006 – 2012.

Amount of the Value. $6,077,820

Amount of Business Related to the Payment.

Intermediary. Agents; Subsidary.

Foreign Official. Unnamed government officials in China.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $9,221,484

Compliance Monitor/Reporting Requirements. None

Related Enforcement Actions. None.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

and a $2 million civil penalty—totaling $9,221,484 in sanctions.

On the same day, the DOJ issued a declination letter to D&B stating that it would decline prosecution under the FCPA Corporate Enforcement Policy, recognizing D&B's voluntary disclosure; cooperation, including identification of individuals responsible for the alleged misconduct; and remediation, including disciplining responsible employees.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

174. IN THE MATTER OF ALERE INC. (2017)

NATURE OF THE BUSINESS

Alere Inc., a Delaware corporation headquartered in Waltham, Massachusetts, is a manufacturer and seller of medical diagnostic devices. The company maintains stock that is registered with the SEC under Section 12(b) of the Exchange Act and trades on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to the SEC, Alere prematurely recorded more than $260 million in revenue in its financial statements and made improper payments to government officials in Colombia and India that were not accurately recorded in the company's books and records. Executives at Alere's subsidiaries in South Korea, Israel, South Africa, Ireland, and China allegedly violated the company's accounting procedures between 2011 and 2016. Alere, which grew rapidly in the 2000s and early 2010s by acquiring a number of foreign companies, established procedures to conform to U.S. generally accepted accounting procedures ("GAAP"). However, the company's finance department, headquartered in Massachusetts, delegated revenue-reporting authority to executives at Alere's foreign subsidiaries; those executives and their employees allegedly falsified sales to meet revenue targets. Employees at Alere's South Korean subsidiary, for example, repeatedly falsified shipping documents to suggest that the company had sold equipment and subsequently reported those false sales to Alere's finance department. The SEC alleges that Alere prematurely recorded more than $260 million in revenue.

In addition to the revenue misreporting, Alere's subsidiaries in Colombia and India reportedly paid government officials to win sales contracts for the company's products. From 2007 through 2012, Alere's Colombian subsidiary paid approximately $275,000 to a government client responsible for procuring medical products; that client ultimately purchased $7.8 million in Alere testing devices on behalf of the Colombian government. Alere's subsidiary masked the payments as fees for consulting services, although no such services were provided. Meanwhile, in 2011, Alere's Indian subsidiary won a contract with a local government to supply 200,000 malaria testing kits. Acting through a conduit who communicated with the subsidiary, the government officials allegedly offered to increase the order to 1,000,000 kits in exchange for a four percent sales commission. According to the SEC, Alere agreed to the arrangement, which generated approximately $150,000 in profit.

ENFORCEMENT

On September 28, 2017, the SEC settled its enforcement action against Alere for violations of the FCPA's books-and-records and internal controls provisions. According to the cease-and-desist order, Alere agreed to pay $3,328,689 in disgorgement, $495,196 in prejudgment interest, and a $9.2 million civil penalty—totaling $13,023,885 in sanctions.

See Parallel Litigation Digest Number H-A23.

KEY FACTS

Citation. *In the Matter of Alere Inc.*, Admin. Proc. File No. 3-18228 (September 28, 2017).

Date Filed. September 28, 2017.

Country. Colombia, India (Books-and-Records); China, Ireland, Israel, South Africa, South Korea (Internal Controls).

Date of Conduct. 2011 – 2016.

Amount of the Value. $275,000 (Colombia); four percent sales commission (India).

Amount of Business Related to the Payment. Approximately $3,300,000 in profit.

Intermediary. Unnamed India-based distributor.

Foreign official. Unnamed government officials in Colombia and India.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $13,023,885.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

173. IN THE MATTER OF TELIA COMPANY AB (2017)

NATURE OF THE BUSINESS

Telia Company AB is a telecommunications company organized under the laws of Sweden which operates throughout Europe and Asia. Prior to September 5, 2007, Telia's securities were registered with the SEC under Section 12(b) of the Exchange Act. Telia operates through a wide network of subsidiaries and joint ventures.

INFLUENCE TO BE OBTAINED

According to the SEC, throughout the relevant period, Telia paid approximately $330 million in bribes to an Uzbek government official ("Uzbek Official"). Telia then recorded those payments as legitimate lobbying and consulting services, without any documentation that they ever occurred.

In 2006, Telia began exploring expansion opportunities in the Eurasia market. It identified Uzbekistan as a target market and, in particular, COSCOM, an existing Uzbek telecommunications operator, as an acquisition target to facilitate the expansion. The Uzbekistan telecommunications market was highly regulated by the government, and any issue of licenses, frequencies, channels, and number blocks must be approved by government officials. Throughout the relevant time period, Telia developed and maintained a relationship with the unnamed Uzbek Official, who was a family member of the President of Uzbekistan at the time and could exert influence over officials who regulated the telecommunications market.

Telia accomplished its expansion through a series of agreements with the Uzbek Official. According to the SEC, Telia understood that corrupt payments to the Uzbek Official were required to operate in Uzbekistan. In July 2007, Telia entered into an agreement to provide the Uzbek Official with an ownership stake in COSCOM, as well as other payouts, in exchange for the official causing government regulators to issue licenses, frequencies, and number blocks.

In its effort to acquire 3G, and later 4G, licenses, Telia also fraudulently paid the Uzbek Official, through a network of sham holding companies, fees for consulting services that were never provided. These payments should have alerted Telia's managers, since the licenses sought could only have been obtained directly from the telecommunications regulator in Uzbekistan, and for which up-front payments were not required.

ENFORCEMENT

On September 21, 2017, the SEC settled its enforcement action against Telia for violations of the FCPA's anti-bribery and internal controls provisions. According to the cease-and-desist order, Telia agreed to pay $457,000,000 in disgorgement.

See DOJ Digest Number B-189

KEY FACTS

Citation. *In the Matter of Telia Company AB.*, Admin. Proc. File No. 3-18185 (September 21, 2017).

Date Filed. September 21, 2017.

Country. Uzbekistan.

Date of Conduct. 2007 – 2010.

Amount of the Value. $330,000,000

Amount of Business Related to the Payment. Approximately $2,500,000,000 in profit.

Intermediary. Shell Company.

Foreign official. Unnamed government official in Uzbekistan.

FCPA Statutory Provision. Anti-bribery, Internal Controls

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Sweden.

Total Sanction. $457,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Telia Company AB*, No. 1:17-cr-00581-GBD (S.D.N.Y. 2017); *United States v. Coscom*, No. 1:17-cr-00581 (S.D.N.Y. 2017).

Total Combined Sanction. $965,603,972 (Global Resolution); $691,603972 (U.S. Recovery).[96]

[96] The Global Resolution includes sanctions imposed on Telia by U.S., Dutch, and Swedish agencies. The U.S. Recovery only includes sanctions paid to U.S. authorities, and may be further reduced based on disgorgment that may be imposed by Dutch or Swedish regulators.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

172. IN THE MATTER OF HALLIBURTON COMPANY AND JEANNOT LORENZ (2017)

NATURE OF THE BUSINESS

Halliburton Company, a Delaware corporation headquartered in Houston, Texas, is an oilfield services company that, during the relevant time period, operated in more than 70 countries. The company maintains stock that is registered with the SEC under Section 12(b) of the Exchange Act and trades on the New York Stock Exchange. Jeannot Lorenz, a French citizen, is a former Halliburton vice president who, from 2008 to 2013, led Halliburton's local content efforts in Angola.

INFLUENCE TO BE OBTAINED

According to the SEC, officials with Sonangol, Angola's state-owned oil company, threatened in 2008 to not award additional contracts to Halliburton unless the company agreed to increase its local content efforts with Angolan-owned businesses. In response to that threat, Halliburton attempted to contract with an Angolan company that promised to provide ground transportation and real estate management services; that company was owned by a former Halliburton employee who resided next to a Sonangol official with authority to modify or terminate contracts awarded to Halliburton. According to the SEC, Halliburton and the Angolan company could not reach an agreement with respect to the ground transportation services, although Halliburton agreed to rent commercial and residential real estate from the Angolan company at above-market rates. Under the same agreement, the Angolan company promised to provide quarterly reports to Halliburton on the local real estate market. No such reports were ever rendered.

The SEC alleges that Jeannot Lorenz violated Halliburton's internal accounting controls by helping award the $3.705 million contract to the Angolan company. Halliburton's internal accounting controls include specific procedures for selecting a supplier or subcontractor: the company must first identify the need for a particular service, not the supplier itself. By contrast, Lorenz allegedly identified a supplier—the Angolan company—and only later considered Halliburton's need for the supplier's services. According to the SEC, Lorenz also violated Halliburton's internal accounting controls by failing to solicit bids from other suppliers or to offer a sufficient explanation for the single-source bid. Finally, Lorenz allegedly backdated Halliburton's contract with the Angolan company and paid the company for services never rendered; in doing so, Lorenz falsified Halliburton's books-and-records and caused Halliburton's violations of the FCPA's books-and-records and internal controls provisions.

ENFORCEMENT

On July 27, 2017, the SEC settled its enforcement action against Halliburton Company and Jeannot Lorenz for violations of the FCPA's books-and-records and internal controls provisions. According to the cease-and-desist order, Halliburton agreed to pay $14 million in disgorgement, $1.2 million in prejudgment interest, and a $14 million civil penalty—totaling $29.2 million in sanctions. Moreover, Halliburton is required to retain an independent compliance consultant for eighteen months. Lorenz agreed to pay a $75,000 civil penalty.

KEY FACTS

Citation. *In the Matter of Halliburton Company and Jeannot Lorenz*, Admin. Proc. File No. 3-18080 (July 27, 2017).

Date Filed. July 27, 2017.

Country. Angola.

Date of Conduct. 2010 – 2011.

Amount of the Value. $3,705,000.

Amount of Business Related to the Payment. Approximately $14 million in profit.

Intermediary. Unnamed Angolan company.

Foreign official. Unnamed official at Sonangol, Angola's state-owned oil company.

FCPA Statutory Provision.

- **Halliburton**. Books-and-Records; Internal Controls.
- **Lorenz**. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer (Halliburton); Agent of Issuer (Lorenz).

Defendant's Citizenship. United States (Halliburton); France (Lorenz).

Total Sanction. $29,200,000 million (Halliburton); $75,000 (Lorenz).

Compliance Monitor/Reporting Requirements. Independent Compliance Consultant (18 months).

Related Enforcement Actions. None.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

171. SEC V. MICHAEL L. COHEN (E.D.N.Y. 2017)
SEC V. VANJA BAROS (E.D.N.Y. 2017)

NATURE OF THE BUSINESS

Michael L. Cohen, a dual citizen of the U.S. and U.K. residing in London, was a partner at Och-Ziff Capital Management LLC. Cohen worked closely with Vanja Baros, an Australian citizen residing in the U.K., who was an analyst in the private investments group at Och-Ziff's European office. Och-Ziff, which is among the world's largest hedge funds, provides investment advisory and management services in exchange for management fees and interest income. Och-Ziff's common stock is registered with the SEC and is listed on the New York Stock Exchange. In September 2016, Och-Ziff resolved an enforcement action by the DOJ and SEC for violations of the FCPA.

INFLUENCE TO BE OBTAINED

The SEC claims that between 2007 and continuing through at least August 2012, Baros and Cohen allegedly executed multiple schemes involving corrupt transactions and bribes to high-ranking government officials in several African countries including Libya, Chad, Niger, Guinea, Congo, and the Democratic Republic of the Congo. According to the SEC, Baros began working with Cohen at Och-Ziff in 2007 and participated in multiple corrupt transactions that aimed to secure Och-Ziff special access to investment opportunities in Africa, obtain or retain business for the hedge fund or its subsidiaries, and financially benefit themselves in the process.

To facilitate the various schemes, Cohen and Baros, acting on behalf of Och-Ziff, allegedly engaged the services of multiple agents, intermediaries, and business partners who promoted themselves as having connections to high-ranking foreign government officials and, according to the SEC, typically had reputations for engaging in unsavory business practices. Baros and Cohen later allegedly funneled tens of millions of dollars (often from Och-Ziff investor accounts) to those agents, intermediaries, and business partners, knowing that at least of portion of those monies would be paid as bribes to government officials.

ENFORCEMENT

On January 26, 2017, the SEC filed a complaint against Baros and Cohen in the Eastern District of New York. The complaint charged Baros and Cohen with multiple violations of the FCPA, as well as multiple counts of aiding and abetting Och-Ziff's violations of the FCPA and the Investment Advisers Act. Cohen was also separately charged with one substantive violation of the Investment Advisers Act.

On July 12, 2018, the court granted Cohen's and Baros's motion to dismiss because the claims against them were outside the five-year statute of limitations period that applied to all of the forms of relief sought by the SEC.

See DOJ Digest Number B-170 and B-173.
See SEC Digest Number D-160.
See Ongoing Investigation Number F-43.

KEY FACTS

Citation. *SEC v. Cohen & Baros*, No. 1:17-cv-00430 (E.D.N.Y. 2017).

Date Filed. January 26, 2017.

Country. Chad, Congo, Guinea, Libya, Niger.

Date of Conduct. 2007 – 2012.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Customs Broker or Agent/Consultant; Sales Agent/Consultant.

Foreign Official. Unnamed foreign officials of Chad, Congo, the Democratic Republic of the Congo, Guinea, Libya, and Niger.

FCPA Statutory Provision. Anti-Bribery; Internal Controls; Aiding and Abetting (Anti-Bribery; Books-and-Records; Internal Controls)

Other Statutory Provision. Aiding and Abetting (Investment Adviser Fraud (Advisers Act Section 206(1), 206(2))).

Disposition. Acquitted (Baros & Cohen).

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. Australia (Baros); United States (Cohen); United Kingdom (Cohen).

Total Sanction. None.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In the Matter of Och-Ziff Capital Management Group, OZ Management LP, Daniel S. Och, and Joel M. Frank*; *United States v. Och-Ziff Capital Management Group LLC*; *United States. v. OZ Africa Management GP, LLC*; *United States v. Mebiame*; *United States v. Mebiame*.

Total Combined Sanction. None.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

170. IN THE MATTER OF ORTHOFIX INTERNATIONAL N.V. (2017)

NATURE OF THE BUSINESS

Orthofix International is a Curacao company with its principal headquarters in Lewisville, Texas. Orthofix do Brasil LTDA is its Brazilian subsidiary. Orthofix is a medical device company that develops and sells surgical and non-surgical medical products to medical professionals in various market sectors. Orthofix do Brasil markets and sells extremity fixations products through direct and indirect sales to public and private sector customers. Orthofix maintains a common stock on the Nadsaq Global Select Market.

INFLUENCE TO BE OBTAINED

According to the SEC, Orthofix do Brasil entered into agreements with third-party commercial representatives to directly sell its products to hospitals and doctors in Brazil. Orthofix do Brasil paid commissions to those commercial representatives, who then used a portion of their commissions to make agreed upon payments to doctors. Additionally, the SEC alleges that Orthofix do Brasil used third-party distributors to make improper payments to doctors. The SEC claims that Orthofix lacked adequate training, policies, processes, and corporate culture that would have allowed employees at its subsidiaries to raise compliance concerns to the parent level. In addition, the SEC alleges that Orthofix do Brasil improperly recorded payments and discounts, portions of which were used to make improper payments, rendering Orthofix's books and records inaccurate. Furthermore, the SEC maintains that Orthofix failed in a timely manner to devise and maintain an adequate system of internal accounting controls in Brazil for the setting, approval, and payment of commissions and discounts.

ENFORCEMENT

On January 18, 2017, the SEC announced that it had resolved an FCPA enforcement action against Orthofix for violations of the FCPA's books-and-records and internal controls provisions. According to the Commission's cease-and-desist order, Orthofix was required to pay a civil penalty of approximately $6 million.

See DOJ Digest Number B-133.

See SEC Digest Number D-109.

KEY FACTS

Citation. *In the Matter of Orthofix International N.V.*, Admin. Proc. File No. 3-17800 (2017).

Date Filed. January 18, 2017.

Country. Brazil.

Date of Conduct. 2011 – 2013.

Amount of the Value. Not stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Third-party Commercial Representatives and Distributors.

Foreign official. Unnamed doctors at government hospitals.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Curacao.

Total Sanction. $6,119,375.

Compliance Monitor/Reporting Requirements. Independent Monitor.

Related Enforcement Actions. *United States v. Orthofix Int'l, N.V.*; *SEC v. Orthofix Int'l N.V.*

Total Combined Sanction. $6,119,375.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

169. IN THE MATTER OF SOCIEDAD QUÍMICA Y MINERA DE CHILE, S.A. (2017) IN THE MATTER OF PATRICIO CONTESSE GONZÁLEZ (2018)

NATURE OF THE BUSINESS

Sociedad Química y Minera ("SQM") is a multinational mining and chemical company headquartered in Santiago, Chile. Shares of SQM, in the form of American Depository Receipts, are traded on the New York Stock Exchange and are registered with the Commission.

Patricio Contesse González, a Chilean citizen and resident, was SQM's Chief Executive Officer from at least 1990 to March 2015.

INFLUENCE TO BE OBTAINED

According to the SEC, from 2008 to 2015, SQM maintained a discretionary fund for use by the company's CEO for, among other things, travel, publicity and advisory services for the office of the CEO. The fund ranged in value from $3.3 million to $5.7 million per year. The SEC claims that SQM allegedly failed to exercise proper due diligence, verification, or oversight of the discretionary fund to ensure that the account was used for proper and lawful purposes.

As a result, an SQM executive allegedly made approximately $14.75 million in improper payments to Chilean politicians, political candidates and individuals connected to them. Most of the payments were allegedly made using fictitious documentation submitted to SQM by Chilean officials or individuals associated with them who posed as legitimate vendors to the company. According to the SEC, the payments were not supported by documentation that demonstrated that any services were provided in connection with the payments.

ENFORCEMENT

On January 13, 2017, the SEC announced that it had resolved an FCPA enforcement action against SQM for violations of the books-and-records and internal controls provisions of the FCPA. According to the SEC's order, SQM was required to pay a $15 million civil penalty and engage an independent compliance monitor for a period of two years. On September 25, 2018, the SEC announced in a separate order that it had settled the FCPA action against Mr. Contesse González for alleged violations of the FCPA's books-and-records and internal control provisions. He was required to pay a civil monetary penalty of $125, 000 pursuant to the settlement.

The DOJ separately resolved an FCPA enforcement action against the company wherein SQM agreed to pay approximately $15 million in criminal penalties.

See DOJ Digest Number B-183.

KEY FACTS

Citation. *In the Matter of Sociedad Química y Minera de Chile, S.A.*, Admin. Proc. File No. 3-17774 (Jan. 13, 2017); *In the Matter of Contesse González*, Admin. Proc. File No. 3-18839 (Sept. 25, 2018).

Date Filed. January 13, 2017 (SQM); September 25, 2018 (Contesse González).

Country. Chile.

Date of Conduct. 2008 – 2015.

Amount of the Value. Approximately $14,750,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Subcontractor.

Foreign Official. Unnamed Chilean politicians, political candidates, and associated individuals.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer (SQM); Agent of Issuer (Contesse González).

Defendant's Citizenship. Chilean.

Total Sanction. $15,000,000 (SQM); $125,000 (Contesse González).

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Sociedad Química y Minera de Chile, S.A.* (deferred prosecution agreement).

Total Combined Sanction. $30,487,500.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

168. IN THE MATTER OF BIOMET, INC. (2017)

NATURE OF THE BUSINESS

Biomet, Inc. is a medical device company headquartered in Warsaw, Indiana that sells medical devices and dental products. Prior to 2008, Biomet's stock was registered with the Commission. In September 2007, Biomet was acquired by a group of private equity funds and went private. Following the acquisition, Biomet continued to file periodic reports with the Commission.

INFLUENCE TO BE OBTAINED

In March 2012, Biomet consented, as part of a settlement with the Commission, to a permanent injunction against future violations of Sections 30(A), 13(b)(2)(A), 13(b)(2)(B) of the Exchange Act, as well as the appointment of an independent compliance monitor for a period of three years, for FCPA violations in multiple countries.

In June 2015, Biomet was acquired by Zimmer Holdings, Inc. and was renamed Zimmer Biomet. Zimmer Biomet began trading on the New York Stock exchange and the SIX Swiss Stock exchange.

According to the SEC, from approximately 2008 until 2013, Biomet, through its subsidiary and third-party customs brokers, allegedly made unlawful payments to Mexican customs officials to facilitate the importation of Biomet's unregistered and mislabeled dental products into Mexico.

In addition, the Commission claims that from 2009 to 2013, Biomet improperly recorded transactions with a known prohibited distributor in Brazil as transactions with another distributor. The SEC claims that Biomet had prohibited the use of the distributor after determining that the distributor made improper payments to public doctors in Brazil from 2000 to August 2008 to obtain sales of Biomet products, which was the subject of Biomet's 2012 settlement with the Commission and criminal authorities for FCPA violations. According to the SEC, Biomet could not account for the prohibited distributor's use of certain funds nor determine if the prohibited distributor had continued the same improper conduct. As a result, the SEC concluded that Biomet failed to appropriately record the transactions in Mexico and Brazil in its books and records. Further, the SEC accused Biomet of failing to devise and maintain a sufficient system of internal accounting controls.

ENFORCEMENT

On January 12, 2017, the SEC announced that it had resolved an FCPA enforcement action against Biomet for violations of the FCPA's anti-bribery, books-and-records, and internal controls provisions. According to the SEC's cease-and-desist order, Biomet was required to pay disgorgement of $5,820,100, prejudgment interest of $702,705, and a civil penalty of $6,500,000 for a total sanction of $13,022,805. Biomet was also ordered to engage an independent compliance monitor for a three-year period. Zimmer Biomet separately resolved an enforcement action with the DOJ whereby the company agreed to pay a criminal fine of $17,460,300.

See DOJ Digest Number B-182 and 130.
See SEC Digest Number D-107.
See Ongoing Investigation Numbers F-56.

KEY FACTS

Citation. *In the Matter Biomet, Inc.*, Admin. Proc. File No. 3-17771 (Jan. 12, 2017).

Date Filed. January 12, 2017.

Country. Brazil, Mexico.

Date of Conduct. 2008 – 2013.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Sales Agent/Consultant; Subcontractor.

Foreign official. Unnamed Mexican customs officials; Unnamed Brazilian officials.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $13,002,805.

Compliance Monitor/Reporting Requirements. Independent Compliance Monitor.

Related Enforcement Actions. *United States v. Biomet, Inc.*; *SEC v. Biomet, Inc.*; *United States v. Zimmer Biomet Holdings, Inc.*; *United States v. Jerds Luxembourg Holding S.ÀR.L.*

Total Combined Sanction. $27,702,805.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

167. IN THE MATTER OF CADBURY LIMITED & MONDELĒZ INTERNATIONAL, INC. (2017)

NATURE OF THE BUSINESS

Mondelēz, formerly known as Kraft Foods Inc., is a Virginia company with its principal headquarters in Deerfield, Illinois. In 2010, Mondelēz was known as Kraft Foods Inc. Kraft was a global manufacturer of food, beverage, and snack products. Kraft maintained a common stock on the New York Stock Exchange that was registered with the Commission. Mondelēz acquired the U.K.-incorporated and based Cadbury Limited in February 2010. Prior to the acquisition, Cadbury had a class of ADRs registered with the Commission and traded on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to the SEC, in early 2010, Cadbury India Limited, a Cadbury subsidiary, retained an agent to interact with Indian government officials to obtain licenses and approvals for a chocolate factory in Baddi, Himachal Pradesh, India. The SEC claims that Cadbury India failed to conduct appropriate due diligence and monitor the agent to ensure that funds paid to the agent were not used for improper or unauthorized purposes. In addition, Cadbury is accused of failing to accurately and fairly record the nature of the services rendered by the agent into its books and records.

ENFORCEMENT

On January 6, 2017, the SEC announced that it had resolved an FCPA enforcement action against Mondelēz for violations of the FCPA's books-and-records and internal controls provisions. According to the Commission's cease-and-desist order, Mondelēz was required to pay a civil penalty of $13 million.

KEY FACTS

Citation. *In the Matter of Cadbury Limited and Mondelēz International, Inc.*, Admin. Pro. File No. 3-17759 (2017).

Date Filed. January 6, 2017.

Country. India.

Date of Conduct. 2010.

Amount of the Value. Not stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Agent.

Foreign official. Indian government officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $13,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $13,000,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

166. IN THE MATTER OF GENERAL CABLE CORPORATION (2016)
IN THE MATTER OF KARL J. ZIMMER (2016)

NATURE OF THE BUSINESS

General Cable Corporation is a publically-traded company based in Highland Heights, Kentucky. General Cable is a global manufacturer of copper, aluminum, and fiber optic wire and cable products. General Cable's common stock is registered with the Commission and trades on the New York Stock Exchange. Karl J. Zimmer, a resident of Douglas, Georgia, was a Senior Vice President for General Cable's Europe and Africa Supply Chain and Global Supply Chain.

INFLUENCE TO BE OBTAINED

According to the SEC, between 2003 and 2015, multiple General Cable subsidiaries made improper payments worth approximately $19 million to employees or officials at various state-owned enterprises located in Angola, Thailand, China, Indonesia, Bangladesh, and Egypt. The SEC claims that the alleged schemes generated illicit profits in excess of $50 million. According to the SEC, General Cable's subsidiaries made the improper payments through local agents and distributors, in the form of sales commissions, rebates, discounts, and other fees, who then passed along the payments to foreign government officials. The SEC also alleged that the improper payments were made despite numerous red flags that the agents and distributors were bribing foreign officials. In some instances, the SEC claims that even when General Cable became aware of the alleged schemes, it failed to take appropriate action to investigate and ultimately stop the improper practices.

Zimmer was allegedly responsible for approving improper commission payments to a third-party agent ("Agent") to promote General Cable's sales to Angolan state-owned enterprises. The SEC claims that Zimmer approved the multiple commissions totaling $342,613 despite knowing that (i) General Cable's policies prohibited excessive commissions to third parties on sales to state-owned enterprises, (ii) General Cable had commenced an investigation into the Agent, and (iii) General Cable had prohibited past commissions to the Agent while the investigation was pending and without further approval.

ENFORCEMENT

On December 29, 2016, the SEC announced that it had resolved an FCPA enforcement action against General Cable for violations of the FCPA's anti-bribery, books-and-records, and internal controls provisions. According to the SEC's cease-and-desist order, General Cable was required to pay disgorgement of $51,174,237 and prejudgment interest of $4,107,660, for a total sanction of $55,281,897.00. The DOJ separately resolved an enforcement action against General Cable through a non-prosecution agreement that required General Cable to pay a criminal penalty of $20,469,694.80. In addition, on December 29, 2016, the SEC announced that it had resolved a separate enforcement action against Zimmer for violations of the FCPA. As part of the SEC's cease-and-desist order, Zimmer was ordered to pay a $20,000 civil penalty.

See DOJ Digest Number B-181.
See Parallel Litigation Digest Number H-A27.

KEY FACTS

Citation. *In the Matter of General Cable Corporation,* Admin. Proc. File No. 3-17755 (Dec. 29, 2016); *In the Matter of Karl J. Zimmer*, Admin. Proc. File No. 3-17756 (Dec. 29, 2016).

Date Filed. December 29, 2016.

Country. Angola, Thailand, China, Indonesia, Bangladesh, and Egypt.

Date of Conduct. 2003 – 2015.

Amount of the Value. Approximately $19 million (General Cable); Approximately $342,613 (Zimmer).

Amount of Business Related to the Payment. Approximately $51 million (General Cable); Not Stated (Zimmer).

Intermediary. Third-Party Agents, Distributors.

Foreign official. Unnamed employees and officials from state-owned entities in Angola, Thailand, Indonesia, Bangladesh, China, and Egypt.

FCPA Statutory Provision.

- **General Cable**. Anti-Bribery; Books-and-Records; Internal Controls.
- **Zimmer**. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist (General Cable); Cease-and-Desist (Zimmer).

Defendant Jurisdictional Basis. Issuer (General Cable); Agent of Issuer (Zimmer).

Defendant's Citizenship. United States (General Cable); United States (Zimmer).

Total Sanction. $55,281,897 (General Cable); $20,000 (Zimmer).

Compliance Monitor/Reporting Requirements. 3-Year Self-Reporting Requirement.

Related Enforcement Actions. *In re General Cable Corp.* (Dec. 22, 2016).

Total Combined Sanction. $75,751,591.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

165. SEC V. TEVA PHARMACEUTICAL INDUSTRIES LTD. (S.D. FLA. 2016)

NATURE OF THE BUSINESS

Teva Pharmaceutical Industries Ltd. is an Israeli pharmaceutical and drug manufacturing company with operations around the world. It maintains American Depository Receipts on the New York Stock Exchange, and, from 1987 to 2012, it listed its ADRs on the Nasdaq National Market.

INFLUENCE TO BE OBTAINED

According to the SEC, between approximately 2002 and 2012, Teva, through its subsidiaries in Russian, Ukraine, and Mexico, made illegal payments to government officials to assist the company in obtaining or retaining business.

In Russia, between 2010 and 2012, the SEC explains that Teva's wholly-owned subsidiary, Teva LLC ("Teva Russia"), utilized a local distributor ("Russian Distributor") to package and distribute its products. The Russian Distributor's owner was allegedly the wife of a high-level government official ("Russian Official") who had owned or controlled the entity prior to obtaining his position in the government. With Teva's knowledge, the Russian Official improperly used his position to benefit Teva by, for example, ensuring that Teva maintained its market share and securing the company lucrative supply agreements for its drugs in Russia. In exchange, Teva Russia partnered with the Russian Distributor to ensure that the Russian Official profited from Teva's Russian operations.

In Ukraine, from 2002 to 2011, Teva also allegedly bribed a government official in Ukraine ("Ukrainian Official") to obtain improper business advantages for its products. The SEC claims that the Ukrainian Official used his government position to improperly assist in the clinical approval and registration of Teva's drugs in Ukraine. In exchange for these advantages, Teva allegedly provided the Ukrainian Official with $200,000 and five paid vacations, all of which it recorded as legitimate business expenses.

In Mexico, between 2007 and 2012, Teva's Mexican subsidiary ("Teva Mexico") allegedly made improper payments to doctors employed at government-operated health facilities to influence those doctors' drug approvals, purchasing decisions, and prescription selections. The alleged scheme was uncovered after Teva received an anonymous letter in 2007 accusing Teva Mexico of paying bribes to government officials; however, according to the SEC, Teva failed to implement sufficient compliance measures to end the practices, which continued until at least 2012.

ENFORCEMENT

On December 22, 2016, the SEC announced that it had resolved its FCPA enforcement action against Teva. As part of its settlement agreement with the SEC, Teva is required to pay over $214 million in disgorgement and interest. In a separate deferred prosecution agreement with the DOJ, Teva agreed to pay a criminal penalty of $283 million.

See DOJ Digest Number B-179.
See Parallel Litigation Digest Number H-D14.

KEY FACTS

Citation. *SEC v. Teva Pharm. Indus. Ltd.*, No. 1:16-cv-25298 (S.D. Fla. 2016).

Date Filed. December 29, 2016.

Country. Russia, Ukraine, Mexico.

Date of Conduct. 2002 – 2012.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Approximately $214 million.

Intermediary. Third-party Distributors.

Foreign official. An unnamed Russian government official; an unnamed Ukrainian government official; doctors employed by Mexican state-owned health facilities.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Israel.

Total Sanction. $236,101,824.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *United States v. Teva Pharm. Indus. Ltd.*; *United States v. Teva LLC.*

Total Combined Sanction. $519,279,172.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

164. SEC V. BRASKEM, S.A. (D.D.C. 2016)

NATURE OF THE BUSINESS

Braskem S.A., headquartered in São Paulo, Brazil, produces petrochemical and thermoplastic products. Braskem maintains American Depository Shares on the New York Stock Exchange. It is a partially-owned subsidiary of Odebrecht S.A., a private holding company in Brazil that consists of a conglomerate operating in various sectors, including engineering, oil and gas, and real estate development.

INFLUENCE TO BE OBTAINED

According to the SEC, between 2006 and 2014, Braskem engaged in a scheme to direct improper payments to various Brazilian officials to assist the company retain or obtain business. As part of the scheme, Braskem allegedly made approximately $250 million in improper payments, which netted the company $325 million in profits.

Specifically, the SEC alleges that Braskem used a myriad of intermediaries, subsidiaries, and offshore bank accounts in an effort to disguise the improper payments to government officials. Braskem allegedly created false commissions and invoices for consultants at shell companies for services that were never actually rendered. Further, the shell companies often transferred the funds they received from Braskem to off-book accounts held by Braskem's controlling company, Odebrecht. Once the money arrived in Odebrecht's control, it facilitated the payments to the government officials through another web of disguised companies and bank accounts.

According to the SEC, the alleged scheme involved three different components. First, Braskem allegedly paid $4.3 million to an official at Brazil's state-owned oil company, Petrobras, and a Brazilian congressman, in exchange for those officials' willingness to ensure that Petrobras did not terminate a Braskem-Petrobras joint venture. Second, Braskem allegedly paid the same Petrobras official and Brazilian congressman $20 million in exchange for those officials' willingness to influence a Petrobras-Braskem supply contract to reduce the cost of a key petrochemical input for Braskem. Third, Braskem allegedly paid bribes to Brazilian officials in exchange for certain legislative measures that gave Braskem beneficial tax credits.

ENFORCEMENT

On December 21, 2016, the SEC announced a global settlement against Braskem alongside the DOJ, as well as Brazilian and Swiss authorities. According to the SEC, Braskem violated the FCPA's anti-bribery, books-and-records, and internal controls provisions. As part of Braskem's resolution with the SEC, the company agreed to disgorge $325 million in profits. Of the total disgorgement, Braskem agreed to pay $65 million to the SEC and $260 million to Brazilian authorities. Separately, Braskem entered into a plea agreement with the DOJ wherein it agreed to pay a total criminal penalty of $632.6 million divided between U.S., Brazilian, and Swiss authorities.

See DOJ Digest Number B-178.
See Parallel Litigation Number H-A20.

KEY FACTS

Citation. *SEC v. Braskem, S.A.*, No. 1:16-cv-02488 (D.D.C. 2016)

Date Filed. December 21, 2016.

Country. Brazil.

Date of Conduct. 2006 – 2014.

Amount of the Value. Approximately $250 million.

Amount of Business Related to the Payment. Approximately $325 million.

Intermediary. Offshore Shell Companies; Agents.

Foreign official. An official from the Brazilian state-owned oil company, Petrobras; Multiple unnamed Brazilian legislators.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Brazil.

Total Sanction. $325,000.[97]

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v.Braskem S.A.*

Total Combined Sanction. $957 million (Global Resolution); $160 million (U.S. Recovery).[98]

[97] Braskem will receive credit up to $260 million for any penalty paid to Brazilian authorities.

[98] The $957 million global resolution was divided between Brazilian, Swiss, and U.S. authorities.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

163. IN THE MATTER OF JP MORGAN CHASE & CO. (2016)

NATURE OF THE BUSINESS

JPMorgan is a Delaware corporation headquartered in New York, New York. JPMorgan offers banking and financial services in North America and worldwide, including the Asia-Pacific region. JPMorgan maintains a class of common stock that is registered with SEC and trades on the New York Stock Exchange. JPMorgan Securities (Asia Pacific) Ltd. ("JPMorgan-APAC") is JPMorgan's wholly owned Chinese subsidiary headquartered in Hong Kong.

INFLUENCE TO BE OBTAINED

According to the SEC, between 2006 and 2013, JPMorgan provided valuable jobs and internships to the relatives and friends of certain key executives of its clients, prospective clients, and foreign government officials in the Asia-Pacific region to obtain and retain business or other benefits for the bank. Those benefits allegedly included not only future business, but also assistance from government agencies (who were also clients) for the bank and the bank's clients in navigating complex regulatory landscapes.

The alleged scheme occurred at JPMorgan-APAC, where the JPMorgan subsidiary allegedly created a client referral program that was used to bypass the company's standard hiring practices. While non-referral candidates were subjected to a rigorous screening process and competed against other candidates for a limited number of positions, candidates referred through the client-referral program did not compete against other candidates based on merit and, in most instances, were less qualified than the non-referral candidates.

Over the seven-year life span of the client referral program, JPMorgan hired approximately 200 interns and full-time employees at the request of its Asia-Pacific clients. Of the 200 interns and employees, 100 candidates were referred by foreign government officials at more than twenty different Chinese stated-owned enterprises. According to the SEC, JPMorgan officials knew that hiring relatives and friends of foreign government officials for the purpose of obtaining or retaining business posed a risk of violating the FCPA, but nevertheless circumvented internal compliance controls to secure the candidates' employment.

ENFORCEMENT

On November 17, 2016, the SEC announced that it had resolved its enforcement action against JPMorgan for violations of the FCPA's anti-bribery, books-and-records, and internal controls provisions. According to the Commission's cease-and-desist order, JPMorgan would be required to pay disgorgement of $105,507,668 and prejudgment interest of $25,083,737—for a total sanction of $130,591,405. Separately, the Board of Governors of the Federal Reserve brought an enforcement action against JPMorgan, which included a penalty of $61.9 million. The DOJ separately brought an enforcement action against JPMorgan-APAC whereby the JPMorgan subsidiary was required to pay a $72 million criminal penalty.

See DOJ Digest Number B-175.
See Ongoing Investigation Number F-35.

KEY FACTS

Citation. *In the Matter of JP Morgan Chase & Co.*, Admin. Proc. File No. 3-17684 (Nov. 17, 2016).

Date Filed. November 17, 2016.

Country. China.

Date of Conduct. 2006 – 2013.

Amount of the Value. Approximately $100 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign official. Unnamed employees and executives from Chinese state-owned enterprises.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $130,591,405.

Compliance Monitor/Reporting Requirements. Three-year Reporting Requirement.

Related Enforcement Actions. *In the Matter of JPMorgan Securities (Asia Pacific) Ltd.*; *In the Matter of J.P. Morgan Chase & Co.*

Total Combined Sanction. $264,523,905.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

162. SEC V. EMBRAER, S.A. (S.D. FLA. 2016)

NATURE OF THE BUSINESS

Embraer, S.A. is a manufacturer and exporter of mid-sized commercial jets headquartered in São Paulo, Brazil. Embraer also supplies defense aircraft for the Brazilian Air Force and other countries throughout Africa, Asia, Europe, and Latin America. In 2015, Embraer employed over 22,000 employees and had revenues of just under $6 billion. During the relevant period of time, Embraer maintained a class of common shares that were registered with the SEC and were traded in the form of American Depository Receipts listed on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to the SEC, between 2005 and 2011, Embraer engaged in a series of improper business practices, including the bribery of foreign officials, in the Dominican Republic, Saudi Arabia, Mozambique, and India. Those alleged improper practices are described below.

Dominican Republic

According to the SEC, between 2008 and 2010, Embraer paid $3.52 million to a government official from the Dominican Republic to obtain an aircraft contract valued at approximately $96.4 million.

Beginning in 2007, Embraer initiated efforts to sell a series of military aircrafts to the Dominican Republic's air force. The SEC claims that negotiations were managed by a "Dominican Official" who held himself out to be the "Director of Programs and Projects FAD" and was later appointed as the General Manager/Managing Director of Projects and Programs to the Secretary of the Armed Forces of the Dominican Republic.

During the course of negotiations, the SEC alleges that the Dominican Official demanded a commission in exchange for ensuring that the Dominican government would finance the purchase of Embraer's aircrafts. In September 2008, Embraer executives allegedly agreed to pay the Dominican Official a 3.7% commission on the $96.4 million contract (totaling $3.52 million). The SEC claims that Embraer later allegedly executed consulting agreements with four separate Dominican agents to funnel the money to the Dominican Official. Although Embraer's legal department classified the agreements as "high risk," Embraer executives were allegedly able to circumvent the company's internal controls.

Saudi Arabia

According to the SEC, between 2009 and 2011, Embraer paid a Saudi Arabian government official $1.65 million to obtain a contract for the sale of three private jets to a Saudi Arabian state-owned entity.

Beginning in 2007, Embraer allegedly learned that an unnamed Saudi Arabian state-owned enterprise was interested in purchasing three used executive jets. Later, in 2009, an official from the Saudi Arabian state-owned enterprise (the "Saudi Official") allegedly told senior Embraer officials that he could convince the Saudi Arabian enterprise to purchase three new jets in exchange for an agreement to pay the Saudi Official a commission of $550,000 per aircraft. After Embraer finalized the sale of three new executive jets to the Saudi Arabian state-owned enterprise in May 2010, Embraer

KEY FACTS

Citation. *SEC v. Embraer, S.A.*, No. 0:16-cv-062501 (S.D. Fla. 2016).

Date Filed. October 31, 2016.

Country. Dominican Republic, India, Mozambique, Saudi Arabia.

Date of Conduct. 2005 – 2011.

Amount of the Value. Approximately $11.73 million.

Amount of Business Related to the Payment. $83,248,291.

Intermediary. Local Consultants/Agents; Shell Companies.

Foreign official. Former colonel of the Dominican Republic Air Force serving as representative during contract negotiations; Unnamed employees of a Saudi Arabian state-owned enterprise; Unnamed employees of a Mozambican state-owned airline; CEO of a Mozambican state-owned airline.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Complaint and Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Brazil.

Total Sanction. $98,248,291 ($20,000,000 credit for disgorgement paid to Brazilian Authorities).

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *United States v. Embraer S.A.*; *United States v. Steven.*

Total Combined Sanction. $205,533,381.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

allegedly funneled the $1.65 million commission to the Saudi Official through a South African company that was owned by an acquaintance of the Saudi Official.

Mozambique

According to the SEC, between May 2008 and September 2008, Embraer paid $800,000 to a Mozambican national (the "Mozambican Agent") with connections to Mozambican government officials to obtain a contract valued at $65 million. The SEC alleges that Embraer understood that at least a portion of the funds would be used to bribe Mozambican officials.

Specifically, beginning in approximately May 2008, the SEC explains that Embraer entered into negotiations with a state-owned Mozambican airline for the sale of two aircrafts worth $65 million. The SEC claims that during the course of the negotiations the Mozambican Agent contacted at least one Embraer official with the instruction that Embraer should make a "gesture" to unidentified Mozambican government officials. According to the SEC, the Mozambican Agent was a middleman for the government officials involved in the deal and Embraer officials believed they needed to pay the Mozambican Agent to win the contract. After Embraer allegedly offered to pay the Mozambican between $50,000 and $80,000 per aircraft, the CEO of the Mozambican state-owned airline threatened to end the negotiations if Embraer did not make a "gesture" of between $800,000 and $1 million. The SEC asserts that Embraer subsequently entered into a consulting agreement with the Mozambican Agent where Embraer agreed to pay a commission of $400,000 per aircraft.

India

According to the SEC, between 2005 and 2009, Embraer paid $5.76 million to an Indian consultant who assisted the company to obtain a defense contract with the Indian Air Force worth $208 million. The payments to the Indian consultant were made in spite of an Indian law that prohibited the use of agents for military sales. To conceal the agreement, Embraer allegedly executed multiple consulting agreements with entities in the U.K. and Singapore to conceal a $5.76 million commission that the company ultimately sought to pay the Indian consultant. The SEC claims that the transactions were misreported on Embraer's books and records.

ENFORCEMENT

On October 24, 2016, the SEC announced that it had settled an FCPA enforcement action against Embraer for violations of the FCPA's anti-bribery, books-and-records, and internal controls provisions. As part of the resolution, Embraer agreed to disgorge $83,816,476 and pay prejudgment interest of $14,431,815. Embraer also agreed to appoint an independent compliance monitor for a period of three years. On the same day, the DOJ announced that it had reached a deferred prosecution agreement with Embraer in connection with a parallel FCPA enforcement action. According to the DOJ, Embraer agreed to pay a criminal monetary penalty of $107,285,090.

See DOJ Digest Number B-174 and B-195.
See Parallel Litigation Digest Number H-A25.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

160. IN THE MATTER OF OCH-ZIFF CAPITAL MANAGEMENT GROUP LLC, OZ MANAGEMENT LP, DANIEL S. OCH, AND JOEL M. FRANK (2016)

NATURE OF THE BUSINESS

Och-Ziff Capital Management Group LLC is a New York-based hedge fund incorporated in Delaware, which maintains a class of common stock that is registered with the SEC and trades on the New York Stock Exchange. Och-Ziff controls numerous consolidated subsidiaries and affiliates through which it provides investment advisory and management services to Och-Ziff investor funds in return for management fees and incentive income. OZ Management Group LLC is a registered investment adviser incorporated in Delaware, which managed some of Och-Ziff's investment funds. Daniel S. Och, an American citizen, is the Chief Executive Officer and Chairman of Och-Ziff's Board of Directors, and he also is an officer and partner at OZ Management. Joel M. Frank is the Chief Financial Officer of Och-Ziff and is a U.S. citizen.

INFLUENCE TO BE OBTAINED

According to the SEC, from about 2007 to 2011, Och-Ziff entered into a series of transactions in which it paid bribes through intermediaries, agents, and business partners to high ranking government officials in multiple African countries, including Libya, Chad, Niger, Guinea, and the Democratic Republic of the Congo ("DRC"). The SEC claims that the bribes were allegedly paid with the specific knowledge of a senior Och-Ziff employee and that other Och-Ziff executives ignored red-flags to permit the transactions to proceed. The specific transactions are described below.

- In 2007, Och-Ziff secured a $300 million investment from the Libyan Investment Authority after allegedly paying bribes worth more than $3 million to Libyan government officials through a local agent.
- In 2007, Och-Ziff allegedly used $400,000 to pay a "deal fee" to a local Libyan agent, despite being aware of the high probability that some of those funds would be used as bribes to benefit a Libyan property development project into which Och-Ziff had invested $40 million.
- In 2007 and 2008, Och-Ziff allegedly loaned more than $86 million to a South African partner even though it was aware of the high probability that at least a portion of those funds would be used to bribe foreign officials in Chad and Niger in exchange for mining rights in those countries.
- In 2008, Och-Ziff allegedly provided a $124 million loan to an entity affiliated with an Israeli businessman to purchase mining assets in the DRC through bribing highly ranked officials. According to the SEC, certain Och-Ziff employees had knowledge of this transaction.
- In 2010 and 2011, Och-Ziff loaned the same Israeli businessman $130 million, of which $84.1 million was allegedly provided without any restrictions or oversight by Och-Ziff. The SEC claims that Och-Ziff employees knew that the Israeli businessman would use a portion of the funds to pay bribes to high ranking DRC government officials.
- In 2011, Och-Ziff allegedly purchased shares in a London-based oil exploration company from a South African partner, intending to provide him with capital to use elsewhere. The SEC claims that the South African partner paid more than $1 million of those funds to a local consultant who then used them to bribe government officials in Guinea.

KEY FACTS

Citation. *In the Matter of Och-Ziff Capital Management Group et al.*, Admin. Proc. File No. 3-17595 (Sept. 29, 2016).

Date Filed. September 29, 2016.

Country. Chad, Libya, Niger, Guinea, the Democratic Republic of the Congo.

Date of Conduct. 2007 – 2011.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Customs Broker or Agent/Consultant, Joint Venture; Sales Agent/Consultant; Subsidiary Company; Third-Party Distributors.

Foreign official. Unnamed government officials from Chad, the Democratic Republic of the Congo, Guinea, Libya, and Niger.

FCPA Statutory Provision.

- **Och-Ziff**. Anti-Bribery; Books-and-Records; Internal Controls.
- **Och**. Books-and-Records.
- **Frank**. Books-and-Records; Internal Controls.

Other Statutory Provision. Advisers Act §§ 206(1), 206(2), 206(4), and Rule 206(4)-8 (OZ Management).

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer (Och-Ziff); Agent of Issuer (OZ Management); Agent of Issuer (Och); Agent of Issuer (Frank).

Defendant's Citizenship. United States (Och-Ziff); United States (OZ Management); United States (Och); United States (Frank).

Total Sanction. $201,218,885 ($199,045,167 (Och-Ziff and OZ Management); $2,173,718 (Och)).

Compliance Monitor/Reporting Requirements. Compliance Monitor (Och-Ziff).

Related Enforcement Actions. *United States v. Och-Ziff Capital Management Group LLC*; *United States v. OZ Africa Management GP, LLC*; *SEC v. Cohen & Baros*; *United States v. Michael Leslie Cohen*; *United States v. Mebiame*.

Total Combined Sanction. $414,274,574.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

According to the SEC, Och-Ziff failed to conduct sufficient due diligence on the use of those funds to prevent the payment of bribes.

According to the SEC, Och and Frank personally approved several of the transactions in which bribes or improper payments were made, although they were not aware that bribes would be paid as a result. However, the SEC argued that they were aware of the high risk of corruption involved in the transactions, and thus they were found to have caused Och-Ziff's violations of the FCPA.

ENFORCEMENT

On September 29, 2016, the SEC announced that it had resolved its enforcement action against Och-Ziff for violations of the FCPA's anti-bribery, books-and-records, and internal controls provisions. Och-Ziff was also charged with multiple violations of the Investment Advisors Act for allegedly defrauding clients and prospective clients. Och-Ziff's subsidiary, OZ Management LP; Och-Ziff's founder, CEO, and Chairman of the Board, Daniel S. Och; and Och-Ziff's CFO, Joel M. Frank, were also named in the SEC's action. According to the SEC's order, Och-Ziff would be required to pay a total penalty of $199,045,167. In addition, Daniel S. Och required to pay total sanction of $2,173,718 for his involvement and oversight of the transactions in the DRC. The Commission's order also stated that a penalty would be assessed against Joel Frank at a later date.

The DOJ separately entered into an agreement with Och-Ziff that required the hedge-fund to pay an additional criminal penalty of $213,055,689.

See DOJ Digest Numbers B-170 and B-173.
See Ongoing Investigation Number F-43.
See Parallel Litigation Digest Number H-F26.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

159. IN THE MATTER OF ANHEUSER-BUSCH INBEV SA/NV (2016)

NATURE OF THE BUSINESS

Anheuser Busch InBev, a global brewer, is a Belgian company headquartered in Leuven, Belgium. AB InBev's American Depository Receipts trade on the New York Stock Exchange and are registered with the SEC pursuant to Section 12(b) of the Securities Exchange Act. AB InBev maintains operations in India through its wholly owned subsidiary, Crown Beers India Private Limited ("Crown").

INFLUENCE TO BE OBTAINED

According to the SEC, from 2009 until 2012, AB InBev held a 49% interest in an Indian joint-venture called InBev India International Private Limited ("IIIPL") that was managed by Crown. During this period, IIIPL allegedly invoiced Crown for reimbursement of certain promotional expenses without proper documentation, but Crown paid the invoices nevertheless as legitimate promotional expenses. The SEC claims that IIIPL then funneled the money generated by this scheme to third-party sales promoters, who made improper payments to Indian government officials in exchange for beer orders and regulatory advantages.

The SEC also alleges that Crown and AB InBev were notified of IIIPL's improper conduct, but failed to adequately address the allegations and, in some cases, actively obstructed the Commission's investigation. In one instance, the SEC asserts that Crown terminated a local whistleblower and entered into a separation agreement with the employee that prevented the employee from disclosing any information concerning the improper conduct at IIIPL to the SEC.

ENFORCEMENT

On September 28, 2016, the SEC announced that it had settled an enforcement action against AB InBev for violations of the FCPA's books-and-records and internal controls provisions. The SEC also alleged that AB InBev violated Rule 21F-17(a) of the Exchange Act because the separation agreement entered into between the local whistleblower and Crown impeded the employee from communicating with the SEC regarding possible violations of securities laws. According to the cease-and-desist order, AB InBev agreed to pay a total sanction of $6,008,291. The DOJ separately informed the company that it would not pursue an enforcement action.

KEY FACTS

Citation. *In the Matter of Anheuser-Busch InBev SA/NV*, Admin. Proc. File No. 3-17586 (Sept. 28, 2016).

Date Filed. September 28, 2016.

Country. India.

Date of Conduct. 2009 – 2012.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Joint Venture; Sales Agent/Consultant.

Foreign official. Unnamed Indian government officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. Exchange Act Rule 21F-17(a).

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Belgium.

Total Sanction. $6,008,291.

Compliance Monitor/Reporting Requirements. Two-year Reporting Requirement.

Related Enforcement Actions. None.

Total Combined Sanction. $6,008,291.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

158. IN THE MATTER OF NU SKIN ENTERPRISES, INC. (2016)

NATURE OF THE BUSINESS

Nu Skin is a Delaware corporation based in Provo, Utah that manufactures and markets cosmetic and nutritional products. Nu Skin maintains a class of common stock that is registered with the SEC and listed on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to the SEC, in 2013 Nu Skin's wholly owned Chinese subsidiary ("Nu Skin China") allegedly violated Chinese domestic laws by hosting an unauthorized promotional event in an unnamed Chinese province. As a result, representatives of the provincial Administration of Industry and Commerce ("AIC") initiated an investigation into the company's operations.

Before the AIC investigation concluded, Nu Skin China personnel decided to initiate a charity project in the province in an effort to dissuade the AIC from sanctioning the company and protect future business interests. As a result, Nu Skin China donated RMB 1 million to a charity controlled by a high ranking Communist party official. Nu Skin China also assisted the party official's child to obtain college recommendation letters from an "influential U.S. person." After making the donation and assisting the party official's child obtain letters of recommendation, Nu Skin China allegedly asked the party official to convince the AIC to not name or fine Nu Skin China. Shortly thereafter, Nu Skin China received notice of the AIC's final decision in which the company was neither charged nor fined.

ENFORCEMENT

On September 20, 2016, the SEC announced that it had settled an enforcement action against Nu Skin for violations of the FCPA's books-and-records and internal controls provisions. According to the cease-and-desist order, Nu Skin agreed to pay a total sanction of $765,688.

KEY FACTS

Citation. *In the Matter of Nu Skin Enterprises, Inc.*, Admin. Proc. File No. 3-17556 (Sept. 20, 2016).

Date Filed. September 20, 2016.

Country. China.

Date of Conduct. 2013.

Amount of the Value. RMB 1 million (approximately $154,000).

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign official. High ranking Chinese Communist Party official and representatives of a provincial Chinese enforcement authority.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $765,688.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $765,688.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

157. IN THE MATTER OF JUN PING ZHANG (2016)

NATURE OF THE BUSINESS

Jun Ping Zhang, a U.S. resident and citizen, is the former Chairman and CEO of Hunan CareFx Information Technology, LLC, a wholly owned Chinese subsidiary of Harris Corporation. Harris Corporation is a Delaware corporation headquartered in Melbourne, Florida that provides international communications and information technology services for government and commercial markets around the world. Harris maintains a class of common stock that is registered with the SEC and is listed on the New York Stock Exchange. CareFx was acquired by Harris in April 2011 and sells electronic medical records software to Chinese state-owned hospitals and local Chinese Departments of Health. Following the acquisition, CareFx's books and records were consolidated into Harris' financial statements.

INFLUENCE TO BE OBTAINED

According to the SEC, from at least April 2011 until April 2012, Ping authorized or indirectly allowed between $200,000 and $1 million in improper gifts to Chinese government officials to obtain or retain business.

As part of the scheme, CareFx's sales staff allegedly submitted false sales receipts for entertainment, office expenses, or transportation, which were then used to provide gifts to various Chinese government officials. According to the SEC, Ping and other supervisors managed the sham expense claims and were aware that the reimbursed funds were used to provide improper benefits to government officials.

The SEC also alleges that Ping failed to disclose the true nature of the sales expenses that were recorded on CareFx's books and records to Harris, either before or after the acquisition. In fact, the SEC asserts that Ping cautioned CareFx employees to avoid detection by not giving any overly large gifts.

ENFORCEMENT

On September 13, 2016, the SEC announced that it had settled an FCPA enforcement action against Ping for violations of the FCPA's anti-bribery, internal controls, and books-and-records provisions. According to the cease-and-desist order, Ping agreed to pay a civil penalty of $46,000. However, the SEC declined to pursue charges against Harris Corporation due to its prompt self-reporting, cooperation, and remediation.

KEY FACTS

Citation. *In the Matter of Jun Ping Zhang*, Admin. Proc. File No. 3-17535 (Sept. 13, 2016).

Date Filed. September 13, 2016.

Country. China.

Date of Conduct. 2011 – 2012.

Amount of the Value. Approximately $200,000 to $1 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign official. Unnamed Chinese foreign officials at state-owned hospitals and regional Departments of Health.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. United States.

Total Sanction. $46,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $46,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

156. IN THE MATTER OF ASTRAZENECA PLC (2016)

NATURE OF THE BUSINESS

AstraZeneca plc is a global bio-pharmaceutical company based in the United Kingdom with operations around the world, including China and Russia. Throughout the relevant period, AstraZeneca maintained a class of American Depository Shares that were registered with the SEC and listed on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to the SEC, between 2005 and 2010, AstraZeneca's wholly-owned subsidiaries in China and Russia engaged in separate schemes to deliver improper benefits to health care providers at state-owned hospitals and healthcare facilities in exchange for increased sales of AstraZeneca pharmaceutical products.

In China, the SEC claims that the sales and marketing staff at AstraZeneca's wholly owned Chinese subsidiary used fake tax receipts for fraudulent reimbursements to generate cash for the improper payments. Those individuals also allegedly funneled payments to bank accounts they opened themselves in the doctors' names, "engag[ed] a collusive travel vendor" to submit fake or inflated invoices, and paid speaker fees to certain healthcare professionals even though the service contracts were often incomplete or the speaking engagements never occurred.

Similarly, in Russia, the SEC asserts that employees at AstraZeneca's wholly owned Russian subsidiary provided improper gifts, conference support, and other incentives to healthcare providers at state-owned facilities in exchange for increased sales of AstraZeneca pharmaceutical products.

ENFORCEMENT

On August 30, 2016, the SEC announced that it had settled its FCPA enforcement action against AstraZeneca. According to the cease-and-desist order, AstraZeneca violated the FCPA's books-and-records and internal controls provisions. As part of the resolution, AstraZeneca agreed to pay a total sanction of $5.5 million. The DOJ separately declined to bring an enforcement action against the company.

KEY FACTS

Citation. *In the Matter of AstraZeneca PLC*, Admin. Proc. File No. 3-17517 (Aug. 30, 2016).

Date Filed. August 30, 2016.

Country. China, Russia.

Date of Conduct. 2005 – 2010.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Third-Party Vendor.

Foreign official. Unnamed government officials, including health care providers at state-owned and state-controlled entities in China and Russia.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United Kingdom.

Total Sanction. $5,522,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $5,522,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

155. IN THE MATTER OF KEY ENERGY SERVICES, INC. (2016)

NATURE OF THE BUSINESS

Key Energy is a Maryland corporation headquartered in Houston, Texas. Key Energy maintains a class of common stock listed on the New York Stock Exchange. Key Mexico is a wholly owned subsidiary of Key Energy that operates in Mexico. Key Mexico's financial results were included in Key Energy's consolidated financial statements.

INFLUENCE TO BE OBTAINED

From August 2010 through at least April 2013, Key Mexico allegedly made improper payments to a contract employee from Pemex in exchange for inside information, as well as advice on Pemex contracts. Specifically, according to the SEC, in August 2010, Key Mexico hired a consulting firm to provide "expert advice on contracts with . . . Pemex." Over the course of three years, the SEC claims that Key Mexico paid the consulting firm at least $229,000. In exchange, the Pemex employee provided Key Mexico with non-public information regarding upcoming Pemex tenders and lobbied internally for lucrative amendments to Key Mexico's contracts with Pemex.

The SEC claims that Key Mexico's country manager knew that the consulting firm had connections to a Pemex contract employee to whom Key Mexico's payments would be funneled. Further, as early as 2011, Key Energy personnel allegedly became aware that Key Mexico was doing business with the consulting firm, yet Key Energy failed to conduct the required due diligence.

ENFORCEMENT

On August 11, 2016, the SEC announced that it had settled the charges against Key Energy through a cease-and-desist order. According to the SEC, Key Energy would disgorge $5 million in ill-gotten gains for violations of the FCPA's books-and-records and internal controls provisions. Earlier, in May 2016, the company announced that the DOJ had closed its investigation and declined to bring an enforcement action.

KEY FACTS

Citation. *In the Matter of Key Energy Services, Inc.*, Admin. Proc. File No. 3-17379 (Aug. 11, 2016).

Date Filed. August 11, 2016.

Country. Mexico.

Date of Conduct. 2010 – 2013.

Amount of the Value. Approximately $284,000.

Amount of Business Related to the Payment. Approximately $125 million.

Intermediary. Agent/Consultant.

Foreign official. Contract employee at the Mexican state-owned oil company, Petróleos Mexicanos.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $5,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $5,000,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

154. IN THE MATTER OF JOHNSON CONTROLS, INC. (2016)

NATURE OF THE BUSINESS

Johnson Controls, based in Milwaukee, Wisconsin, is a global provider of automatic temperature control systems for buildings, industrial facilities, and ships. It operates in 150 countries around the world with approximately 15,000 employees and maintains a class of securities on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to the SEC, beginning in 2007, a pair of Johnson Controls' wholly owned Chinese subsidiaries (jointly "China Marine") engaged in a scheme to inflate vendor sales contracts to facilitate payments for foreign officials. China Marine employees allegedly conspired with local vendors to prepare inflated vendor invoices for which the company would approve payment. The difference between the actual vendor sale price and the inflated sale price was then allegedly used to enrich China Marine employees and bribe officials from Chinese government-owned shipyards and ship-owners, as well as other unknown individuals. In total, China Marine allegedly paid over $4.9 million to vendors for goods and services that were never provided and obtained $11.8 million in profits from the sham vendor agreements.

ENFORCEMENT

On July 11, 2016, the SEC announced that it had resolved an FCPA enforcement action against Johnson Controls for the actions of China Marine through an administrative proceeding. As part of the cease-and-desist order, Johnson Controls agreed to disgorge $11.8 million and pay a civil penalty of $1.18 million in addition to prejudgment interest of $1,382,561—totaling $14,362,561. Separately, the DOJ announced that it would decline to pursue charges against Johnson Controls as part of its FCPA Pilot Program on account of the company's voluntary disclosure, cooperation, and remediation.

KEY FACTS

Citation. *In the Matter of Johnson Controls, Inc.*, Admin. Proc. File No. 3-17337 (July 11, 2016).

Date Filed. July 11, 2016.

Country. China.

Date of Conduct. 2007 – 2013.

Amount of the Value. $4.9 million.

Amount of Business Related to the Payment. $11.8 million.

Intermediary. Third-Party Vendors.

Foreign official. Unnamed Chinese foreign officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $14,362,561.

Compliance Monitor/Reporting Requirements. One-year Reporting Requirement.

Related Enforcement Actions. None.

Total Combined Sanction. $14,362,561.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

153. IN THE MATTER OF ANALOGIC CORPORATION AND LARS FROST (2016)

NATURE OF THE BUSINESS

Analogic Corporation, incorporated and headquartered in Massachusetts, designs and manufactures medical imaging, ultrasound, and security technology systems. The company maintains a class of common stock on the NASDAQ exchange. Analogic operates through a series of subsidiaries, including its Danish subsidiary, BK Medical ApS, which focuses on the manufacture and sale of ultrasound systems. Lars Frost, a citizen of Denmark, served as BK Medical's CFO from 2008 until 2011.

INFLUENCE TO BE OBTAINED

According to the SEC's cease-and-desist order, between 2001 and 2011, BK Medical engaged in an improper payment scheme related to the sale of Analogic's ultrasound products that caused the company to distribute approximately $20 million in funds without knowing how the funds were used. The SEC claims that the scheme primarily involved BK Medical's operations in Russia, and, to a lesser extent, Ghana, Israel, Kazakhstan, Ukraine, and Vietnam.

According to the SEC, at the direction of a Russian distributor, BK Medical created fictitious invoices reflecting an inflated purchase price for Analogic products sold to the Russian distributor. The Russian distributor would pay the inflated price for the products and, at a later point in time, direct BK Medical to wire the excess funds—the difference between the inflated invoice and the actual retail value of the products—to unknown third parties in various locations around the world. As stated by the SEC, BK Medical complied with the Russian distributor's instructions despite not knowing how the funds it sent to the third parties were being used.

ENFORCEMENT

On June 21, 2016, the SEC announced that it had resolved an enforcement action against Frost for violations of the books-and-records and internal controls provisions of the FCPA. As part of the enforcement action, Frost agreed to pay a civil monetary penalty of $20,000 and Analogic agreed to pay $11,482,962 in disgorgement. The DOJ and SEC separately settled enforcement actions against Analogic and BK Medical, causing the companies to pay approximately $15 million in sanctions total.

See DOJ Digest Number B-168.

KEY FACTS

Citation. *In the Matter of Analogic Corporation and Lars Frost*, Admin. Proc. File No. 3-17305 (June 21, 2016).

Date Filed. June 21, 2016.

Country. Russia, Ghana, Israel, Kazakhstan, Russia, Ukraine, Vietnam.

Date of Conduct. 2001 – 2011.

Amount of the Value. Approximately $20 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Distributors.

Foreign official. Unnamed foreign officials.

FCPA Statutory Provision.

- **Analogic. Books-and-Records; Internal Controls**.
- **Frost**. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer (Analogic); Agent of Issuer (Frost).

Defendant's Citizenship. United States (Analogic); Denmark (Frost).

Total Sanction. $11,502,962.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In the Matter of BK Medical ApS*.

Total Combined Sanction. $14,904,962.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

152. IN THE MATTER OF NORTEK, INC. (2016)[99]

NATURE OF THE BUSINESS

Nortek, Inc. is a Delaware corporation headquartered in Providence, Rhode Island, which manufactures residential and commercial solutions for heating and air conditioning, security, and audio/visual systems. Nortek's stock is registered with the NASDAQ Global Select Market.

INFLUENCE TO BE OBTAINED

According to the SEC, from at least 2009 to 2014, Nortek's Chinese subsidiary, Linear Electronics, regularly made improper payments to Chinese officials in exchange for preferential treatment, relaxed regulatory oversight, and reduced customs duties, taxes, and fees. The improper payments were allegedly in the form of cash, gifts, travel, accommodations, and entertainment. The SEC claims that the payments were systematic, occurring at least once a month for five years—totaling approximately $290,000.

ENFORCEMENT

On June 7, 2016, the SEC announced that it had entered into a non-prosecution agreement with Nortek after asserting that Linear's conduct violated the book-and-records and internal controls provisions of the FCPA. As part of the NPA, Nortek agreed to pay a total sanction of $322,058. The DOJ later publically announced that it would decline to prosecute Nortek in accordance with the FCPA Pilot Program due to the company's voluntary disclosure, cooperation, and remediation.

KEY FACTS

Citation. *In the Matter of Nortek, Inc.* (May 3, 2016).

Date Filed. May 3, 2016.

Country. China.

Date of Conduct. 2009 – 2014.

Amount of the Value. Approximately $290,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign official. Unnamed Chinese foreign officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $322,058.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $322,058.

[99] Matter resolved through non-prosecution agreement (July 2016).

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

151. IN THE MATTER OF AKAMAI TECHNOLOGIES, INC. (2016)[100]

NATURE OF THE BUSINESS

Akamai Technologies, Inc. is a Delaware corporation headquartered in Cambridge, Massachusetts, which provides cloud services for delivering, optimizing, and securing online content and business applications over the internet. Akamai maintains a class of stock registered on the NASDAQ Global Select Market.

INFLUENCE TO BE OBTAINED

According to the SEC, from at least 2013 until 2015, Akamai's Chinese subsidiary, Akamai (Beijing) Technologies, Co. Ltd. ("Akamai-China"), bribed Chinese officials in exchange for sales contracts. Under Chinese regulations, Akamai-China was required to sell its services through the use of a local third-party channel partner. This meant that Akamai would sell its services to a local channel partner and the channel partner would in turn resell those services to an end user.

The SEC claims that Akamai-China's Regional Sales Manager schemed with a particular channel partner to offer the employees of certain end users bribes in exchange for an agreement to purchase greater than necessary services from Akamai. Many of those end users were state-owned companies. Akamai-China also provided gifts directly to end users, some of whom were Chinese government officials. The alleged bribes constituted cash, expensive gifts, and entertainment totaling approximately $187,500.

ENFORCEMENT

On June 7, 2016, the SEC announced that it had entered into an NPA with Akamai after it concluded that Akamai-China's conduct violated the book-and-records and internal controls provisions of the FCPA. As part of the NPA, Akamai agreed to pay a total sanction of $671,885. The DOJ later publicly announced that it would decline to prosecute Akamai in accordance with the FCPA Pilot Program announced in April 2016 due to the company's voluntary disclosure, cooperation, and remediation.

KEY FACTS

Citation. *In the Matter of Akamai Technologies, Inc.* (May 3, 2016).

Date Filed. May 3, 2016.

Country. China.

Date of Conduct. 2013 – 2015.

Amount of the Value. Approximately $187,500.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Third-party Channel Partner.

Foreign official. Unnamed Chinese foreign officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $671,885.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $671,885.

[100] Matter resolved through non-prosecution agreement (July 2016).

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

150. IN THE MATTER OF LAS VEGAS SANDS CORP. (2016)

NATURE OF THE BUSINESS

Las Vegas Sands Corp., a Nevada corporation, owns and operates integrated resorts and casinos in Asia and the United States through a network of subsidiaries. Las Vegas Sands maintains a class of publicly traded securities on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to the SEC, from 2006 to at least 2011, Las Vegas Sands failed to devise and maintain a reasonable system of internal accounting controls over its operations in China and Macao. The allegations generally concern Las Vegas Sands's use of a Chinese consultant (the "Consultant") to execute a series of business transactions described below.

In 2007, Las Vegas Sands sought to purchase a basketball team with the purported purpose of improving the company's image in China and attracting visitors to the company's casinos. However, the Chinese Basketball Association prohibited gaming companies such as Las Vegas Sands from owning a team. According to the SEC, to circumvent the regulatory prohibition, the Consultant was tasked with serving as a straw man—surreptitiously purchasing the basketball team on behalf of Las Vegas Sands—to conceal Las Vegas Sands's ownership of the team. In March 2007, a Las Vegas Sands subsidiary in China allegedly transferred over $6 million to an entity associated with the Consultant without any agreement covering such transfer to purchase the basketball team. The SEC claims that the company later paid an additional $8 million to the Consultant to cover the costs of operating the team without any documentation.

From 2006 through 2008, Las Vegas Sands allegedly used the Consultant as an intermediary to purchase a building in Beijing from a Chinese state-owned entity to ostensibly develop a business center for U.S. companies. The SEC claims that Las Vegas Sands's decision to purchase the property was intended to curry favor with Chinese officials. According to the SEC, approximately $43 million in payments were made to the Consultant without research, analysis, or prior approval. Approximately $900,000 was paid to an entity controlled by the Consultant and recorded as "property management fees" when no services were actually performed. Further, the SEC claims that approximately $1.4 million was recorded as "arts and crafts" when the entity had never provided any artwork.

In 2007, Las Vegas Sands contracted with a ferry company to transport customers from China and Hong Kong to Macao. The SEC asserts that the ferry company was owned in-part by another Chinese stated-owned ferry company and a shipping company that was indirectly controlled by the Consultant and the chairman of another stated-owned entity. According to the SEC, the ferry company, with the approval of Las Vegas Sands, provided meals, gifts, and entertainment to government officials in order to secure routes for the ferry. Although the company's audit department detected the improper payments, it allegedly failed to elevate the issue within the company.

ENFORCEMENT

On April 7, 2016, the SEC announced that it had resolved an FCPA enforcement action against Las Vegas Sands for violations of the FCPA's books-and-records and internal controls provisions. According to the cease-

KEY FACTS

Citation. *In the Matter of Las Vegas Sands Corp.*, Admin. Proc. File No. 3-17204 (Apr. 7, 2016).

Date Filed. April 7, 2016.

Country. China, Macao.

Date of Conduct. 2006 – 2011.

Amount of the Value. Approximately $62 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Consultant.

Foreign official. Unnamed Chinese foreign officials.

FCPA Statutory Provision. Books-and-Records, Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $9,000,000.

Compliance Monitor/Reporting Requirements. Independent Monitor; Two-year Reporting Requirement.

Related Enforcement Actions. *In re Las Vegas Sands Corp.*

Total Combined Sanction. $15,960,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

and-desist order, Las Vegas Sands agreed to pay a $9 million civil penalty and to appoint an independent compliance monitor for a period of two years. *See* DOJ Digest Number B-186. *See* Parallel Litigation Digest Numbers H-D16 and H-F16.	

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

149. IN THE MATTER OF NOVARTIS AG (2016)

NATURE OF THE BUSINESS

Novartis AG, headquartered in Switzerland, is a global provider of pharmaceutical and over-the-counter health products. Novartis maintains a class of registered securities that are traded on the New York Stock Exchange. Novartis conducts business in over 180 countries around the world, including China where it operates solely through subsidiaries.

INFLUENCE TO BE OBTAINED

According to the SEC, from at least 2009 to 2013, employees and agents of two Novartis subsidiaries doing business in China provided things of value to foreign officials, primarily healthcare professionals, in order to influence those individuals and thereby increase Novartis sales.

The SEC found that from 2009 to 2011, employees of a Novartis subsidiary, Shanghai Novartis Trading Ltd ("Sandoz China"), provided cash, gifts, travel, improper sightseeing or vacations, entertainment, and favors for the healthcare professionals. According to the SEC, the employees, at times with the knowledge and approval of Sandoz China management, recorded these things of value on the general ledger as legitimate employee expenses, sponsorships, conferences, medical studies, and marketing costs. Sandoz China employees also allegedly paid the healthcare professionals for patient data research. Although the studies consisted of fictitious data, the SEC claimed that the healthcare professionals were paid approximately $522,000 in 2009 and 2010.

In addition, between 2011 and 2013, the SEC alleged that employees and agents of another Novartis subsidiary, Beijing Novartis Pharma Co, Ltd ("Novartis China") made payments to Chinese "government officials" intended to influence them to prescribe or recommend Novartis products. According to the SEC, these payments were made through event planning and travel companies used by Novartis China to arrange transportation, accommodations, and meals for healthcare professionals in connection with educational conferences and business activities. These payments were recorded as legitimate selling and marketing costs.

ENFORCEMENT

On March 23, 2016, the SEC announced a settlement with Novartis through an administrative proceeding. The SEC order found that Novartis violated the FCPA's books-and-records and internal controls provisions. Without admitting or denying the SEC's findings, Novartis agreed to disgorge $21,579,217 in ill-gotten gains with prejudgment interest of $1,470,887 and to pay a civil monetary penalty of $2,000,000.

KEY FACTS

Citation. *In the Matter of Novartis AG*, Admin. Proc. File No. 3-17177 (Mar. 23, 2016).

Date Filed. March 23, 2016.

Country. China.

Date of Conduct. 2009 – 2013.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Subsidiaries; Third-party Agents.

Foreign official. Chinese healthcare officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Switzerland.

Total Sanction. $23,720,104.

Compliance Monitor/Reporting Requirements. Two-year Reporting Requirement.

Related Enforcement Actions. None.

Total Combined Sanction. $23,720,104.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

148. IN THE MATTER OF NORDION (CANADA) INC. (2016) IN THE MATTER OF MIKHAIL GOUREVITCH (2016)

NATURE OF THE BUSINESS

Nordion (Canada) Inc. is the successor in interest to Nordion, Inc., a global health science company and provider of medical isotopes and sterilization technologies used by pharmaceutical and biotechnology companies, medical device manufacturers, hospitals, medical clinics, and research laboratories in more than 60 countries. Nordion was headquartered in Ottawa, Canada and maintained a class of stock that was traded on the New York Stock Exchange and was registered with the SEC. In August 2014, Nordion was acquired by Nordion Canada.

Mikhail Gourevitch, a dual Canadian and Israeli citizen, was formerly employed by Nordion as an Engineer. From approximately 2004 until October 2011, Gourevitch facilitated, helped negotiate, and monitored consulting contracts between Nordion and a Russian third-party agent to license, register, and distribute TheraSphere—a Nordion liver cancer therapy, in Russia.

INFLUENCE TO BE OBTAINED

According to the SEC, at the recommendation of Gourevitch, Nordion engaged the services of a Russian businessman (the "Agent") to assist the company in procuring a supply of cobalt-60 isotopes from the Russian government in 2000. The Agent was allegedly a childhood friend of Gourevitch and had no experience in the nuclear power industry, nuclear medicine, or medical isotopes. Nevertheless, after entering into a consulting agreement with the Agent, the SEC claims that the Agent was able to assist the company acquire the supply of cobalt-60 isotopes.

Later in 2004, the SEC alleges that Nordion again approached the Agent to obtain government approval of a liver cancer treatment called TheraSphere. According to the SEC, Nordion entered into a contract with the Agent to register, license, and distribute TheraSphere in Russia. The SEC claims that to acquire approval, Gourevitch and the Agent attempted to bribe Russian officials by using a portion of the monies received from the Agent's consulting agreement with Nordion as bribes. The SEC claims that although Nordion had limited internal controls, which it failed to consistently apply, Gourevitch actively attempted to conceal the illicit scheme by manipulating budget estimates before they were reviewed by Nordion. In total, the SEC claims that Nordion paid the Agent $235,043 from 2005 to 2011 to obtain Russian regulatory approvals of TheraSphere. The SEC notes that Nordion was ultimately unable to distribute TheraSphere in Russia and therefore did not earn any profits as a result of the scheme.

ENFORCEMENT

On March 3, 2016, the SEC announced that it settled an enforcement action against Nordion for violations of the FCPA's books-and-records and internal controls provisions. Nordion agreed to pay a $375,000 civil penalty to settle the SEC's charges. The SEC gave Nordion cooperation credit for inter alia its willingness to self-disclose the conduct, preform an extensive internal investigation, and report the findings to the SEC. The SEC also announced a settlement with Gourevitch, in which he agreed to pay $100,000 in disgorgement and interest, as well as a civil penalty of $66,000. The DOJ separately declined to bring charges against Nordion.

KEY FACTS

Citation. *In the Matter of Nordion (Canada) Inc.*, Admin. Proc. No. 3-17153 (Mar. 3, 2016); *In the Matter of Mikhail Gourevitch*, Admin Proc. No. 3-17152 (Mar. 3, 2016).

Date Filed. March 3, 2016.

Country. Russia.

Date of Conduct. 2004 – 2011.

Amount of the Value. $235,043.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Local agent.

Foreign official. Unnamed Russian government officials.

FCPA Statutory Provision.

- **Nordion**. Books-and-Records; Internal Controls.
- **Gourevitch**. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and Desist Order (Nordion); Cease-and Desist Order (Gourevitch).

Defendant Jurisdictional Basis. Issuer (Nordion); Agent of Issuer (Gourevitch).

Defendant's Citizenship. Canada (Nordion); Canada and Israel (Gourevitch).

Total Sanction. $553,950 ($375,000 (Nordion); $179,950 (Gourevitch)).

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $553,950.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

147. IN THE MATTER OF QUALCOMM INC. (2016)

NATURE OF THE BUSINESS

Qualcomm Incorporated is a Delaware corporation headquartered in San Diego, California. The company designs and sells wireless telecommunication products and earns royalties from licensing its patented technologies. The company's common stock trades on the NASDAQ Global Select Market and is registered with the Commission pursuant to Section 12(b) of the Exchange Act.

INFLUENCE TO BE OBTAINED

According to the SEC, Qualcomm maintained a high interest in promoting the use of its wireless telecommunications technologies within the Chinese telecommunications market. The SEC claims that Qualcomm's success hinged on the decisions of Chinese state-owned telecommunications companies and, specifically, whether those companies would adopt and promote Qualcomm technologies on an expedited basis. As described below, to curry favor with those companies and those officials with decision-making authority, the SEC Claims that between 2002 and 2012, Qualcomm (i) hired relatives or other individuals at the request of Chinese officials and (ii) offered or provided others meals, gifts, and entertainment.

First, Qualcomm allegedly offered to employ multiple individuals, often family members of Chinese telecommunications officials, with the purpose of influencing those officials' decisions. In total, the SEC described three occasions where Qualcomm offered to hire the children or other individuals at the request of Chinese officials. In each case the SEC made clear that the decision to offer those individuals employment was based on the company's interest in promoting Qualcomm technologies among the Chinese state-owned telecommunications companies. In at least two of those three instances, the SEC points out that the children of those officials were not qualified for the position they were offered.

Second, the SEC also described instances where Qualcomm officials provided foreign officials with extravagant meals, gifts, and entertainment. This included lavish hospitality packages to events such as the 2008 Beijing Olympics, sightseeing tours, and golf outings. According to the SEC, none of these benefits had a valid business purpose.

ENFORCEMENT

On March 1, 2016, the SEC announced that it settled its enforcement action against Qualcomm through an administrative proceeding whereby Qualcomm agreed to pay a civil penalty of $7.5 million. For its part, Qualcomm acknowledged that its conduct caused the company to violate the FCPA's anti-bribery, books-and-records, and internal controls provisions. The DOJ had launched a separate investigation in 2012 and notified the company in 2015 that it would not pursue any charges.

KEY FACTS

Citation. *In the Matter of Qualcomm Inc.*, Admin. Proc. No. 3-17145 (Mar. 1, 2016).

Date Filed. March 1, 2016.

Country. China.

Date of Conduct. 2002 – 2012.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign official. Unnamed Chinese government officials and employees and executives of Chinese stated-owned instrumentalities.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $7,500,000.

Compliance Monitor/Reporting Requirements. Two-year Reporting Requirement.

Related Enforcement Actions. None.

Total Combined Sanction. $7,500,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

146. SEC V. VIMPELCOM LTD (S.D.N.Y. 2016)

NATURE OF THE BUSINESS

VimpelCom Ltd., headquartered in the Netherlands, is a global provider of telecommunications services. VimpelCom is the sixth largest telecommunications company in the world, operating in Europe, Asia, and Africa. It maintains a class of publicly traded securities on NASDAQ and, until 2013, a class of securities on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to the SEC's Complaint, between 2006 and 2012, VimpelCom paid an Uzbek government official over $114 million for access to the Uzbek telecommunications market and the acquisition of important Uzbek licenses and frequencies. Court documents explain that the improper payments were primarily made through sham contracts with a shell company named Takilant Ltd., which VimpelCom knew to be beneficially owned by the official. The SEC also claimed that other payments were made under the guise of legitimate charitable contributions and sponsorships. According to the SEC, VimpelCom was able to generate more than $2.5 billion in revenues as a result of the scheme.

ENFORCEMENT

On February 18, 2016, the SEC announced that it had settled an FCPA enforcement action against VimpelCom for violations of the FCPA's anti-bribery, books-and-records, and internal controls provisions. The settlement required VimpelCom to pay $375 million in disgorgement. Of the total disgorgement, $167.5 million was paid to Dutch regulators and $40 million was credited towards the DOJ's criminal sanction.

See DOJ Digest Number B-166.
See Ongoing Investigation Number F-44.
See Parallel Litigation Digest Numbers H-A22 and H-H3.

KEY FACTS

Citation. *SEC v. VimpelCom Ltd*, No. 1:16-cv-01266 (S.D.N.Y. 2016).

Date Filed. February 22, 2016.

Country. Uzbekistan.

Date of Conduct. 2006 – 2012.

Amount of the Value. Approximately $114 million.

Amount of Business Related to the Payment. More than $2.5 billion.

Intermediary. Shell Company; Local Subsidiary.

Foreign official. Unnamed Uzbek government official and close relative of a high-ranking Uzbek government official, with significant influence over Uzbek telecommunication authorities.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Complaint and Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Netherlands.

Total Sanction. $167,000,000.

Compliance Monitor/Reporting Requirements. Independent Monitor; Three-year Reporting Requirement.

Related Enforcement Actions. *United States v. VimpelCom Ltd.*

Total Combined Sanction. $795,326,398.40 (Global Resolution);[101] $397,826,398.40 (U.S. Resolution).

[101] The $375 million global resolution was divided between U.S. and Dutch authorities.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

145. IN THE MATTER OF PTC INC. (2016)
IN THE MATTER OF YU KAI YUAN (2016)

NATURE OF THE BUSINESS

PTC Inc. (formerly Parametric Technology Company) is a Massachusetts corporation with its headquarters in Needham, Massachusetts. PTS designs, manufactures, and sells Product Lifecycle Management Software (i.e., software that manages a company's products from design through manufacturing and distribution) and maintains operations in the Americas, Europe, and Asia Pacific, including China. PTC's stock is registered with the U.S. Securities and Exchange Commission and is listed on NASDAQ.

Yu Kai Yuan is a Chinese citizen who resides in Shanghai, China. From 1996 until 2011, Yuan was employed by PTC as a sales executive at PTC's Chinese subsidiaries, Parametric Technology (Shanghai) Software Company Ltd. and Parametric Technology (Hong Kong) Ltd. (collectively "PTC China").

INFLUENCE TO BE OBTAINED

According to the SEC, from 2006 to at least 2011, PTC China provided improper payments of almost $1.5 million to customers who were employed at Chinese state-owned entities to obtain or retain business. The SEC alleged that PTC China made the allegedly improper payments in one of two ways: (1) by providing over $1 million to third-party agents disguised as commission or sub-contracting payments that were used to pay for non-business foreign travel for the Chinese officials; and (2) by allowing sales staff to provide gifts and excessive entertainment of over $250,000 to the Chinese officials. The SEC alleged that PTC obtained approximately $11.8 million in illicit profits from sales contracts with state-owned entities whose officials participated on these trips.

ENFORCEMENT

On February 16, 2016, the SEC announced a settlement with PTC through an administrative proceeding. The SEC order found that PTC violated the FCPA's anti-bribery, books-and-records, and internal controls provisions. PTC agreed to disgorge $11,858,000 in ill-gotten gains and pay $1,764,000 in prejudgment interest. PTC was able to forego a civil penalty as a result of the $14.54 million sanction it paid in connection with a parallel DOJ criminal enforcement action.

See DOJ Digest Number B-165.

KEY FACTS

Citation. *In the Matter of PTC Inc.,* Admin. Proc. File No. 3-17118 (Feb. 16, 2016); *In the Matter of Yu Kai Yuan*, (February 2016).

Date Filed. February 16, 2016.

Country. China.

Date of Conduct. 2006 – 2011.

Amount of the Value. Approximately $1.5 million.

Amount of Business Related to the Payment. Approximately $11.8 million.

Intermediary. Chinese Subsidiaries; Third-Party Business Partners.

Foreign official. Employees of Chinese state-owned entities.

FCPA Statutory Provision.

- **PTC**. Anti-Bribery; Books-and-Records; Internal Controls.
- **Yu Kai Yuan**. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist (PTC); Deferred Prosecution Agreement (Yu Kai Yuan).

Defendant Jurisdictional Basis. Issuer (PTC); Agent of Issuer (Yu Kai Yuan).

Defendant's Citizenship. United States (PTC); China (Yu Kai Yuan).

Total Sanction. $13,622,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Parametric Technology (Shanghai) Software Co. Ltd. and Parametric Technology (Hong Kong) Limited.*

Total Combined Sanction. $28,162,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

144. IN THE MATTER OF SCICLONE PHARMACEUTICALS, INC. (2016)

NATURE OF THE BUSINESS

SciClone Pharmaceuticals, Inc. is an American pharmaceutical company headquartered in Foster City, California and organized under the laws of Delaware. SciClone maintains a class of publicly traded securities that are traded on the NASDAQ Exchange. SciClone's products are primarily marketed and sold in China.

INFLUENCE TO BE OBTAINED

According to the SEC, between 2007 and 2012, employees and agents of SciClone's subsidiaries conducting business in China, including SciClone Pharmaceuticals International Ltd. ("SPIL"), gave money, gifts, and other things of value to healthcare professionals employed by state-owned hospitals in China to allegedly obtain sales of SciClone pharmaceutical products. The SEC claims that SciClone's managers were aware of these practices but did nothing to stop them.

For example, a regulatory affairs specialist hired by SciClone allegedly arranged for two foreign officials to travel to Greece for a conference related solely to SciClone's new medical device. When the trip was cancelled due to visa issues, the specialist allegedly provided these officials with at least $8,600 in "lavish gifts." Thereafter, the SEC alleges, the specialist submitted two expense reimbursements for these gifts, one of which was approved by SPIL's senior vice president. SciClone subsequently fired the specialist upon learning of the gifts and conducted a limited internal investigation that ended in 2008, with no further action or remedial measures.

ENFORCEMENT

On February 4, 2016, the SEC announced that it settled its enforcement action against SciClone through an administrative proceeding. According to the cease-and-desist order, SciClone agreed to pay a total of $12,826,000 in sanctions for alleged violations of the FCPA's anti-bribery, books-and-records, and internal controls provisions. The DOJ separately declined to bring charges against the company.

See Parallel Litigation Digest Number H-A12.

KEY FACTS

Citation. *In the Matter of SciClone Pharmaceuticals, Inc.,* Admin. Proc. File No. 3-17101 (Feb. 4, 2016).

Date Filed. February 4, 2016.

Country. China.

Date of Conduct. 2007 – 2012.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Chinese Subsidiary; Local Consultant; Third-party Vendors.

Foreign official. Unnamed employees and executives of Chinese stated-owned instrumentalities.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $12,826,000.

Compliance Monitor/Reporting Requirements. Three-year Reporting Requirement.

Related Enforcement Actions. None.

Total Combined Sanction. $12,826,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

143. IN THE MATTER OF LAN AIRLINES S.A. (2016)
IN THE MATTER OF IGNACIO CUETO PLAZA (2016)

NATURE OF THE BUSINESS

LAN Airlines S.A. was an airline company headquartered in Santiago, Chile that provided passenger and cargo airline services throughout Latin America. LAN merged with TAM, S.A. in 2012 and became LATAM Airlines Group. Throughout the relevant period, LAN's common stock was registered in the United States pursuant to the Exchange Act and was traded on the New York Stock Exchange. Ignacio Cueto Plaza, a Chilean citizen, has been the CEO of LAN Airlines S.A. since 2012. Prior to 2012, Cueto served on LAN's Board of Directors and later became President and COO of the company in 2005.

INFLUENCE TO BE OBTAINED

According to the SEC's cease-and-desist order, in 2006 and 2007, Cueto Plaza authorized payments totaling $1.15 million to a third-party consultant in Argentina with the understanding that some portion of the payments would be passed to Argentine union officials to stem potential labor unrest that threatened the company's efforts to expand into the Argentine airline market. The SEC claims that the payments were made pursuant to an unsigned consulting agreement that purported to provide services that Cueto Plaza and LAN understood would never occur. To execute the scheme, Cueto Plaza and other LAN officers allegedly circumvented the company's internal controls to cause the payments to be improperly recorded on LAN's books and records.

ENFORCEMENT

On February 4, 2016, the SEC announced that it had resolved an FCPA enforcement action against Cueto Plaza. As stated in the SEC's cease-and-desist order, Cueto Plaza was responsible for causing LAN to violate the FCPA's books-and-records and internal controls provisions and was ordered to pay a civil penalty of $75,000.

Later, on July 25, 2016, the SEC also announced that it had resolved its FCPA enforcement action against LAN. According to the cease-and-desist order, LAN violated the FCPA's books-and-records and internal controls provisions. As part of the order, LAN would be required to pay a total sanction of $9,437,788 and engage an independent compliance monitor for a two-year period. On the same day, the DOJ announced that it had entered into a deferred prosecution agreement with LATAM Airlines Group S.A. whereby LATAM Airlines would pay a criminal penalty of $12.75 million and would engage an independent compliance monitor for a period of 27 months.

See DOJ Digest Number B-169.

KEY FACTS

Citation. *In the Matter of LAN Airlines S.A.*, Admin Proc. File No. 3-17357 (July 25, 2016); *In the Matter of Ignacio Cueto Plaza,* Admin. Proc. File No. 2317100 (Feb. 4, 2016).

Date Filed. February 4, 2016 (Cueto Plaza); July 25, 2016 (LAN).

Country. Angola, Argentina, Brazil, Colombia, Dominican Republic, Ecuador, Guatemala, Mexico, Mozambique, Panama, Peru, Venezuela.

Date of Conduct. 2006 – 2007.

Amount of the Value. Approximately $1.15 million.

Amount of Business Related to the Payment. $6,743,932.

Intermediary. Local Consultant.

Foreign official. Unnamed officials from Argentine labor unions.

FCPA Statutory Provision.

- **LAN**. Books-and-Records; Internal Controls.
- **Cueto Plaza**. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order (LAN); Cease-and-Desist Order (Cueto Plaza).

Defendant Jurisdictional Basis. Issuer (LAN); Agent of Issuer (Cueto Plaza).

Defendant's Citizenship. Chile (LAN); Chile (Cueto Plaza).

Total Sanction. $9,512,788.

Compliance Monitor/Reporting Requirements. Compliance Monitor (LAN).

Related Enforcement Actions. *United States v. LATAM Airlines Group S.A.*

Total Combined Sanction. $22,262,788.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

142. IN THE MATTER OF STANDARD BANK PLC

NATURE OF THE BUSINESS

Standard Bank PLC (now known as ICBC Standard Bank Plc) is a London-based international investment bank subsidiary of the Standard Bank Group Limited of South Africa. Standard Bank is regulated by the U.K. Financial Conduct Authority and the Prudential Regulatory Authority.

INFLUENCE TO BE OBTAINED

According to a cease-and-desist order issued by the SEC, from 2011 to 2013, Standard Bank and a Tanzanian Standard Bank Group member, Stanbic Bank Tanzania Limited, sought to secure a mandate from the Government of Tanzania to obtain financing for various infrastructure projects in the country through a private placement of sovereign debt. According to an initial proposal to the Ministry of Finance, Standard Bank and Stanbic would receive a fee of 1.4% of the proceeds for arranging the transaction. Over the course of 2012, Standard Bank and Stanbic worked with the Ministry of Finance to secure its approval of the proposal. However, in May 2012, the Ministry of Finance was replaced by a new group of administrators.

From May 2012 to the end of 2012, Standard Bank and Stanbic continued to work with the new Ministry of Finance to secure its approval of the proposal. After a series of meetings in August and September 2012, Standard Bank and Stanbic issued a proposal letter to the Ministry of Finance which provided that the bank would receive a fee of 2.4% of the gross proceeds as lead manager of the transaction. Notably, the proposal defined "Lead Manager" as Stanbic and Standard Bank, "in collaboration with its Local Partner." The "Local Partner" was later revealed to be Enterprise Growth Market Advisers Limited ("EGMA"). According to the proposal letter, the Local Partner was to receive 1 percent of the gross proceeds. Later versions of the proposal letter removed references to the Local Partner, but contemporaneous emails indicated that Standard Bank and Stanbic were preparing a side letter to allocate a portion of the fees to EGMA.

On February 27, 2013, the Government of Tanzania issued floating-rate amortizing, unrated, unlisted, sovereign bonds through a Regulation S private placement. As alleged by the SEC, $600 million in proceeds were generated by the transactions, with 1% ($6 million) going to EGMA. After EGMA paid for legal costs associated with the transaction, approximately $5.2 million was allegedly withdrawn in cash from the bank account holding the funds in the period between March 18 and March 27, 2013. According to the SEC, Standard Bank did not become aware of the cash withdrawals until after they were made and did not know how the funds were ultimately used. Although not alleged in the SEC action, in a proceeding initiated by the U.K. SFO, Standard Bank and Stabic were accused of using the 1% fee as a bribe to induce the Government of Tanzania to approve the financing proposal.

ENFORCEMENT

On November 30, 2015, the SEC issued a cease-and-desist order against Standard Bank. According to the order, Standard Bank violated Section 17(a)(2) of the Securities Act for its failure to take reasonable steps to understand what role EGMA would play in the transaction and its failure to disclose material facts associated with the transaction to investors. The order instructed Standard Bank to pay a $4.2 million civil penalty as a result of its violation of U.S. securities laws. In addition, the SEC's order acknowledged

KEY FACTS

Citation. *In the Matter of Standard Bank Plc*, Admin. Proc. File No. 3-16973 (Nov. 30, 2015).

Date Filed. November 30, 2015.

Country. Tanzania.

Date of Conduct. 2011 – 2013.

Amount of the Value. Approximately $6 million.

Amount of Business Related to the Payment. Approximately $600 million.

Intermediary. Local Partner.

Foreign official. Tanzanian Minister of Finance and other government officials.

FCPA Statutory Provision. None.

Other Statutory Provision. Securities Act Section 17(a)(2) (obtaining property by untrue statement or omission of material facts).

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. None.

Defendant's Citizenship. United Kingdom.

Total Sanction. $12.6 million (up to $8.4 million credited by payment to U.K. SFO).

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. *Serious Fraud Office v. Standard Bank Plc.*

Total Combined Sanction. $12.6 million.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

that Standard Bank had agreed to disgorge $8.4 million as a result of charges brought by the U.K. SFO for violations of Section 7 of the U.K. Bribery Act. In an SEC press release accompanying the order, the SEC indicated that it did not bring FCPA-related charges against Standard Bank because Standard Bank was not an "issuer" for purposes of the FCPA, thus depriving the Commission of jurisdiction.	

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

141. IN THE MATTER OF BRISTOL-MYERS SQUIBB COMPANY (2015)

NATURE OF THE BUSINESS

Bristol-Myers Squibb Company ("BMS") is an American pharmaceutical company headquartered in New York, New York and incorporated in Delaware. BMS is registered with the SEC under Section 12(g) of the Exchange Act and maintains a class of common stock on the New York Stock Exchange. Bristol-Myers Squibb (China) Investment Co. Limited ("BMS China") is BMS' Chinese subsidiary.

INFLUENCE TO BE OBTAINED

According to the SEC, between 2009 and 2014, employees of BMS China engaged in the regular practice of offering cash payments, gifts, meals, travel, entertainment, and sponsorships for conferences and meetings to various health care providers of Chinese state-owned and state-controlled hospitals in exchange for increased sales. To execute these transactions, the SEC alleges that BMS China employees regularly submitted false or altered reimbursement invoices and receipts to secure the funds to facilitate the improper payments. The SEC claims that BMS China falsely recorded the relevant transactions as legitimate business expenses in its books and records.

The SEC also cited numerous red-flags, including admissions by employees that it was a widespread practice within BMS' Chinese operations to submit false reimbursement claims to secure prescription sales. Nevertheless, BMS officials failed to investigate the red-flags. Likewise, when BMS established a formal FCPA compliance program in 2006 in China, it identified numerous compliance gaps in its Chinese operations, including the lack of a permanent compliance officer in China, but allegedly failed to take remedial action. Finally, the SEC identified numerous contemporaneous documents, such as emails to district or regional sales managers, indicating that sales representatives used funds derived from travel and expense claims to offer improper benefits to HCPs.

ENFORCEMENT

On October 5, 2015, the SEC announced that it settled its FCPA enforcement action against BMS through an administrative proceeding for violations of the FCPA's books-and-records and internal controls provisions. According to the cease-and-desist order, BMS was required to pay $11,442,000 in disgorgement, $500,000 in prejudgment interest, and a $2,750,000 civil penalty—totaling $14,692,000 in sanctions.

KEY FACTS

Citation. *In the Matter of Bristol-Myers Squibb Co.*, Admin. Proc. File No. 3-16881 (Oct. 5, 2015).

Date Filed. October 5, 2015.

Country. China.

Date of Conduct. 2009 – 2014.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Local Subsidiary.

Foreign official. Unnamed health care providers at Chinese stated-owned and state-controlled hospitals.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $14,692,000.

Compliance Monitor/Reporting Requirements. Two-year Reporting Requirement.

Related Enforcement Actions. None.

Total Combined Sanction. $14,692,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

140. IN THE MATTER OF HYPERDYNAMICS CORPORATION (2015)

NATURE OF THE BUSINESS

Hyperdynamics Corporation is an oil and gas exploration company headquartered in Houston, Texas and incorporated in Delaware. Hyperdynamics has registered stock with the SEC under Section 12(g) of the Exchange Act, and its shares are traded on OTCQX—an over-the-counter marketplace.

INFLUENCE TO BE OBTAINED

According to the SEC, Hyperdynamics purchased the rights to a small oil company with exclusive drilling rights off the coast of Guinea in 2001. In 2005, the company opened a subsidiary in Guinea to facilitate its ongoing operations.

The SEC claims that between 2007 and 2008, Hyperdynamics, through its Guinean subsidiary, paid $130,000 for public relations and lobbying services in Guinea to two entities—$55,000 to BerMia Service SRL and $75,000 to Africa Business Service. In 2008, Hyperdynamics allegedly discovered that an employee of its Guinean subsidiary controlled both BerMia Service SRL and Africa Business Service and was the sole signatory for African Business Service. According to the SEC, Hyperdynamics could not determine how the two companies spent the $130,000 and whether Hyperdynamics received any services in return. Further, the SEC states that Hyperdynamics was unable to retrieve the funds. The SEC claims that although there was no evidence indicating that the $130,000 payment was spent on public relations and lobbying activities, Hyperdynamics characterized the funds as such on its books and records.

ENFORCEMENT

On September 29, 2015 the SEC announced that it settled its enforcement action against Hyperdynamics through an administrative proceeding. According to the cease-and-desist order, Hyperdynamics agreed to pay a civil penalty of $75,000 for alleged violations of the FCPA's books-and-records and internal controls provisions.

See Parallel Litigation Digest Number H-A17.

KEY FACTS

Citation. *In the Matter of Hyperdynamics Corp.*, Admin. Pro. File No. 3-16843 (Sept. 29, 2015).

Date Filed. September 29, 2015.

Country. Guinea.

Date of Conduct. 2007 – 2008.

Amount of the Value. $130,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Consultant; Subsidiary.

Foreign official. Not Stated.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $75,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $75,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

139. SEC V. HITACHI, LTD. (2015)

NATURE OF THE BUSINESS

Hitachi, Ltd. is a multinational conglomerate headquartered in Tokyo, Japan. Among its lines of business, Hitachi designs and constructs power stations. From January 2005 until April 2012, Hitachi maintained a class of American Depository Shares on the New York Stock Exchange that were registered with the SEC under Section 12(b) of the Exchange Act.

INFLUENCE TO BE OBTAINED

According to the SEC, beginning in 2005, Hitachi established a subsidiary in South Africa ("HPA") to pursue public and private infrastructure contracts in South Africa. Hitachi then sold 25% of its shares in HPA to a local South African company called Chancellor House Holdings (Pty) Ltd. which, according to the SEC, was a front for the African National Congress ("ANC")—South Africa's ruling political party.

The SEC claims that as part of the arrangement, Chancellor House agreed to use its political connections to steer procurement contracts to HPA in exchange for a success fee (in addition to its 25% equity stake in HPA). The SEC's Complaint explains that over the course of several years, HPA was able to secure two lucrative power station contracts in South Africa worth a total of $5 billion as a result of Chancellor House's efforts. According to the SEC, HPA paid a $1.1 million success fee to Chancellor House for the award of the two contracts. Further, in 2012, HPA issued a dividend worth approximately $5 million and later repurchased Chancellor's 25% equity stake for $4.4 million. In total, the SEC claims that HPA paid Chancellor House $10.5 million for its association with HPA.

ENFORCEMENT

In September 2015, the SEC announced that it settled charges against Hitachi for violations of the books-and-records and internal controls provisions of the FCPA. Specifically, the SEC accused Hitachi of inaccurately recording the "success fee" in its books and records as consulting fees. Further, the SEC concluded that Hitachi violated the internal controls provisions of the FCPA, alleging that Hitachi executives were able to knowingly circumvent internal company policies in favor of the HPA-Chancellor House arrangement. In exchange for settling the SEC's charges, Hitachi agreed to pay a $19 million civil penalty.

KEY FACTS

Citation. [1] *SEC v. Hitachi, Ltd.*, 1:15-cv-01573 (D.D.C. 2015).

Date Filed. November 24, 2015.

Country. South Africa.

Date of Conduct. 2005 – 2012.

Amount of the Value. $10.5 million.

Amount of Business Related to the Payment. Approximately $5.6 billion.

Intermediary. Subsidiary.

Foreign official. African National Congress.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Final Judgment.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Japan.

Total Sanction. $19,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $19,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

138. IN THE MATTER OF THE BANK OF NEW YORK MELLON CORPORATION (2015)

NATURE OF THE BUSINESS

The Bank of New York Mellon is a New York-based corporation whose common stock is registered under Section 12(b) of the Exchange Act and listed on the New York Stock Exchange. BNYM and its various subsidiaries provide banking and financial services, including asset and wealth management services, in North America and elsewhere around the globe, including Europe, the Middle East, and Africa.

INFLUENCE TO BE OBTAINED

According to the SEC, a Middle East sovereign wealth fund, which is responsible for management and administration of assets of an unnamed Middle Eastern country, was a client of BNYM in various capacities since 2000. Between 2000 and 2011, BNYM allegedly held approximately $55 billion of the Fund's assets. According to the SEC, in 2010 two unnamed officials of the Fund requested that BNYM provide internships to three relatives.

One official, who had authority over allocations of new assets, allegedly requested that BNYM provide internships for his son and nephew and that the request served as an "opportunity" for BNYM. According to the SEC, emails from unnamed BNYM employees indicated that they understood that providing the internships was necessary to retain and obtain business from the Fund. After granting internships to the son and nephew, BNYM allegedly obtained additional assets from the Fund. The second official, a senior official in the European office of the Fund, also allegedly requested an internship for his son in 2010. The SEC asserts that at the time of this request, a number of client service issues threatened to weaken BNYM's relationship with the Fund's European office. According to the SEC, a BNYM manager indicated concerns that another competitor would hire the second official's son and that BNYM would lose market share. The SEC claims that after hiring the second official's son, BNYM retained, and was able to further develop, its existing business relationships with the European office of the Fund.

The SEC claims that while BNYM had established rigorous criteria and processes for hiring interns, the interns hired at the request of the officials did not meet the basic academic or professional requirements for the existing internship programs. The SEC alleges that BNYM agreed to hire the interns before meeting or interviewing them and that BNYM provided a "customized one-of-a-kind training program." According to the SEC, the interns were offered six-month long internships, which is significantly longer than typical BNYM internships, and BNYM assisted the three interns to obtain visas. According to the SEC, BNYM management indicated that the internships constituted an "expensive favor" for the officials given the amount of resources expended for these customized internships.

ENFORCEMENT

On August 18, 2015, the SEC settled its enforcement action against BNYM for violating of the anti-bribery and internal controls provisions of the FCPA. As a result, BNYM agreed to pay $8.3 million in disgorgement, $1.5 million in prejudgment interest, and a $5 million civil penalty—totaling $14.8 million in sanctions.

See Ongoing Investigation Number F-35.

KEY FACTS

Citation. *In the Matter of The Bank of New York Mellon Corp.*, Admin. Proc. File No. 3-16762 (Aug. 18, 2015).

Date Filed. August 18, 2015.

Country. Not Stated.

Date of Conduct. 2010 – 2011.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign official. Officials from a sovereign wealth fund recognized as a governmental body of an unnamed Middle Eastern country.

FCPA Statutory Provision. Anti-Bribery; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $14,800,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $14,800,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

137. IN THE MATTER OF VICENTE E. GARCIA (2015) IN THE MATTER OF SAP SE (2016)

NATURE OF THE BUSINESS

SAP SE is an internationally recognized technology solutions provider headquartered in Waldorf, Germany with operations in over 180 countries. SAP maintains American Depository Shares that are registered with the SEC under Section 12(b) of the Securities Act of 1933 and listed on the New York Stock Exchange. Vicente Garcia is a U.S. citizen who was a Vice President of Global and Strategic Accounts at SAP and was responsible for SAP's sales in Latin America.

INFLUENCE TO BE OBTAINED

According to the SEC, between June 2009 and November 2013, Garcia and others planned and executed a scheme to bribe three senior government officials from the Panamanian government in exchange for the sale of SAP solutions—valued at $3.7 million—to the Panamanian government. The SEC's cease-and-desist order asserts that Garcia and others paid bribes to one official worth $145,000 and promised to pay bribes to the two other officials.

The SEC asserts that Garcia was able to accomplish the bribery scheme by working through SAP's worldwide partners. According to the SEC, SAP executes the majority of its sales with local corporate partners whereby SAP agrees to sell certain products to a partner for resale to a separate end user. In Panama, the SEC claims that Garcia was able to sell software to a partner at a discount of 82% for purposes of reselling the solutions to the Panamanian government, generating a slush fund which enabled Garcia and his accomplices to bribe foreign officials and receive kickbacks of their own.

According to the SEC, Garcia's conduct caused SAP to violate the FCPA's books-and-records and internal controls provisions. The SEC alleged that SAP's procedures for approving discounts to local partners were flawed, claiming that SAP allowed wide latitude for the application of discounts without verifying employees' explanations of why such discounts were necessary.

ENFORCEMENT

On August 12, 2015, the SEC announced that it settled its charges against Garcia for violating the FCPA's anti-bribery and internal controls provisions. Specifically, the cease-and-desist order commented that Garcia knowingly circumvented SAP's internal controls and was later asked to resign by SAP as the result of his conduct at the company. In total, Garcia was required to pay $85,965 in disgorgement and $6,430 in prejudgment interest—totaling $92,395 in sanctions.

On February 1, 2016, the SEC separately announced that it had resolved its FCPA enforcement action against SAP for violations of the FCPA's books-and-records and internal controls provisions. According to the Commission's cease-and-desist order, SAP would be required to disgorge $3.7 million in profits

See DOJ Digest Number B-162.

KEY FACTS

Citation. *In the Matter of Vicente E. Garcia*, Admin. Proc. File No. 3-16750 (Aug. 12, 2015); *In the Matter of SAP SE*, Admin Proc. File No. 3-17080 (Feb. 1, 2016).

Date Filed. August 12, 2015; February 1, 2016.

Country. Panama.

Date of Conduct. 2009 – 2013.

Amount of the Value. $145,000.

Amount of Business Related to the Payment. $3.7 million.

Intermediary. Subsidiary.

Foreign official. Senior government officials of the Republic of Panama.

FCPA Statutory Provision.

- Garcia. Anti-Bribery; Internal Controls; Books-and-Records.
- SAP. Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Agent of Issuer (Garcia); Issuer (SAP).

Defendant's Citizenship. United States (Garcia); Germany (SAP).

Total Sanction. $3.7 million.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Garcia*.

Total Combined Sanction. $3.7 million.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

136. IN THE MATTER OF MEAD JOHNSON NUTRITION COMPANY (2015)

NATURE OF THE BUSINESS

Mead Johnson Nutrition Company is an infant formula and child nutrition product manufacturer and marketer based in Glenview, Illinois and incorporated in Delaware. The company maintains stock that has been registered with the SEC under Section 12(b) of the Exchange Act and is listed on the New York Stock Exchange. Mead Johnson Nutrition has subsidiaries throughout the world, including China, and the financial results of its subsidiaries are consolidated into the financial statement of the company.

INFLUENCE TO BE OBTAINED

According to the SEC, Mead Johnson Nutrition relies on third-party distributors to market, sell, and distribute the company's products in China. Pursuant to contracts between Mead Johnson and its third-party distributors, Mead Johnson Nutrition agreed to sell its products to the third-party distributors for resale at discounted prices (referred to as a "Distributor Allowance"). The SEC claims that the funds generated by the discounted Mead Johnson Nutrition products were used by the third-party distributors as illicit payments to healthcare professionals for recommending Mead Johnson Nutrition products and improperly providing the contact information for expecting mothers.

Though the funds belonged to these third-party distributors, Mead Johnson Nutrition employees are alleged to have maintained certain control over the use of the funds and kept records related to the Distributor Allowance. Upon examination, the SEC claims that the records relating to the use of the Distributor Allowance were incomplete and did not indicate that a portion of the Distributor Allowance was used in a manner that was contrary to internal company policies (which prohibited conduct that might violate the FCPA). The SEC alleges that Mead Johnson Nutrition failed to devise and maintain an adequate system of internal controls at Mead Johnson Nutrition's subsidiary in China to ensure that the marketing and sales expenditures were not used for improper purposes in violation of Mead Johnson Nutrition's internal policies.

ENFORCEMENT

On July 28, 2015, the SEC settled its enforcement action against Mead Johnson Nutrition for violations of the FCPA's books-and-records and internal controls provisions. According to the cease-and-desist order, Mead Johnson Nutrition was required to pay $7,770,000 in disgorgement; $1,260,000 in prejudgment interest; and a $3,000,000 civil penalty—totaling $12,030,000 in sanctions.

KEY FACTS

Citation. *In the Matter of Mead Johnson Nutrition Co.*, Admin. Proc. File No. 3-16704 (Jul. 28, 2015).

Date Filed. July 28, 2015.

Country. China.

Date of Conduct. 2008 – 2013.

Amount of the Value. $2,070,000.

Amount of Business Related to the Payment. Approximately $7,770,000.

Intermediary. Subsidiary.

Foreign official. Health care professionals at state-owned hospitals in China.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $12,030,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $12,030,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

135. IN THE MATTER OF BHP BILLITON LTD. AND BHP BILLITON PLC (2015)

NATURE OF THE BUSINESS

BHP Billiton Ltd., headquartered in Melbourne, Australia, and BHP Billiton PLC, headquartered in London, England, (collectively "BHP") operate under a Dual Listed Company structure as a single economic entity run by a single board of directors. BHP is a global resources company that is among the world's leading producers of major commodities, including iron ore, coal, oil and gas, copper, aluminum, manganese, uranium, nickel, and silver. BHP maintains American Depository Shares which have been registered with the SEC according to Section 12(b) of the Exchange Act and are listed on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to the SEC, on December 8, 2005 the Beijing Organizing Committee for the Games of the XXIX Olympiad announced BHP as an official sponsor of the 2008 Beijing Olympic Games. The SEC explained that, in exchange for providing the raw materials for the Olympic medals and financial support, BHP received priority access to event tickets and luxury accommodations during the Games. The SEC noted that to take full advantage of their priority status, BHP established the Olympic Sponsorship Steering Committee ("OSSC") to which employees would submit Olympic Leverage Plans which identified key individuals whose attendance at the Games could further the business interests of BHP. According to the SEC, the overall objective of BHP was "to reinforce and develop relationships with key stakeholders" across Asia and Africa.

The SEC states that, in total, BHP invited 650 individuals to attend the Olympic Games in Beijing, 176 of which were government officials. According to the SEC, sixty officials, along with their spouses, attended the games under BHP sponsorships and were treated to event tickets, luxury hotels stays, and sightseeing trips while in Beijing—each hospitality package being valued at approximately $12,000–$16,000. The SEC's order offered a series of examples of officials from Burundi, the Philippines, the Democratic Republic of the Congo, and Guinea with close relationships to BHP's business interests who received invitations.

According to the SEC, BHP did not require the applications for invitations to undergo any form of legal or compliance review. Instead, the SEC claims that of the hundreds of applications submitted by BHP employees, only ten were reviewed by the OSSC and BHP's Ethics Panel, which only served in an advisory capacity and noted that "accountability rest[ed] with business leaders." Further, the SEC cited other flaws in BHP's oversight including (i) numerous incomplete and inaccurate applications; (ii) a lack of general training on how to appropriately fill out the application forms and how business leaders should evaluate the applications; (iii) the failure of certain applications to update the company on any developments which could impact the appropriateness of a particular invitation; and (iv) the failure to set in place a mechanism that would allow BHP to detect whether an invitee was involved in other business dealings which could raise a conflict of interest.

ENFORCEMENT

On May 20, 2015, the SEC announced that it settled its charges against BHP through an administrative proceeding for BHP's alleged violation of the FCPA's books-and-records and internal controls provisions. According to the cease-and-desist order, BHP agreed to pay a civil penalty of $25 million.

KEY FACTS

Citation. *In the Matter of BHP Billiton Ltd. & BHP Billiton Plc*, Admin. Proc. File No. 3-16546 (May 20, 2015).

Date Filed. May 20, 2015.

Country. China, Burundi, Philippines; Democratic Republic of Congo, and Guinea.

Date of Conduct. 2005 – 2008.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign official. Various unnamed foreign officials and representatives of state-owned enterprises; Burundi Minister of Mines; Department of Environment and Resources of the Philippines; Governor of Katanga Province of the Democratic Republic of the Congo; Guinean Minister of Mines.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Australia.

Total Sanction. $25,000,000.

Compliance Monitor/Reporting Requirements. One-year Reporting Requirement.

Related Enforcement Actions. None.

Total Combined Sanction. $25,000,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

134. IN THE MATTER OF GOODYEAR TIRE & RUBBER COMPANY (2015)

NATURE OF THE BUSINESS

The Goodyear Tire & Rubber Company is an Akron, Ohio based tire manufacturer with facilities in twenty-two countries and sales around the world. Goodyear's common stock is registered with the SEC pursuant to Section 12(b) of the Exchange Act and is listed on the NASDAQ Stock Market.

INFLUENCE TO BE OBTAINED

According to the SEC, from 2007 until 2011, Goodyear's subsidiaries in Kenya and Angola engaged in the practice of paying bribes to various government officials in exchange for business.

In Kenya, the SEC claims that managers of Goodyear's majority-owned subsidiary, Treadsetters, paid bribes totaling approximately $1.5 million to employees of several Kenyan government-owned or affiliated entities. According to the SEC, Treadsetters' managers also paid $14,457 in improper payments to local government officials including city council members, local police, and tax authorities. The bribery scheme was allegedly organized by Treadsetters' managers who approved phony promotion payments and directed the company's finance department to issue checks to cash. Once the checks were cashed, the payments were allegedly used as bribes but were recorded as promotional expenses on the company's books and records.

In Angola, the SEC claims that a manager of Goodyear's subsidiary, Trentyre, paid $1.6 million in bribes to employees of Angolan government owned and affiliated entities and another $64,713 to local police and tax authorities. According to the SEC, to generate the funds for the improper payments, Trentyre falsely marked-up the cost of its tires by adding phony freight and customs clearing costs. Although the mark-ups were recorded as freight and customs clearing costs on the company's books and records, the SEC alleges that they were used as bribes.

ENFORCEMENT

On February 24, 2015, the SEC announced that it settled its charges against Goodyear through an administrative proceeding. According to the cease-and-desist order, Goodyear was required to disgorge $14,122,525 and pay $2,105,540 in prejudgment interest, totaling a $16,228,065 sanction.

KEY FACTS

Citation. *In the Matter of Goodyear Tire & Rubber Co.,* Admin. Proc. File No. 3-16400 (Feb. 24, 2015).

Date Filed. February 24, 2015.

Country. Angola; Kenya.

Date of Conduct. 2007 – 2011.

Amount of the Value. Approximately $3,200,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Subsidiaries.

Foreign official. Employees of various Kenyan government-owned or affiliated entities; Employees of various Angolan government-owned or affiliated entities.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $16,228,065.

Compliance Monitor/Reporting Requirements. One-year Reporting Requirement.

Related Enforcement Actions. None.

Total Combined Sanction. $16,228,065.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

133. IN THE MATTER OF PBSJ CORPORATION (2015)
IN THE MATTER OF WALEED HATOUM (2015)

NATURE OF THE BUSINESS

PBSJ Corporation was an engineering and construction firm based in Tampa, Florida. PBS&J International, Inc. ("PBS&J Int'l") was a wholly owned subsidiary of PBSJ which provided engineering services in international markets, including the Middle East. During the relevant period, PBS&J's common stock was registered pursuant to Section 12(g) of the Securities Exchange Act of 1934 and PBSJ filed annual and quarterly reports under Section 13(a) of the Exchange Act. Walid Hatoum, a United States citizen, is a former employee and President of PBS&J Int'l.

INFLUENCE TO BE OBTAINED

According to the SEC's cease-and-desist order, in 2009 PBS&J Int'l won a pair of multi-million dollar development project contracts in Qatar and Morocco. Both projects were solicited through a competitive bidding process with the Qatari Diar Real Estate Investment Company—an agency of the Qatari government for the development of real estate investments. The SEC claims that the two projects were facilitated by the efforts of a PBSJ employee, and later President of PBS&J Int'l, Walid Hatoum. Hatoum allegedly arranged for PBS&J Int'l to bid on the two Qatari Diar projects by partnering with a local subcontractor ("Local Partner") in charge of managing the project's local operations. The SEC explains that, unbeknownst to PBSJ, the Local Partner was owned and controlled by the Director of the Qatari Diar. According to the SEC, as part of the arrangement, Hatoum planned to use the Local Partner as a conduit to funnel bribes to the then-Director of the Qatari Diar, agreeing to share 40% of the project profits with the Local Partner and to pay the Partner "agency fees" for the successful tenders. Additionally, PBS&J agreed to pay half of the salary of the Director's wife, who worked for the Local Partner. In exchange, the Director allegedly provided PBS&J Int'l with confidential bid information to assist PBS&J Int'l to win both contracts.

While the SEC contends that the PBSJ employees who oversaw the bid process were never aware of the scheme, the SEC claims that they ignored significant red-flags, including the fact that PBS&J Int'l was being given confidential bid information; the fact that Hatoum described the Director of the Qatari Diar as a good friend; and the fact that a PBS&J Int'l employee was aware that the husband of one of the Local Partner's employees was a government official. According to the SEC, had PBSJ conducted "meaningful due diligence" it would have discovered the Director's role as a Qatari Diar official and owner of the Local Partner.

ENFORCEMENT

On January 22, 2014 the SEC announced that it entered into a deferred prosecution agreement with WS Atkins, the corporate parent of PBSJ. WS Atkins acquired PBSJ in October 2010, after the conduct in issue took place. In the agreement, Atkins, on behalf of PBSJ, agreed to pay a total sanction of $3,407,875. On the same day, the SEC announced that it settled charges against Hatoum for violations of the FCPA's anti-bribery provision, books-and-records, and internal controls provisions. As part of the settlement, Hatoum agreed to pay a civil penalty of $50,000.

KEY FACTS

Citation. *In the Matter of PBSJ Co.* (Jan. 22 2015); *In the Matter of Walid Hatoum*, Admin. Proc. File No. 3-16352 (Jan. 22, 2015).

Date Filed. January 22, 2015.

Country. Qatar.

Date of Conduct. 2009.

Amount of the Value. $1,390,000.

Amount of Business Related to the Payment. $60,600,000.

Intermediary. Local Partner.

Foreign official. Former Director of International Projects at Qatari Diar Real Estate Investment Company.

FCPA Statutory Provision.

- **PBSJ** – Anti-Bribery; Books-and-Records; Internal Controls.
- **Hatoum** – Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Deferred Prosecution Agreement (WS Atkins/PBSJ); Cease-and-Desist Order (Hatoum).

Defendant Jurisdictional Basis. Issuer (PBSJ); Agent of Issuer (Hatoum).

Defendant's Citizenship. United States.

Total Sanction. $3,407,875.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $3,407,875.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

132. SEC V. AVON PRODUCTS INC. (S.D.N.Y. 2014)

NATURE OF THE BUSINESS

Avon Products, Inc. is a U.S.-based corporation headquartered in New York focusing on the sale of beauty, home, and health products. Throughout the relevant period, Avon had shares registered pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange. Avon Products (China) Co. Ltd. is an indirect subsidiary of Avon that manufactures and sells Avon products in China. Avon China's books and records were consolidated into Avon's financial statements.

INFLUENCE TO BE OBTAINED

According to a civil complaint filed by the SEC, between 2004 and 2008, Avon China engaged in a regular practice of offering improper benefits to Chinese government officials responsible for awarding regulatory licenses and other officials with the authority to assist Avon China avoid fines and negative press. According to the SEC, Avon purposefully misreported the expenses in the Company's books and records to conceal the improper activities.

The SEC claims that the benefits frequently took the form of expensive gifts, travel, and entertainment where no legitimate business purpose existed. On other occasions, Avon China officials paid government officials cash through false reimbursement submissions or payments, which Avon China recorded as fines. Avon China is also alleged to have paid a third-party consultant for interactions with government officials, even though Avon China officials were aware that the consultant's invoices were false and that the consultant offered no legitimate services to the company.

In addition to the improper benefits described above, the SEC alleges that Avon failed to maintain adequate internal controls during the period in question. According to the complaint, during a 2005 global internal audit Avon discovered multiple red flags associated with Avon China's activities. The SEC claims that, after much delay, Avon prepared a draft audit report stating that Avon China regularly offered gifts and meals to government officials implying that the benefits could potentially violate the FCPA. According to the SEC, upon further internal discussion between Avon executives, the vice president of internal audit was instructed to redraft the report to remove references to potential FCPA violations. Although Avon China was later ordered to implement remedial measures, the SEC claims no action was ever taken and that approximately three years after the improper practices were discovered, Avon China continued to engage in the same conduct. Only after a former Avon China executive wrote the CEO of the company describing Avon China's practices did the Company commence an internal investigation and report the findings to the U.S. authorities in October 2008.

ENFORCEMENT

On December 17, 2014, the SEC announced that it settled its claims against Avon for violating the books-and-records and internal controls provisions of the FCPA. Accordingly, Avon agreed to pay approximately $67 million in penalties including $52,850,00 in disgorgement and $14,515,013 in prejudgment interest.

In a parallel proceeding by the DOJ, Avon and Avon China settled criminal charges by agreeing to pay approximately $67 million in corporate penalties

KEY FACTS

Citation. *SEC v. Avon Products Inc*., No. 14-cv-9956 (S.D.N.Y. 2014).

Date Filed. December 17, 2014.

Country. China.

Date of Conduct. 2004 – 2008.

Amount of the Value. Approximately $8 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Third-Party Consultants.

Foreign official. Unspecified Chinese government officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Complaint and Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $67,365,013.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *In re United States v. Avon Products (China) Co. Ltd.*; *In re United States v. Avon Products, Inc*..

Total Combined Sanction. $135,013,013.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

and to retain an independent compliance monitor for an eighteen month period. *See* DOJ Digest Number B-156. *See* Parallel Litigation Digest Numbers H-A13, H-B2, H-F13.	

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

131. IN THE MATTER OF BRUKER CORPORATION (2014)

NATURE OF THE BUSINESS

Bruker Corporation is a Delaware corporation with its headquarters located in Billerica, Massachusetts. Bruker designs, manufactures, and markets analytical, life science, and material research systems, including infrared spectrometers and microscopes. The company maintains a class of common stock registered on the NASDAQ exchange.

INFLUENCE TO BE OBTAINED

According to the SEC's cease-and-desist order, between 2005 and 2012, Bruker engaged in two different practices to improperly influence employees of Chinese state-owned entities who were responsible for awarding the company valuable sales agreements.

First, according to the SEC, Bruker paid for Chinese officials to take extensive travel throughout North America and Europe when the travel retained no legitimate business purpose. Occasionally, the travel was in connection with a business trip, but according to the SEC, the bulk of the travel expenses were related to leisure and sightseeing trips which had no connection to Bruker's business operations. In other instances, the SEC claims Bruker paid for Chinese officials to travel to New York and Los Angeles, cities where no Bruker facilities existed, for the sole purpose of sightseeing. In total, the SEC reported that Bruker paid for Chinese officials to take seventeen different leisure trips and, as a result, the SEC claims Bruker earned $1,131,740 in profits from sales contracts awarded by the Chinese officials.

Second, the SEC also states that Bruker entered into a series of "Collaboration Agreements" whereby the relevant state-owned entities would agree to provide research on Bruker products and to use Bruker products in demonstration laboratories. In reality, according to the SEC, the state-owned entities provided no services to Bruker, and the Collaboration Agreements merely enabled Bruker officials to funnel improper payments to Chinese officials in exchange for sales agreements which netted the company $583,112 in profits.

ENFORCEMENT

On December 15, 2014, the SEC announced that it settled charges with Bruker over multiple violations of the FCPA's books-and-records and internal controls provisions. According to the cease-and-desist order, Bruker would agree to pay a total corporate penalty of $2,399,969.

KEY FACTS

Citation. *In the Matter of Bruker Corp.*, Admin. Proc. File No. 3-16314 (Dec. 15, 2014).

Date Filed. December 15, 2014.

Country. China.

Date of Conduct. 2005 – 2012.

Amount of the Value. $230,938.

Amount of Business Related to the Payment. Approximately $1.7 million in profit.

Intermediary. Subsidiaries.

Foreign official. Employees of Chinese state-owned entities.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $2,399,969.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

130. IN THE MATTER OF STEPHEN TIMMS & YASSER RAMAHI (2014) IN THE MATTER OF FLIR SYSTEMS, INC. (2015)

NATURE OF THE BUSINESS

FLIR Systems, Inc. is an Oregon-based defense contractor whose common stock is registered under Section 12(b) of the Exchange Act and is listed on the NASDAQ Global Select Market. FLIR markets and manufactures thermal imaging and other sensing products and systems, night vision, and infrared camera systems. Stephen Timms was FLIR's Middle East Business Development Director and Yasser Ramahi was an employee in FLIR's business development department.

INFLUENCE TO BE OBTAINED

According to the SEC, in 2008 FLIR entered into a contract with the Saudi Arabian Ministry of Interior ("MOI") to sell thermal binoculars for approximately $12.9 million. As part of the sales agreement between FLIR and the MOI, FLIR agreed to conduct a "Factory Acceptance Test" that would be attended by MOI officials. FLIR allegedly believed that the successful execution of the contract, along with the "Factory Acceptance Test," would lead to additional business with the MOI.

The Factory Acceptance Test was planned for July 2009 in Billerica, Massachusetts. However, in arranging the MOI officials' travel, FLIR employees, Timms and Ramahi, allegedly organized a twenty-night trip with stops in Casablanca, Paris, Boston, New York, Beirut, and Dubai. Timms and Ramahi allegedly referred to the travel as the "World Tour." According to the SEC, none of the stops, outside of Boston, served a business purpose. The SEC also contends that Timms and Ramahi gave expensive watches worth approximately $7,000 in total to five MOI officials and that FLIR paid for additional travel and entertainment expenses for MOI officials valued at approximately $40,000 from 2008 and 2010. After July 2009, the MOI placed additional orders with FLIR for binoculars for the price of $1.2 million. In total, FLIR earned revenues of over $7 million in profits in connection with its sale of binoculars to the MOI.

The SEC order states that in July 2009 FLIR's finance department flagged Timms' reimbursement request for the watches, and when questioned, Timms falsely stated that the report should have read the equivalent of 7,000 Saudi Riyal (approx. $1,900) instead of $7,000. At Timms' request, Ramahi procured fabricated invoices stating that the watches were purchased for $1,900 by FLIR's third-party agent. In September 2009, FLIR's finance department contacted the third-party agent to confirm the value of the watches; however, unbeknownst to FLIR's finance department, Timms drafted responses to FLIR's questions on behalf of the agent to maintain that the watches cost approximately $1,900.

When questioned about the "World Tour," Timms and Ramahi explained that the MOI had used FLIR's travel department to arrange the travel and that FLIR's travel department mistakenly charged FLIR instead of the MOI. To cover up the MOI's travel expenses, Timms and Ramahi prepared additional false documentation that was submitted to FLIR's finance department.

In addition to alleged payments made to MOI officials, the SEC claims that unspecified FLIR officials paid for $43,000 in travel costs for nine officials of the Egyptian Ministry of Defense to FLIR's Stockholm factory, which also included

KEY FACTS

Citation. *In the Matter of Stephen Timms & Yasser Ramahi*, Admin. Proc. File No. 3-16281 (Nov. 17, 2014); *In the Matter of FLIR Systems, Inc.*, Admin. Proc. File No. 3-16478 (Apr. 8, 2015).

Date Filed. November 17, 2014; April 8, 2015.

Country. Egypt; Saudi Arabia.

Date of Conduct. 2008 – 2010.

Amount of the Value. Not stated.

Amount of Business Related to the Payment. Approximately $7 million in profits.

Intermediary. None.

Foreign official. Saudi Arabian Ministry of Interior officials; Egyptian Ministry of Defense officials.

FCPA Statutory Provision.

- **Timms & Ramahi**. Anti-Bribery; Books-and-Records.
- **FLIR**. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Agent of Issuer (Timms & Ramahi); Issuer (FLIR).

Defendant's Citizenship. United States.

Total Sanction. $9,504,584 (FLIR); $50,000 (Timms); $20,000 (Ramahi).

Compliance Monitor/Reporting Requirements. Two-year Reporting Requirement.

Related Enforcement Actions. None.

Total Combined Sanction. $9,504,584.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

a non-essential visit to Paris. In total, according to the SEC, the officials traveled fourteen days but only engaged in legitimate business activity on four days.

ENFORCEMENT

On November 17, 2014, the SEC announced that it settled charges against Timms and Ramahi for violations of the FCPA's anti-bribery and books-and-records provisions. As part of the settlement, Timms agreed to pay a civil monetary penalty of $50,000 and Ramahi agreed to pay a civil monetary penalty of $20,000.

On April 8, 2015, the SEC announced that it settled charges against FLIR for violations of the FCPA's books-and-records and internal controls provisions through an administrative proceeding. According to the cease-and-desist order, FLIR was required to pay $7,534,000 in disgorgement, $970,584 in prejudgment interest, and a $1,000,000 civil penalty—totaling $9,504,584.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

129. IN THE MATTER OF BIO-RAD LABORATORIES, INC. (2014)

NATURE OF THE BUSINESS

Bio-Rad Laboratories, Inc. is a Delaware corporation with its headquarters in Hercules, California. Bio-Rad is a life-science research and clinical diagnostics company with operations in the United States and abroad. Bio-Rad's clinical diagnostics segment sells testing kits and systems to clinical laboratories and hospitals, accounting for the majority of the company's net sales. Bio-Rad maintains a class of publicly traded securities on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to the SEC's cease-and-desist order, between 2005 and 2010, Bio-Rad's French subsidiary ("Bio-Rad SNC") made payments disguised as commissions to foreign third-party agents with phony Moscow addresses and off-shore bank accounts. The third-party agents entered into various agreements with Bio-Rad SNC to perform services, including acquiring new business, creating and disseminating promotional materials to prospective customers, distributing and installing products and related equipment, and training customers. The SEC noted that none of the third-party agents appear to have had the resources necessary to perform the contracted-for-services and claims that at least a portion of these payments was used to bribe government officials in Russia's Ministry of Health in exchange for government contracts. Bio-Rad managers are accused of ignoring red flags and affirmatively making efforts to conceal the agents' work. For instance, one manager communicated with the agents through at least ten different personal e-mail addresses with aliases and referred to the commissions with code words such as "bad debts."

Apart from the scheme involving the Russian Ministry of Health, between 2005 and 2009, Bio-Rad's country managers in Vietnam are accused of directing sales representatives to make cash payments to officials at government-owned hospitals and laboratories in exchange for their agreement to buy Bio-Rad products. When Bio-Rad's regional sale manager discovered the company's practice in Vietnam in 2006, she raised her concerns with the Vietnam country manager, but allowed the bribes to continue.

Finally, in Thailand, Bio-Rad failed to uncover a pre-existing bribery scheme set in place by Diamed Thailand, a company Bio-Rad acquired in 2007. Between 2007 and 2010, Thai agents received inflated commissions, most of which were paid to Thai government officials in exchange for profitable business contracts. The SEC alleges that Bio-Rad performed very little due diligence on Diamed Thailand prior to the acquisition and, despite discovering the bribery scheme in March 2008, did nothing to stop the conduct.

ENFORCEMENT

On November 3, 2014, the SEC announced that it settled its charges against Bio-Rad for violations of the FCPA's anti-bribery and accounting provisions. As part of the settlement, Bio-Rad agreed to pay a total sanction of $40.7 million, consisting of a disgorgement of $35.1 million and prejudgment interest of $5.6 million. As part of a separate DOJ action for FCPA violations associated with the bribes that took place in Russia, Bio-Rad also agreed to pay an additional $14.35 million criminal penalty.

See DOJ Digest Numbers B-154.
See Parallel Litigation Digest Number H-D13, H-F28 and H-F17.

KEY FACTS

Citation. *In the Matter of Bio-Rad Labs, Inc.*, Admin. Proc. File No. 3-16231 (Nov. 3, 2014).

Date Filed. November 3, 2014.

Country. Russia, Thailand, Vietnam.

Date of Conduct. 2005 – 2010.

Amount of the Value. Approximately $7.5 million.

Amount of Business Related to the Payment. Approximately $35.1 million.

Intermediary. Sales Agent/Consultant.

Foreign official. Russian Ministry of Health officials; Government officials in Thailand; Officials at government-owned hospitals and laboratories in Vietnam.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $40,700,000.

Compliance Monitor/Reporting Requirements. Two-year Reporting Requirement.

Related Enforcement Actions. *In re Bio-Rad Laboratories, Inc.*

Total Combined Sanction. $51,050,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

128. IN THE MATTER OF LAYNE CHRISTENSEN COMPANY

NATURE OF THE BUSINESS

Layne Christensen Company is a Texas-based global water management, construction, and drilling company with over 100 offices in Africa, Australia, Europe, South America, and North America. Its common stock is registered pursuant to Section 12(b) of the Exchange Act.

INFLUENCE TO BE OBTAINED

Between 2005 and 2009, Layne Christensen, through its wholly owned subsidiaries in Africa and Australia, allegedly paid $768,000 to foreign officials in the Republic of Mali, the Republic of Guinea, and the Democratic Republic of Congo. According to the SEC, Layne Christensen made these payments to reduce its tax liability and to avoid associated penalties for delinquent payment.

The SEC also alleged that Layne Christensen made improper payments to customs officials in Burkina Faso and the Democratic Republic of Congo between 2007 and 2010 to avoid customs duties and to obtain clearance to import and export its drilling equipment. The improper payments were falsely recorded as legal fees and commissions in the company's books and records.

During the same period, Layne Christensen is accused of paying more than $23,000 in cash to police, border patrol, immigration officials, and labor inspectors in Burkina Faso, Guinea, Tanzania, and the Democratic Republic of Congo to obtain border entry for its equipment and employees, secure work permits for its expatriate employees, and to avoid penalties for noncompliance with local immigration and labor regulations. The SEC also claimed Layne Christensen made more than $10,000 in small payments to unspecified "foreign officials" through various customs and clearing agents in Tanzania, Burkina Faso, Mali, Mauritania, and the Democratic Republic of Congo. The SEC argued that these payments, ranging from $4 to $1,700, were mischaracterized in Layne Christensen's accounting records.

ENFORCEMENT

On October 27, 2014, in a standalone action, the SEC announced that it reached a settlement with Layne Christensen for various violations of the FCPA anti-bribery and accounting provisions. As part of the settlement, Layne Christensen agreed to pay $5,127,193 in sanctions consisting of a civil penalty of $375,000, disgorgement of $3,893,472.42, and pre-judgment interest of $858,720.68.

KEY FACTS

Citation. *In the Matter of Layne Christensen Co.*, Admin. Proc. File No. 3-16216 (Oct. 27, 2014).

Date Filed. October 27, 2014.

Country. Burkina Faso, Democratic Republic of Congo, Guinea, Mali, Mauritania, Tanzania.

Date of Conduct. 2005 – 2010.

Amount of the Value. Approximately $1 million.

Amount of Business Related to the Payment. Approximately $3.9 million.

Intermediary. Subsidiaries; Customs brokers/agents; Local lawyers.

Foreign official. Tax officials in the Democratic Republic of Congo, Guinea, and Mali; Customs agents in Burkina Faso and the Democratic Republic of Congo; Police, border patrol, immigration officials, and labor inspectors in Burkina Faso, Guinea, Tanzania, and the Democratic Republic of Congo; Officials in Burkina Faso, the Democratic Republic of Congo, Tanzania, Mali, and Mauritania.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $5,127,193.10.

Compliance Monitor/Reporting Requirements. Two-year Reporting Requirement.

Related Enforcement Actions. None.

Total Combined Sanction. $5,127,193.10.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

127. IN THE MATTER OF SMITH & WESSON HOLDING CORPORATION (2014)

NATURE OF THE BUSINESS

Smith & Wesson Holding Corporation is a Nevada corporation with its principal place of business in Massachusetts. Smith & Wesson manufactures and markets firearms products in the United States and abroad, and it maintains a class of publicly traded securities on the NASDAQ Stock Exchange, registered pursuant to Section 12(b) of the Exchange Act.

INFLUENCE TO BE OBTAINED

From 2007 to 2010, in an effort to increase Smith & Wesson's international sales, the SEC alleged that the company authorized employees and other third-party agents to bribe foreign government officials in exchange for contracts to sell firearms.

According to the SEC, in 2008 Smith & Wesson retained a third-party agent in Pakistan to obtain a deal to sell firearms to a Pakistani police department. When the third-party agent informed the company that it would provide $11,000 in firearms to the Pakistani officials as gifts and would make additional cash payments to those officials, the company authorized the transaction. As a result of the alleged bribes, Smith & Wesson earned $107,852 in illicit profits.

In 2009, Smith & Wesson hired a similar third-party agent in Indonesia who explained that payments would be made to Indonesian police officials under the guise of firearm lab testing costs. Also in 2009, the SEC claims that Smith & Wesson, through a third-party agent, paid bribes to Turkish police and military officials for contracts to sell handcuffs and firearms, respectively. No shipments were made for these contracts as the company's bidding efforts for one contract were unsuccessful and the other contract was ultimately canceled. Smith & Wesson also allegedly attempted to bribe officials in Nepal and Bangladesh, but were unsuccessful.

ENFORCEMENT

On July 28, 2014, the SEC announced that it settled its claims against Smith & Wesson for violations of the anti-bribery, book-and-records, and internal controls provisions of the FCPA through an administrative proceeding. According to SEC documents, the company agreed to pay a total of $2,034,892 in disgorgement, prejudgment interest, and civil penalties.

KEY FACTS

Citation. *In the Matter of Smith & Wesson Holding Corp.*, Admin. Proc. File No. 3-15986 (Jul. 28, 2014).

Date Filed. July 28, 2014.

Country. Bangladesh, Indonesia, Nepal, Pakistan, Turkey.

Date of Conduct. 2007 – 2010.

Amount of the Value. $11,000.

Amount of Business Related to the Payment. $107,852.

Intermediary. Third-party Agents/Consultants.

Foreign official. Pakistani police officials; Indonesian police officials; Turkish police and military officials; Undisclosed "foreign officials" in Nepal and Bangladesh.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $2,034,892.

Compliance Monitor/Reporting Requirements. Two-year Reporting Requirement.

Related Enforcement Actions. None.

Total Combined Sanction. $2,034,892.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

126. IN THE MATTER OF HEWLETT-PACKARD COMPANY (2014)

NATURE OF THE BUSINESS

Hewlett-Packard Company ("HP Co.") is a Delaware corporation with its principal place of business in Palo Alto, California, and with subsidiaries around the world, most relevantly in Russia, Poland, and Mexico. HP Co. manufactures personal computers, printers, and software and provides related information services and maintains its common stock pursuant to Section 12(b) of the Exchange Act.

INFLUENCE TO BE OBTAINED

According to the SEC, between 2003 and 2010, HP Co.'s wholly owned subsidiaries in Russia, Poland, and Mexico engaged in a series of improper business practices, including making unlawful payments to foreign government officials to gain and maintain business.

Russia

In Russia, the SEC alleges that in December 2000, the Russian government announced a project to automate the telecommunications and computing infrastructure of the Office of the Prosecutor General ("GPO"). To win the contract, Zao Hewlett-Packard A.O. ("HP Russia") allegedly agreed to partner with a series of third-party intermediaries who had close ties to the Russian officials administering the contract. In particular, HP Russia agreed to pay one intermediary as much as $1.2 million for the contract and agreed to use the intermediary as the principal contractor in the future if the agent secured the GPO project. According to the SEC, HP Russia was awarded the GPO contract worth over $35 million in January 2001 as a result of this agreement.

Later in 2003, regulatory issues in the United States forced HP Russia to obtain financing from a German bank. As a result of German content requirements, the Russian government threatened to re-open the tender on the GPO project. Afraid that the company might lose the project, the SEC claims that HP Russia executives agreed to funnel approximately €8 million to a Russian official through a German intermediary and various shell companies. According to the SEC, as a result of the additional illicit payments, HP Russia (through the HP Co.'s German subsidiary Hewlett-Packard ISE GmbH) was awarded the GPO project once again. Over the course of the GPO project, the SEC alleged that HP Russia funneled more than €21 million through the German agent to Russian officials, earning more than $10.4 million in illicit profits.

Finally, in 2005, HP Russia paid approximately $2.5 million to a distributor for services to a state-owned enterprise in Russia, but there are no records of the work performed by the distributor for these payments.

Poland

In Poland, officials from Hewlett-Packard Polska, SP. z.o.o. ("HP Poland") invited a Polish official responsible for reviewing and awarding technology contracts to a conference in San Francisco in October 2006. Before the conference began, HP Poland allegedly paid for dinners, gifts, and sightseeing for the Polish Official as well as a personal trip to Las Vegas that occurred in the middle of the conference. In late 2006, the HP Poland officials also allegedly began providing the Polish Official with HP Poland products for personal use. In 2007, SEC documents state that HP Poland agreed to give the Polish Official 1.2% of HP Poland's net revenue on any contract awarded.

KEY FACTS

Citation. *In the Matter of Hewlett-Packard Co.*, Admin. Proc. File No. 3-15832 (Apr. 9, 2014).

Date Filed. April 9, 2014.

Country. Russia, Poland, Mexico

Date of Conduct. 2003 – 2010.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Consultants/Agents; Subsidiaries; Shell Companies.

Foreign official. Russian officials responsible for awarding the GPO project (Federal prosecutor's office); Officials of Mexico's state-owned petroleum company (Petroleos Mexicanos); Polish official from the Polish National Police Agency and the Polish Ministry of the Interior and Administration.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $34,000,000.

Compliance Monitor/Reporting Requirements. Three-year Reporting Requirement.

Related Enforcement Actions. *In re Hewlett-Packard Mexico, S. de R.L. de C.V.*; *United States v. Hewlett-Packard Polska, SP. Z.O.O.*; *United States v. Zao Hewlett-Packard A.O.*

Total Combined Sanction. $108,222,474.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

Around this time, HP officials are accused of giving the Polish Official bags of cash totaling more than $600,000 and gifts worth over $30,000. The SEC argues that in exchange for these bribes, HP Poland was awarded several contracts valued at approximately $60 million.

Mexico

In Mexico, to obtain software contracts worth approximately $6 million dollars, the SEC alleges that Hewlett-Packard Mexico, S. de R.L. de C.V. ("HP Mexico") hired a Mexican consulting company that was closely affiliated with senior officials of Mexico's state-owned petroleum company. HP Mexico is alleged to have agreed to pay the Mexican consulting firm an "influencer fee" equal to 25% of the licensing and support components of the software agreement. To facilitate the payments, HP Mexico arranged for an approved written channel partner (to comply with HP Co. internal controls) to receive the commission and pass it on to the consulting company, keeping a fee for itself. In accordance with this plan, HP Mexico transferred approximately $1.66 million to the pass-through entity, which then transferred $1.41 million to the consulting company. Thereafter, the consulting company allegedly paid $125,000 to an entity controlled by a government official. As a result of the bribes, HP Mexico earned approximately $2.5 million on the software deal.

Other Conduct

The SEC alleges that some of HP's European subsidiaries invited government customers to attend a marketing event in connection with the FIFA World Cup in Germany in 2006. They paid thousands of dollars in travel and entertainment expenses for their guests.

ENFORCEMENT

On April 9, 2014, the SEC announced that it settled charges with HP Co. through an administrative proceeding for the acts of its subsidiaries in Russia, Poland, and Mexico. As part of the settlement, HP Co. agreed to pay $29 million in disgorgement, $2,527,750 of which was deemed satisfied as part of the criminal proceedings against HP Co., and an additional $5 million in prejudgment interest. These penalties were in addition to the DOJ's $74.2 million sanction in the criminal case against the company.

See DOJ Digest Numbers B-153.
See Parallel Litigation Digest Numbers H-C30 and H-F27.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

125. IN THE MATTER OF ALCOA INC. (2014)

NATURE OF THE BUSINESS

Aloca Inc. ("Alcoa"), a Pennsylvania corporation, is a global provider of primary aluminum, fabricated aluminum, and smelter-grade alumina (the raw material that is supplied to smelters to produce aluminum). Alcoa's publicly traded securities are registered pursuant to Section 12(b) of the Securities Exchange Act.

INFLUENCE TO BE OBTAINED

Between 1989 and 2009, two Alcoa subsidiaries—Alcoa of Australia ("AA") and Alcoa World Alumina ("AWA")—retained a consultant to act as a middleman for purposes of structuring an alumina supply arrangement that allowed Alcoa and its subsidiaries to mark-up the cost of alumina sold to Aluminium Bahrain B.S.C. ("Alba"), an aluminum smelter majority owned by a state holding company of the Kingdom of Bahrain. According to the SEC, the consultant provided no legitimate services to Alcoa, but received sales commissions and mark-ups which were subsequently used to bribe Bahraini officials. As a result of the corrupt payments, from at least 1989 until 2009, Alcoa was able to secure a series of multi-year contracts with Alba, making Alba among Alcoa's largest alumina customers.

Multiple officials and employees at Alcoa expressed concern over the use of the consultant but nevertheless approved the arrangement without conducting appropriate due diligence into the arrangement. Furthermore, according to the SEC, the sales commissions and mark-ups made pursuant to the supply arrangements were improperly recorded on Alcoa's books and records.

ENFORCEMENT

Shortly after Alba filed a civil suit against Alcoa in U.S. federal court in 2008, the DOJ and SEC initiated a probe into Alcoa's activities in Bahrain. On January 9, 2014, the SEC announced that it had settled the charges against Alcoa, citing violations of the FCPA's books-and-records and internal control provisions. As part of the settlement, Alcoa Inc. agreed to pay $175 million in disgorgement, $14 million of which was deemed satisfied by Alcoa's forfeiture in the parallel DOJ proceedings.

See DOJ Digest Numbers B-150.

KEY FACTS

Citation. *In the Matter of Alcoa Inc.*, Admin. Proc. File No. 3-15673 (Jan. 9, 2014).

Date Filed. January 9, 2014.

Country. Bahrain.

Date of Conduct. 1989 – 2009.

Amount of the Value. Approximately $110 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Sales Agent/Consultant.

Foreign official. Officials and board members of Aluminum Bahrain B.S.C. ("Alba"), whose majority shareholder is the Kingdom of Bahrain.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $175,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Alcoa World Alumina LLC.*

Total Combined Sanction. $384,000,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

124. SEC V. ARCHER-DANIELS-MIDLAND COMPANY (2013)

NATURE OF THE BUSINESS

Archer Daniels Midland Company ("ADM"), a Delaware corporation headquartered in Illinois, manufactures, processes, and sells agricultural commodities. ADM's common stock is registered pursuant to Section 12 of the Exchange Act.

INFLUENCE TO BE OBTAINED

According to the SEC's Complaint, ADM's subsidiaries in Germany and the Ukraine—Alfred C. Toepfer, International G.m.b.H. ("ACTI Hamburg") and Alfred C. Toepfer International (Ukraine) Ltd. ("ACTI Ukraine")—engaged in multiple fraudulent schemes to pay Ukrainian officials to release VAT refunds that were being delayed or refused by the Ukrainian government. Allegedly, ACTI Ukraine and ACTI Hamburg entered into fraudulent agreements with a shipping company and an insurance company to raise the funds and funnel the payments, and misrepresented the bribes as charitable donations or "depreciations" required by the Ukrainian government.

ENFORCEMENT

On December 20, 2013, the SEC filed a complaint against ADM, alleging violations of the books-and-records and internal controls provisions of the FCPA. ADM admitted the allegations and agreed to the entry of a final judgment permanently enjoining the company from violating the FCPA, and agreed to pay $36,467,366 in disgorgement and prejudgment interest.

In a parallel criminal action, ADM entered into a non-prosecution agreement with the DOJ, and its Ukrainian subsidiary pleaded guilty to one count of conspiring to violate the FCPA. ADM and its subsidiary paid a total of approximately $17.8 million in criminal penalties.

See DOJ Digest Number B-148.

KEY FACTS

Citation. *SEC v. Archer-Daniels-Midland Co.*, No. 13-cv-2279 (C.D. Ill. Dec. 20, 2013).

Date Filed. December 20, 2013.

Country. Ukraine.

Date of Conduct. 2002 – 2008.

Amount of the Value. Approximately $22 million.

Amount of Business Related to the Payment. Approximately $100 million

Intermediary. Third-party Vendor; Subsidiaries.

Foreign official. Unnamed Ukrainian government officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Final Judgment.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $26,467,366.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In re Archer Daniels Midland Company.*

Total Combined Sanction. $54,238,979.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

123. SEC V. WEATHERFORD INTERNATIONAL LTD. (S.D. TEX. 2013)

NATURE OF THE BUSINESS

Weatherford International Ltd., a Swiss corporation, provides equipment and services to the oil industry in over 100 countries. During the relevant period, Weatherford was incorporated in Bermuda and headquartered in Texas. It maintains a class of securities trading on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to the SEC's complaint, between 2002 and 2011, Weatherford and its subsidiaries made improper payments to government officials in Angola, Algeria, Albania, and Iraq to win lucrative oil services contracts and to gain significant market share.

In Angola, between 2006 and 2007, Weatherford Services, Limited ("WSL"), a wholly owned subsidiary of Weatherford that is incorporated in Bermuda, retained a Swiss freight-forwarding and logistics services company (the "Swiss agent") as part of a scheme to pay bribes to an Angolan official. WSL paid these bribes to secure the approval for an oil services contract renewal. Although the contract was with a privately-owned corporation, Angolan law requires Sonangol, the Angolan state-owned oil company, to approve the award or renewal of any oil services contract in Angola. To facilitate these bribes, WSL entered into a consultancy agreement with the Swiss agent, pursuant to which WSL produced sham work orders and the Swiss agent generated sham invoices. Weatherford also paid the Angolan official's travel expenses, which included a week-long vacation to Italy and Portugal.

Also in Angola, in 2004, Sonangol officials informed WSL that if it formed a joint venture with Sonangol-chosen companies it would obtain the entirety of the well screens market in Angola. Shortly thereafter, the subsidiary formed the joint venture with a company controlled by Sonangol officials and a company controlled by a relative of an Angolan minister. As a result of this joint venture, Sonangol officials awarded all well screens contracts to Weatherford.

In the Middle East, between 2005 and 2011, Weatherford Oil Tool Middle East Limited ("WOTME"), a wholly owned subsidiary of Weatherford, improperly discounted products sold to a state-owned and state-controlled national oil company. The volume discounts were used to create a slush fund for bribe payments to decision makers at the national oil company. WOTME recorded the volume discounts on its contra revenue account entitled "Volume Discount Account," despite the absence of an official volume discount contractual provision in the contracts between WOTME and the distributer.

In Algeria, Weatherford provided improper travel and entertainment to officials of Sonatrach, an Algerian state-owned company. The travel included trips to the FIFA World Cup soccer tournament, the honeymoon trip for the daughter of a Sonatrach official, and a religious trip by a Sonatrach official. Additionally, when Sonatrach officials visited Houston, Weatherford paid Sonatrach officials cash sums with no apparent legitimate business purpose.

In Albania, from 2001 to 2006, Weatherford's Italian subsidiary "WEMESPA" misappropriated company funds and made $41,000 in payments to Albanian tax auditors to close out the audit or to speed up the certification process. WEMESPA also provided laptop computers to the Albanian tax director and

KEY FACTS

Citation. *SEC v. Weatherford Int'l Ltd*., No. 4:13-cv-03500 (Nov. 26, 2013 S.D. Tex. 2013).

Date Filed. November 26, 2013.

Country. Angola, Algeria, Albania, Iraq.

Date of Conduct. 2002 – 2011.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Approximately $59.3 million.

Intermediary. Subsidiaries; Third-party Distributors; Third-party Agents; Joint Ventures.

Foreign official. Government officials in Angola; Employees at a state-owned oil company in unnamed Middle Eastern country; Iraqi Ministry of Oil; employees at Algerian state-owned oil company; Employees at Albania's National Petroleum Agency; Albanian Tax Director.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Final Judgment.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $97,259,267.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *United States v. Weatherford Int'l Ltd.*; *United States v. Weatherford Services,* Ltd.

Total Combined Sanction. $152,392,360.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

two members of Albania's National Petroleum Agency.

In Iraq, WOTME paid illegal kickbacks to the Iraqi government as part of the United Nations Oil for Food Program. To conceal the payments, WOTME inflated the price of the contracts before submitting them to the UN for approval. The payments were then recorded as cost-of-goods-sold on the company's books and records. WOTME also paid improper inland transportation fees to the Iraqi government for the transportation of items that did not actually require delivery.

ENFORCEMENT

On November 26, 2013, the SEC filed a complaint against Weatherford, alleging violations of the anti-bribery, books-and-records, and internal controls provisions of the FCPA. Weatherford agreed to pay disgorgement and prejudgment interest of $95,384,267, and a civil penalty of $1.875 million. The disgorgement amount was offset by a $31,646,907 fine Weatherford paid pursuant to a deferred prosecution agreement with the U.S. Attorney's Office relating to violations of sanctions and export control laws.

Weatherford entered into a separate deferred prosecution agreement with the DOJ relating to violations of the FCPA. Under the DOJ agreement, Weatherford agreed to pay a monetary penalty of approximately $87.2 million. Deducted from this amount was a separate $420,000 penalty imposed on WSL pursuant to a plea agreement.

See DOJ Digest Number B-146.
See Ongoing Investigation Number F-2.
See Parallel Litigation Digest Number H-F12.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

122. IN THE MATTER OF STRYKER CORPORATION (2013)

NATURE OF THE BUSINESS

Stryker Corporation, a Michigan corporation with its principal offices in Michigan, manufactures and distributes medical devices and products worldwide. It maintains a class of common stock registered pursuant to Section 12(b) of the Exchange Act and Listed on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to the findings in the SEC's cease-and-desist order, between August 2003 and February 2008, Stryker subsidiaries in Argentina, Greece, Mexico, Poland, and Romania made illicit payments to public health care officials, including doctors and health administrators at various state-owned hospitals, universities, and health agencies. According to the order, Stryker routinely mischaracterized the payments on its corporate books and records as legitimate consulting services and contracts, travel expenses, charitable donations, or commissions.

In Argentina, Stryker regularly paid commission or "honoraria" to physicians of state-owned hospitals in exchange for their willingness to promote Stryker products. In Greece, the relevant Stryker subsidiary made a $197,055 donation to a public university to curry favor with an influential professor. In Poland and Romania, Stryker's subsidiaries made 32 and 192 illicit payments, respectively, totaling approximately $960,000, often in the form of travel and entertainment benefits or sham consulting agreements.

In Mexico, Stryker paid state health officials more than $76,000 to obtain or maintain the right to sell its products at certain public hospitals. On at least one occasion, the relevant Mexican government agency threatened to withdraw its contracts with the company unless Stryker made a payment to a Mexican official. Stryker made the payments through its local Mexican counsel; the Mexican law firm billed Stryker for the bribe amounts, which Stryker recorded as legal services on its books and records, although no legal services had been provided.

ENFORCEMENT

On October 24, 2013, the SEC filed a cease-and-desist order under which Stryker agreed to pay disgorgement and prejudgment interest of $9,783,523, as well as a $3,500,000 civil penalty for violations of the FCPA's books-and-records and internal controls provisions.

KEY FACTS

Citation. *In Matter of Stryker Corp.*, Admin. Proc. File No. 3-15587 (Oct. 24, 2013).

Date Filed. October 24, 2103.

Country. Argentina, Greece, Mexico, Poland, Romania

Date of Conduct. 2003 – 2008.

Amount of the Value. $2.2 million.

Amount of Business Related to the Payment. $7.5 million.

Intermediary. Subsidiaries; Local law firm.

Foreign official. Employees at Mexican social security agency; Employees at publicly owned hospitals in Poland; Employees at publicly owned hospitals in Greece; Employees at public hospitals in Romania; Employees at public hospitals in Argentina.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $13,283,523.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $13,283,523.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

121. SEC V. DIEBOLD, INC. (D.D.C. 2013)

NATURE OF THE BUSINESS

Diebold, Inc., an Ohio company, is a global provider of automated teller machines and bank security systems. Diebold's common stock is registered pursuant to Section 12(b) of the Exchange Act and is listed on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to the SEC's Complaint, Diebold repeatedly provided payments, gifts, and non-business travel for employees of state-owned and controlled banks in China and Indonesia to secure and retain business with those banks. Diebold attempted to disguise the payments and benefits through various means, including by making payments through third-parties designated by the banks and by inaccurately recording leisure trips for bank employees as "training."

Diebold also created and entered into false contracts with a distributor in Russia for services that the distributor was not performing. The distributor, in turn, used the funds to pay bribes to employees of Diebold's privately owned bank customers in Russia to obtain and retain contracts with those customers. However, no government officials were alleged to be involved in the Russia scheme.

ENFORCEMENT

On October 22, 2013, Diebold consented to the entry of final judgment enjoining it from committing further FCPA violations. Diebold agreed to pay $22,972,942 in disgorgement and prejudgment interest and to appoint an independent compliance monitor.

In a parallel criminal proceeding, Diebold entered into a deferred prosecution agreement with the DOJ, under which it agreed to pay a $25.2 million fine.

See DOJ Digest Number B-145.

KEY FACTS

Citation. *SEC v. Diebold, Inc.*, No. 1:13-cv-01609 (D.D.C. 2013).

Date Filed. October 22, 2013.

Country. China, Indonesia.

Date of Conduct. 2005 – 2010.

Amount of the Value. Approximately $3 million.

Amount of Business Related to the Payment. $281 million.

Intermediary. Third-party Agents.

Foreign official. Employees of state-owned banks in China; Employees of state-owned banks in Indonesia.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Final Judgment and Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $22,972,942.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *United States v. Diebold, Inc.*

Total Combined Sanction. $48,182,942.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

120. IN THE MATTER OF TOTAL, S.A. (2013)

NATURE OF THE BUSINESS

Total S.A. is a French corporation that explores and develops oil and gas resources worldwide. Its American Depositary Shares are registered with the SEC and are listed on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

In 1995, Total met with an Iranian government official who headed a subsidiary of the National Iranian Oil Company ("NIOC") to secure a contract to develop oil fields in southern Iran. In the course of negotiations, Total entered into a purported consulting agreement with an intermediary designated by the Iranian official. As described by the SEC, the consulting agreement included no specific payment terms, but instead stated that the intermediary would provide "economic and marketing research and support" upon a "Consulting Service Request." The SEC alleges that the agreement was a pretext for bribe payments to the Iranian official made in exchange for his influence over the development contracts.

In 1997, Total began negotiating with NIOC to acquire the rights to develop a gas field in the Persian Gulf. Total then entered into another agreement to assign the consulting agreement to a second intermediary, who was also designated by the Iranian official. Following the assignment, Total was awarded a 40% interest in the development of the gas field. Allegedly, Total made at least 12 payments to the second intermediary between 1997 and 2004.

ENFORCEMENT

On May 29, 2013, the SEC filed a cease-and-desist order against Total for violations of the anti-bribery, books-and-records, and internal controls provisions of the FCPA. As a result of the order, Total disgorged $153 million in profits netted from the bribery scheme.

In a parallel criminal proceeding, Total entered into a deferred prosecution agreement with the DOJ, under which it agreed to pay a $245.2 million penalty and engage an independent compliance monitor.

See DOJ Digest Number B-143.
See Ongoing Investigation Numbers F-3 and F-2.

KEY FACTS

Citation. *In the Matter of Total, S.A.*, Admin. Proc. File No. 3-15338 (May 29, 2013).

Date Filed. May 29, 2013.

Country. Iran.

Date of Conduct. 1995 – 2004.

Amount of the Value. Approximately $60.5 million.

Amount of Business Related to the Payment. Approximately $150 million.

Intermediary. Third-Party Agents.

Foreign official. Official for a subsidiary of the National Iranian Oil Company and an engineering company majority-owned by the Iranian government

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. France.

Total Sanction. $153,000,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *United States v. Total, S.A.*

Total Combined Sanction. $398,200,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

119. SEC V. TOMAS ALBERTO CLARKE BETHANCOURT, JOSE ALEJANDRO HURTADO, HAYDEE LETICIA PABON, IURI RODOLFO BETHANCOURT, ERNESTO LUJAN, BENITO CHINEA, AND JOSEPH FLORES DEMENESES (S.D.N.Y. 2016)

NATURE OF THE BUSINESS

U.S. employees of Direct Access Partners LLC ("DAP"), a New York broker-dealer, were charged with paying bribes to a senior government official in Venezuela's state-owned economic development bank, Banco de Desarrollo Económico y Social de Venezuela ("BANDES"), to obtain business for DAP. The SEC, however, did not bring FCPA charges in its civil action, most likely because the alleged scheme involved broker-dealers rather than issuers.

Tomas Alberto Clarke Bethancourt ("Clarke") is a U.S. citizen and, beginning in or around 2008, was the Senior Vice President in the Global Markets Group of DAP. Clarke was listed as the account opening salesman for the BANDES account. Jose Alejandro Hurtado, a U.S. citizen, was an employee of DAP. Haydee Leticia Pabon, a resident of Miami, Florida, was the Director for International Sales in Eastern Europe, the Middle East and Russia for a Miami based distributor of Venezuelan cable television network programs. Iuri Rodolfo Bethancourt, a resident of Panama, is apparently related to co-defendant Clarke. Ernesto Lujan, a U.S. citizen, was the Managing Partner of the Global Markets Group of DAP and ran its Miami office beginning in approximately 2008. Benito Chinea and Joseph Demeneses are both senior executives at DAP's New York headquarters.

INFLUENCE TO BE OBTAINED

According to the SEC's complaint, DAP's Global Markets Group generated more than $66 million in revenue for DAP from October 2008 to June 2010 from transaction fees on riskless principal trade executions in Venezuelan sovereign or state-sponsored bonds for BANDES. The SEC alleges that the revenue was the result of a multi-faceted kickback scheme orchestrated by the defendants, in which a portion of the revenue was illicitly paid to BANDES official Gonzalez, who authorized the fraudulent trades, and to Bethancourt, Hurtado, and Pabon. Chinea is accused of facilitating the scheme by authorizing DAP to reimburse DeMeneses and Clarke for kickback payments made from their personal funds to Gonzalez. The Complaint also stated that after payments were made to those individuals and other expenses covered, 60 percent of DAP Global's net profits were shared by Lujan, Clarke, Chinea, and DeMeneses. The SEC also alleges that Lujan, Clarke, and Hurtado falsified the size of DAP's markups to BANDES and Gonzalez, which enabled them to retain a greater share of the fraudulent profits.

ENFORCEMENT

On May 7, 2013, the SEC filed a complaint against Clark, Hurtado, Pabon, and Bethancourt, which was subsequently amended on June 12, 2013 to add Lujan as a defendant and again on April 14, 2014 to include Chinea and DeMeneses. On August 1, 2013, the DOJ moved to stay the civil proceedings in the SEC case until the parallel criminal cases were resolved. The stay was lifted on December 22, 2015 and, in April 2016, the court issued final judgments as to each of the defendants. Clarke, Hurtado, Pabon, Bethancourt, Lujan, Chinea, and DeMeneses, were each permanently enjoined from from violating Section 10(b) of the Exchnage Act. Furthermore, Clarke, Hurtado, Lujan, Chinea, and DeMeneses were each ordered to disgorge $5,787,824, $11,896,743, $18,514,560, $3,636,432 and, $2,670,612, respectively—amounts that were

KEY FACTS

Citation. *SEC v. Clarke, et al.*, No. 13-cv-3074 (S.D.N.Y. 2016).

Date Filed. May 27, 2008.

- **Clarke, Hurtado, Pabon, Lujan, Chinea, Demeneses**. April 6, 2016.
- **Bethancourt**. April 7, 2016.

Country. Venezuela.

Date of Conduct: 2008 – 2010.

Amount of the Value. $9 million.

Amount of Business Related to the Payment. $466 million.

Intermediary. Shell entity.

Foreign official. Maria de los Angeles Gonzalez de Hernandez, a senior official at BANDES.

FCPA Statutory Provision. None.

Other Statutory Provision.

- **Pabon, Lujan, Chinea, Demeneses, Bethancourt**. Securities Fraud (Securities Act Section 17(a); Exchange Act Section 10(b)); Aiding and Abetting (Securities Fraud).

Clarke, Hurtado. Securities Fraud (Securities Act Section 17(a); Exchange Act Section 10(b)); Aiding and Abetting (Securities Fraud); Aiding and Abetting (Broker/Dealer Registration Rule).

Disposition. Consent Order (all defendants).

Defendant Jurisdictional Basis. Agent of Issuer (all defendants).

Defendant's Citizenship.

- **Clarke**. United States.
- **Hurtado**. United States.
- **Pabon**. United States.
- **Lujan**. United States.
- **Chinea**. United States.
- **Demenese**s. United States.
- **Bethancourt**. Panama.

Total Sanction.

- **Clarke**. $5,787,824.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

deemed satisfied by the amounts forfeited in the parallel criminal cases against the defendants.	• **Hurtado**. $11,896,743. • **Lujan**. $18,514,560. • **Chinea**. $3,636,432. • **Demeneses**. $2,670,612. **Compliance Monitor/Reporting Requirements.** None. **Related Enforcement Actions.** *United States v. Clarke*, No. 1:13-cr-00670 (S.D.N.Y. 2013); *United States v. Hurtado*, No. 1:13-cr-00673 (S.D.N.Y. 2013); *United States v. Gonzalez*, No. 1:13-cr-00901 (S.D.N.Y. 2013); *United States v. Lujan*, No. 1:13 cr-00671 (S.D.N.Y. 2013); *United States v. Chinea*, No. 1:14 cr 00240 (S.D.N.Y. 2014). **Total Combined Sanction.** $ $42,506,171.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

118. IN RE RALPH LAUREN CORPORATION (2013)[102]

NATURE OF THE BUSINESS

Ralph Lauren Corporation ("RLC"), a Delaware corporation headquartered in New York, is in the business of design, marketing, and distribution of apparel, accessories, and other consumer products around the world. Its common stock is registered pursuant to Section 12(b) of the Securities Exchange Act.

INFLUENCE TO BE OBTAINED

According to the statement of facts attached to the SEC's non-prosecution agreement with RLC (which RLC neither admits nor denies), the Argentine subsidiary of RLC allegedly paid bribes and gifts from 2006 to 2009 to Argentine customs officials to assist in improperly obtaining paperwork necessary for its products to clear customs, permit clearance of items without the necessary paperwork, permit clearance of prohibited goods, and avoid inspection of products by Argentine customs officials. The payments were made through a customs broker, who passed the bribes on to customs officials. The gifts, which were given directly to Argentine government officials to secure the importation of RLC's goods into Argentina, included perfume, dresses, and handbags valued at between $400 and $14,000 each.

ENFORCEMENT

On April 18, 2013, RLC entered into a non-prosecution agreement with the SEC under which it paid $734,846 in disgorgement and prejudgment interest. RLC has since ceased its operations in Argentina.

In a press release, the SEC explained that it granted its first-ever FCPA-related non-prosecution agreement due to RLC's "prompt reporting of the violations . . . completeness of the information it provided, and its extensive, thorough, and real-time cooperation with the SEC's investigation."

In a related criminal action, RLC entered into a non-prosecution agreement with the DOJ, under which the company agreed to pay a monetary penalty of $882,000.

See DOJ Digest Number B-141.

KEY FACTS

Citation. *In re Ralph Lauren Corporation* (SEC Apr. 22, 2013) (non-prosecution agreement).

Date Filed. April 22, 2013.

Country. Argentina.

Date of Conduct. 2005 – 2009.

Amount of the Value. $538,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Customs Broker.

Foreign official. Argentine customs officials and other government officials."

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $734,846.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In re Ralph Lauren Corporation*.

Total Combined Sanction. $1,616,846.

[102] Matter resolved through non-prosecution agreement (April 2013).

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

117. SEC V. PARKER DRILLING COMPANY (E.D. VA. 2013)

NATURE OF THE BUSINESS

Parker Drilling Company is a publicly-listed drilling-services company headquartered in Houston, Texas, with subsidiaries operating throughout the world, including Parker Drilling (Nigeria) Limited, a wholly owned subsidiary incorporated in the Cayman Islands.

INFLUENCE TO BE OBTAINED

According to the complaint filed by the SEC, in 2001 and 2002 Parker Drilling failed to pay certain tariffs and duties associated with Nigeria's Customs & Excise Management Act of 1958. When the Nigerian government formed a panel to investigate companies' compliance with the Act, it found that Parker Drilling had violated Nigeria's laws, and it assessed a fine of $3.8 million against the company. During these proceedings, Parker Drilling allegedly retained a Nigerian agent to help resolve the customs issues. Parker Drilling authorized payments to this Nigerian agent totaling $1.25 million, most of which were paid through Parker Drilling's U.S. law firm. The Nigerian agent used those funds, in part, to entertain Nigerian government officials involved with the customs issues. Subsequently, Parker Drilling's fine was reduced to $750,000—a reduction of $3.05 million, or approximately 80%.

ENFORCEMENT

On April 16, 2013, the SEC filed a complaint against Parker Drilling, alleging violations of the anti-bribery, books-and-records, and internal controls provisions of the FCPA. Parker Drilling consented to a final judgment permanently enjoining the company from future violations of the FCPA and agreed to pay $4,090,818 in disgorgement and prejudgment interest.

In a related criminal action, Parker Drilling entered into a three-year deferred prosecution agreement with the DOJ under which the company agreed to pay a monetary penalty of $11.76 million.

See DOJ Digest Number B-139.
See Parallel Litigation Digest Number H-F14.

KEY FACTS

Citation. *SEC v. Parker Drilling Co.*, No. 1:13-cv-461 (E.D. Va. Apr. 23, 2013).

Date Filed. April 23, 2013.

Country. Nigeria.

Date of Conduct. 2001 – 2002.

Amount of the Value. $1.25 million.

Amount of Business Related to the Payment. Approximately $3.05 million.

Intermediary. Local Agent, U.S. Law Firm.

Foreign official. Officials and employees of the Nigerian Minister of Finance, Nigeria State Security Service, Nigeria Customs Service; Nigerian President—appointed "Panel of Inquiry for the Investigation of All Cases of Temporary Import Permits."

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Final Judgment.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $4,090,818.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Parker Drilling Co.*

Total Combined Sanction. $15,850,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

116. IN THE MATTER OF KONINKLIJKE PHILIPS ELECTRONICS N.V. (2013)

NATURE OF THE BUSINESS

Koninklijke Philips Electronics N.V. is a Netherlands-based parent of numerous companies that manufacture and supply goods and services in the healthcare, consumer lifestyle, and lighting sectors. Since 1999, Philips has participated in public tenders to sell medical equipment to Polish healthcare facilities through its Polish subsidiary, Philips Polska sp. z o.o. ("Philips Poland").

INFLUENCE TO BE OBTAINED

According to the findings in the cease-and-desist order issued by the SEC (which Philips did not admit or deny), employees of Philips Poland allegedly made improper payments from 1999 through 2007 to public officials of Polish healthcare facilities, including hospital directors, to increase the likelihood that Philips would be awarded tenders for the purchase of medical equipment. Philips would submit the technical specifications of its medical equipment to officials drafting the tenders, who would incorporate these specifications into the contracts, greatly increasing Philips' chances of winning. Certain officials involved in these arrangements also decided to whom to award the tenders and received the improper payments when Philips won the tenders. The payments were falsely characterized and accounted for as legitimate expenses and were at times supported by false documentation created by employees or third-parties.

ENFORCEMENT

In December 2009, after the Prosecutor's Office in Poznan, Poland, indicted three former employees for allegedly violating laws related to public tenders for the purchase of medical equipment, Philips conducted an internal investigation and self-reported its findings to the SEC and DOJ in 2010.

On April 5, 2013, the SEC filed a cease-and-desist order against Philips, pursuant to which Philips agreed to pay $3,120,597 in disgorgement and $1,394,581 in prejudgment interest relating to the violations in Poland. The SEC did not impose a civil penalty, based upon Philips' cooperation in the SEC investigation and related enforcement action.

KEY FACTS

Citation. *In the Matter of Koninklijke Philips Elecs. N.V.*, Admin. Proc. File No. 3-15265 (Apr. 5, 2013).

Date Filed. April 5, 2013.

Country. Poland.

Date of Conduct. 1999 – 2007.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Third-party Agent.

Foreign official. Public officials of Polish healthcare facilities.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Netherlands.

Total Sanction. $4,515,178.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $4,515,178.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

115. SEC V. ELI LILLY AND COMPANY (D.D.C. 2012)

NATURE OF THE BUSINESS

Eli Lilly and Company, an Indiana corporation, is a pharmaceutical manufacturer that markets products in over 143 countries. Its common stock is registered with the SEC pursuant to Section 12(b) of the Exchange Act and is traded on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to the SEC's complaint, between 1994 and 2009, Eli Lilly's subsidiaries made improper payments to government officials in China, Brazil, Poland, and Russia to win sales contracts and gain other business advantages.

In China, employees at Eli Lilly's Chinese subsidiary ("Lilly-China") allegedly submitted false expense reports to purchase gifts and entertainment for government- employed physicians to encourage physicians to look favorably upon Lilly and prescribe Lilly products.

In Brazil, Eli Lilly's Brazilian subsidiary ("Lilly-Brazil") distributed drugs through third-party distributors, granting them a discount depending on the distributor's anticipated sale. In 2007, Lilly-Brazil allegedly granted an unusually large discount for two of the distributor's purchases of a Lilly drug, which the distributor then sold to the government of one of the Brazilian states. The distributor used a portion of the purchase price to bribe government officials from the Brazilian state so that the state would purchase the product. The Lilly-Brazil employees that authorized the discount allegedly knew of this arrangement.

In Poland, Eli Lilly's Polish subsidiary made payments to a small charitable foundation that was founded and administered by the head of one of the regional government health authorities at the same time that the subsidiary was seeking the official's support for placing Lilly drugs on the government reimbursement list.

In Russia, Eli Lilly's Russian subsidiary ("Lilly-Russia") made payments to offshore entities for alleged "marketing services" to induce pharmaceutical distributors and government entities to purchase Lilly's drugs. At least one of the offshore entities was owned by government officials, and another was owned by a person closely associated with an important member of Russia's parliament.

ENFORCEMENT

On December 20, 2012, the SEC filed a complaint against Eli Lilly, alleging violations of the anti-bribery, books-and-records, and internal controls provisions of the FCPA. Eli Lilly agreed to pay disgorgement and prejudgment interest of approximately $20.7 million and a penalty of $8.7 million. Without admitting or denying the allegations, Lilly consented to the entry of a final judgment permanently enjoining the company from violating the FCPA. Lilly also agreed to comply with certain undertakings, including the retention of an independent consultant to review and make recommendations about its foreign corruption policies and procedures.

KEY FACTS

Citation. *SEC v. Eli Lilly & Co.*, No. 1:12-cv-02045 (D.D.C. Jan. 02, 2013).

Date Filed. January 2, 2013.

Country. China, Brazil, Poland, Russia.

Date of Conduct. 1994 – 2009.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Subsidiaries; Third-party Distributors.

Foreign official. Director of Polish government health authority; Government-employed healthcare providers and other government officials in China; Government officials in Brazil; Member of Russia's Parliament and other government officials in Russia.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $29,398,734.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. None.

Total Combined Sanction. $29,398,734.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

114. IN THE MATTER OF ALLIANZ SE (2012)

NATURE OF THE BUSINESS

Allianz SE, a German company, engages in insurance and other asset management businesses across approximately 70 different countries. PT Asuransi Allianz Utama ("Utama") is a subsidiary in Indonesia selling general insurance products to individuals and corporate clients. Allianz's American Depository Shares and bonds were registered with the SEC during the relevant period.

INFLUENCE TO BE OBTAINED

According to the SEC's cease-and-desist order, from 2001 to 2008, managers from Utama used a special purpose account, previously used for legitimate business, to make payments to government officials to secure lucrative insurance contracts for large Indonesian government projects. Allianz initially began its operations in Indonesia in 1981 where it opened a special purpose bank account with a local Indonesian broker. This account was used to pay legitimate commissions owed to the local agents that generated business for Utama. Beginning in February 2001, Utama managers used the special purpose account to make the alleged bribes. Despite being alerted to potential misconduct by Utama officials in 2005 and subsequently performing an internal investigation, Allianz made no specific changes to its record keeping procedures and internal controls. While Allianz directed Utama to close the special purpose account, Utama managers continued to make improper payments between 2005 and 2008. Officials at Utama who condoned the conduct utilized multiple methods to avoid Allianz's internal recordkeeping.

Following a 2009 whistleblower complaint, Allianz once again conducted an internal investigation but did not report its findings to the SEC. Instead, in April 2010, the SEC initiated its own investigation into Allianz and Utama, revealing the various illicit payments.

ENFORCEMENT

On December 17, 2012, the SEC filed a cease-and-desist order against Allianz. Allianz subsequently agreed to pay disgorgement and prejudgment interest of approximately $7.1 million and a civil money penalty of approximately $5.3 million.

KEY FACTS

Citation. *In the Matter of Allianz SE,* Admin. Proc. File. No. 3-15132 (Dec. 17, 2012).

Date Filed. December 17, 2012.

Country. Indonesia.

Date of Conduct. 2001 – 2008.

Amount of the Value. Approximately $650,626.

Amount of Business Related to the Payment. Approximately $5,315,649.

Intermediary. Subsidiary.

Foreign official. Unnamed Indonesian government officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Germany.

Total Sanction. $12,396,423.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $12,396,423.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

113. SEC V. TYCO INTERNATIONAL LTD. (D.D.C. 2012)

NATURE OF THE BUSINESS

Tyco International Ltd., a Swiss company, manufactures and sells products related to security, fire protection, and energy. Its securities are registered pursuant to Section 12(b) of the Exchange Act and trade on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

According to the SEC's complaint, Tyco's subsidiaries perpetuated schemes that typically involved payments of fake "commissions" or the use of third-party agents to funnel money to government officials improperly to obtain lucrative contracts. To conceal the true nature of the payments, they were recorded in Tyco's books and records as "commissions," "business introduction services," "promotional expenses," or "sales development expenses."

In Germany, Tyco agents allegedly paid third-parties to secure contracts or avoid penalties or fines in several countries. Tyco's subsidiary in China allegedly paid the "site project team" of a state-owned corporation to sign a contract with the Chinese Ministry of Public Security. Tyco's subsidiary in France allegedly made payments to a security officer at a government-owned mining company in Mauritania and paid sham "commissions" to intermediaries in four different countries.

In several other countries, Tyco's subsidiaries made payments to various government officials and "consultants," falsely recording the payments as "commissions."

ENFORCEMENT

On September 24, 2012, the SEC filed a complaint charging Tyco with anti-bribery, books-and-records, and internal controls violations of the FCPA. On September 25, 2012, Tyco consented to a final judgment, under which it acknowledged as true and accurate the Statement of Facts entered into in connection with its non-prosecution agreement with the DOJ in a related criminal matter. Tyco was required to pay disgorgement and prejudgment interest of approximately $13.13 million and was permanently restrained and enjoined from further violations of the FCPA. After some delay, U.S. District Judge Richard Leon approved the final order on June 17, 2013.

In the related criminal action, in which Tyco entered into a non-prosecution agreement with the DOJ, Tyco agreed to pay a monetary penalty of $13.68 million.

See DOJ Digest Number B-136.

KEY FACTS

Citation. *SEC v. Tyco Int'l Ltd.*, No. 1:12-cv-01583 (D.D.C. June 17, 2013).

Date Filed. June 17, 2013.

Country. Bosnia, China, Congo, Croatia, Egypt, India, Indonesia, Iran, Laos, Libya, Madagascar, Malaysia, Mauritania, Niger, Saudi Arabia, Serbia, Slovenia, Slovakia, Syria, Thailand, Turkey, United Arab Emirates, Poland.

Date of Conduct. 2006 – 2013.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Approximately $ 10.5 million.

Intermediary. Joint ventures; Subsidiaries; Agents.

Foreign official. Employees of government customers in China, Croatia, India, Libya, Saudi Arabia, Serbia, Syria, Turkey, Malaysia, and the UAE; One security officer at a government-owned mining company in Mauritania; Government officials (including those at state-owned "design institutes") and public healthcare officials and publicly employed doctors in China; Representatives of a company majority-owned by the Egyptian government; Doctors and officials of hospitals owned or controlled by the Saudi Arabian government; Healthcare professionals in Poland.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Switzerland.

Total Sanction. $13,131,509.

Compliance Monitor/Reporting Requirements. Two-year Reporting Requirement.

Related Enforcement Actions. *In re Tyco Int'l, Ltd.*

Total Combined Sanction. $26,811,509.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

112. SEC V. ORACLE CORPORATION (N.D. CAL. 2012)

NATURE OF THE BUSINESS

Oracle Corporation is a publicly traded computer technology corporation registered in Delaware and headquartered in California. Oracle develops enterprise software and provides computer hardware products and services to its customers. Its shares are registered pursuant to Section 12(b) of the Exchange Act and are listed on the NASDAQ National Market.

INFLUENCE TO BE OBTAINED

According to the SEC's complaint, employees at Oracle's wholly owned subsidiary, Oracle India Private Limited, secreted proceeds from its sales to the Indian government for potential future use as bribe money or for embezzlement. A $2.2 million "side fund" was allegedly a source of money from which Oracle India intended to make unauthorized payments to third parties. At the direction of the Oracle India employees, the distributors then made payments out of the withheld funds to third parties, purportedly for marketing and development expenses. The SEC further alleged that the Oracle India's employees concealed the $2.2 million from Oracle, and, therefore, that Oracle failed to properly report the $2.2 million as a prepaid marketing expense, an asset item in its books and records.

Finally, the SEC alleged that Oracle lacked the proper controls to prevent its employees at Oracle India from creating and misusing the withheld funds. According the complaint, Oracle failed to audit the distributor's margin against the end user price to ensure excess margins were not being built into the pricing structure. According to the SEC, Oracle also failed to seek transparency in or audit third-party payments made by distributors on Oracle India's behalf.

ENFORCEMENT

On August 27, 2012, Oracle consented to a final judgment without admitting or denying the SEC's allegations, under which it was ordered to pay a civil penalty of $2 million and was permanently restrained and enjoined from violating the FCPA.

KEY FACTS

Citation. *SEC v. Oracle Corp.*, No. 3:12-cv-04310 (N.D. Cal. Aug. 27, 2012).

Date Filed. August 16, 2012.

Country. China.

Date of Conduct. 2005 – 2007.

Amount of the Value. Approximately $2.2 million.

Amount of Business Related to the Payment. $6.7 million.

Intermediary. Subsidiary, Local distributors.

Foreign official. Unnamed Indian government officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $2,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $2,000,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

111. SEC V. PFIZER INC. (D.D.C. 2012)

NATURE OF THE BUSINESS

Pfizer Inc. is a global pharmaceutical, animal health, and consumer products company incorporated in Delaware. Its securities are registered with the SEC pursuant to Section 12(b) of the Exchange Act and its common stock is traded on the New York Stock Exchange. Pfizer H.C.P. Corporation is an indirect wholly owned subsidiary of Pfizer Inc.

INFLUENCE TO BE OBTAINED

According to the SEC, from 2001 to 2007, employees at Pfizer HCP and Pfizer Inc.'s other subsidiaries made and authorized payments of cash and other things of value to government officials (including doctors employed by state-owned hospitals) for the purpose of improperly influencing their decisions regarding regulatory and formulary approvals, purchase decisions, prescription decisions, and customs clearance.

In Bulgaria, Pfizer HCP employees and agents paid for domestic and international travel and provided equipment to government-employed doctors. Employees also organized "Incentive Trips" for the healthcare providers, and Pfizer HCP sales representatives were instructed to reach agreements with the doctors on the specific quantities of Pfizer pharmaceuticals they would prescribe in return for participation in these events.

In China, Pfizer's Chinese subsidiary provided cash, hospitality, gifts, and support for international travel to doctors who were employed by Chinese government healthcare institutions. The payments were intended to influence these officials to prescribe Pfizer products, provide hospital formulary listings, and otherwise use their influence to grant Pfizer China an unfair business advantage.

In Croatia, Pfizer HCP employees made monthly payments to a doctor who served as a member of several Croatian government committees that oversaw the registration and reimbursement of pharmaceutical products. During the period in which Pfizer HCP made payments, the committees on which the doctor served approved three Pfizer products.

In the Czech Republic, Pfizer's Czech subsidiary provided support for international travel and recreational opportunities to doctors employed by the Czech government with the intent to influence the government officials to prescribe Pfizer products.

In Italy, Pfizer's Italian subsidiary provided cash payments, gifts (such as televisions, mobile phones, photocopiers, and printers), support for domestic and international travel, and other benefits to doctors employed by Italian government healthcare institutions. The payment of cash and other things of value was intended to influence those government officials to prescribe Pfizer products.

In Kazakhstan, Pfizer HCP entered into an exclusive distribution contract for a Pfizer product with a Kazakh company, believing that all or part of the value of the contract would be provided to a high-level Kazakh government official, to corruptly obtain approval for the registration of a Pfizer product in Kazakhstan.

In Russia, Pfizer Russia employees used conference attendance and travel as a corrupt inducement for healthcare providers to prescribe or purchase Pfizer

KEY FACTS

Citation. *SEC v. Pfizer Inc.*, No. 1:12-cv-01303 (D.D.C. Aug. 28, 2012).

Date Filed. August 28, 2012.

Country. Bulgaria, Croatia, China, Czech Republic, Italy, Kazakhstan, Russia, Serbia.

Date of Conduct. 2001 – 2007.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Subsidiary; Third-party Agents; Off-Shore Shell Companies.

Foreign official. Officials and publicly employed doctors in Bulgaria, China, Croatia, Czech Republic, Italy, Kazakhstan, Russia, and Serbia.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $26,339,944.84.

Compliance Monitor/Reporting Requirements. Two-year Reporting Requirement.

Related Enforcement Actions. *United States v. Pfizer H.C.P. Corp*.

Total Combined Sanction. $41,339,994.84.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

products. Pfizer Russia employees also used purported sales initiatives to make corrupt payments. The sales initiative, known as the "Hospital Program," appeared to be a mechanism for Pfizer Russia to provide the equivalent of indirect price discounts or in-kind benefits to government hospitals in connection with their purchases of Pfizer products. In practice, however, the Hospital Program was used to make cash payments to individual healthcare professionals to corruptly influence purchases and prescriptions.

Funds for these payments were often generated by Pfizer employees through the use of collusive vendors to create fraudulent invoices. The payments were falsely recorded in Pfizer's books and records, as "Travel and Entertainment," "Convention and Trade Meetings and Conference," "Distribution Freight," "Clinical Grants/Clinical Trials," "Gifts," and "Professional Services - Non Consultant."

ENFORCEMENT

On August 7, 2012, the SEC filed a complaint against Pfizer Inc., alleging violations of the books-and-records and internal controls provisions of the FCPA. On August 28, 2012, Pfizer Inc. consented to a final judgment, under which it was permanently restrained and enjoined from violating the FCPA and ordered to pay disgorgement and prejudgment interest of $26,339,944.84. Pfizer was also ordered to periodically report to the SEC regarding its remediation and implementation of compliance measures.

In a related criminal action, the DOJ entered into a deferred prosecution agreement with Pfizer Inc.'s subsidiary, Pfizer HCP, in which it agreed to pay a criminal penalty of $15 million.

See DOJ Digest Number B-135.
See Parallel Litigation Digest Numbers H-C25 and H-C14.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

110. SEC V. WYETH LLC (D.D.C. 2012)

NATURE OF THE BUSINESS

Wyeth LLC is a pharmaceutical company headquartered in New Jersey and incorporated in Delaware. Before its acquisition by Pfizer, Wyeth's securities were registered with the SEC and its common stock traded on the New York Stock Exchange. In 2009, during Wyeth's alleged misconduct, the company was acquired by Pfizer, Inc. and became a wholly owned subsidiary of Pfizer. The DOJ's action against Pfizer H.C.P. (and the related SEC action against Pfizer Inc.) is entirely unrelated to the conduct alleged by the SEC in this action.

INFLUENCE TO BE OBTAINED

According to a complaint filed by the SEC, Wyeth's subsidiaries in China, Indonesia, Pakistan, and Saudi Arabia allegedly made improper payments to foreign officials (including employees of state-owned hospitals) to procure business, which resulted in inaccurate books and records. The improper payments were falsely recorded as promotional expenses, "Miscellaneous Selling Expenses," "Trade Allowances," "Entertainment," and "Give Aways and Gifts."

In China, Wyeth's indirect majority-owned subsidiary, Shanghai Wyeth Nutritional Co., Ltd., provided cash payments to Chinese state-owned hospitals and healthcare providers employed by the Chinese government. The payments were made to influence the healthcare providers' recommendations of Wyeth nutritional products to patients, to ensure that Wyeth products were made available to new mothers at the hospitals, and to obtain information on new births that could be used for marketing purposes. The payments were funded with the help of collusive travel agencies and by submitting falsified expense reimbursement requests, which were either inflated or related to events that did not occur.

In Indonesia, Wyeth's indirect majority-owned subsidiary, PT Wyeth Indonesia (including Wyeth Indonesia's Ethical Nutritional Division), provided cash payments, nutritional products, cell phones, and phone card credits to employees of Indonesian government-owned hospitals. The payments were made to influence the doctors' recommendation of Wyeth nutritional products to their patients, to ensure that Wyeth products would be made available to new mothers at hospitals, and to obtain information about new births that could be used for marketing purposes.

To conceal the gift inducements, Wyeth Indonesia instructed distributors to generate invoices and deliver the products, but then to charge back the value of the goods to Wyeth Indonesia so the institutions received the products without charge. Wyeth's International Corporate Compliance Office ordered this practice to be stopped, but, Wyeth Indonesia employees continued with the practice and concealed the reimbursement by instructing other vendors to pay the distributors and then obtain reimbursement from Wyeth Indonesia by submitting false invoices.

In Pakistan, Wyeth's indirect majority-owned subsidiary, Wyeth Pakistan Limited, provided cash payments, travel, office equipment, and renovations to doctors who were employed by state-owned healthcare institutions, to influence doctors to recommend Wyeth products to new mothers. The improper benefits were initially funded by fictitious expense reimbursement requests, but after Wyeth's external auditor identified questionable reimbursement submissions, Wyeth Pakistan employees began generating

KEY FACTS

Citation. *SEC v. Wyeth LLC*, No. 1:12-cv-01304 (D.D.C. Aug. 29, 2012).

Date Filed. August 29, 2012.

Country. China, Indonesia, Pakistan, Saudi Arabia.

Date of Conduct. 2005 – 2010.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Third-party distributors/vendors; Subsidiaries.

Foreign official. Employees (including doctors) at state-owned hospitals in China, Indonesia, and Pakistan; Saudi Arabian customs official.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $18,876,624.91.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $218,876,624.91.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

funds with the help of collusive vendors.

In Saudi Arabia, Wyeth operated through COCI Corporation's representative office. Wyeth products were marketed and sold through a Saudi Arabian distributor. The distributor made a payment to a Saudi Arabian customs official to secure the release of Wyeth promotional items, which had been held because Wyeth Saudi Arabia had failed to secure a Certificate of Conformity. Wyeth Saudi Arabia reimbursed the distributor for his cash payment and recorded it as a "facilitation expense."

ENFORCEMENT

On August 7, 2012, the SEC filed a complaint against Wyeth, alleging violations of the books-and-records and internal controls provisions of the FCPA. Wyeth consented to entry of a final judgment on August 29, 2012, under which Wyeth was ordered to pay disgorgement and prejudgment interest of $18.88 million.

See Ongoing Investigation Number F-2.
See Parallel Litigation Digest Numbers H-C25 and H-C14.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

109. SEC V. ORTHOFIX INTERNATIONAL N.V. (E.D. TEX. 2012)

NATURE OF THE BUSINESS

Orthofix International N.V. is a multinational corporation involved in the design, development, manufacture, marketing, and distribution of medical devices. Although incorporated in Curaçao, Netherlands Antilles, the company is based in Lewisville, Texas, and operates in multiple countries around the world including the United States, the United Kingdom, Italy, and Mexico. Orthofix's common stock is registered pursuant to Section 12(b) of the Exchange Act and is publicly traded on the NASDAQ stock exchange.

INFLUENCE TO BE OBTAINED

Between 2003 and 2010, Orthofix and its Mexican subsidiary, Promeca, S.A de C.V., allegedly sought to secure agreements from Mexican officials employed by state-owned hospitals as well as Mexico's government-owned medical care and social services provides, the IMSS, that guaranteed the sale of Orthofix products. In return for the agreements, the Mexican officials would receive a percentage of the collected revenue generated as a result of the sales in addition to various other gifts which Orthofix officials commonly referred to as "chocolates." Promeca allegedly falsely recorded the bribes as cash advances and falsified invoices to disguise these payments.

ENFORCEMENT

On July 10, 2012, the SEC filed a complaint against Orthofix, alleging violations of the books-and-records and internal controls provisions of the FCPA. On September 4, 2012, a final judgment was entered against Orthofix, under which Orthofix was ordered to pay disgorgement and prejudgment interest of approximately $5.2 million.

In a related criminal action, Orthofix entered into a deferred prosecution agreement with the DOJ under which it agreed to pay a monetary penalty of $2,220,000 and to report to the DOJ for a period of three years.

See DOJ Digest Number B-133.
See SEC Digest Number D-170.

KEY FACTS

Citation. *SEC v. Orthofix Int'l N.V.*, No. 4:12-cv-00419 (E.D. Tex. Sept. 4, 2012).

Date Filed. September 4, 2012.

Country. Mexico.

Date of Conduct. 2003 – 2010.

Amount of the Value. Approximately $317,000.

Amount of Business Related to the Payment. Approximately $4.9 million in net profits.

Intermediary. Subsidiary.

Foreign official. Employees of state-owned hospitals; officials from the Mexican state social services agency, the Instituto Mexicano del Seguro Social ("IMSS").

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Netherland Antilles.

Total Sanction. $5,225,701.

Compliance Monitor/Reporting Requirements. Three-year Reporting Requirement.

Related Enforcement Actions. *United States v. Orthofix International, N.V*; *SEC v. Orthofix Int'l N.V.*

Total Combined Sanction. $7,420,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

108. SEC V. GARTH PETERSON (E.D.N.Y. 2012)

NATURE OF THE BUSINESS

Garth Peterson was a managing director in charge of Morgan Stanley's Real Estate Group's ("MSRE") Shanghai office. Morgan Stanley is a global financial services firm listed on the New York Stock Exchange. Morgan Stanley, through MSRE, created and managed real estate funds for institutional investors and high-net-worth investors.

INFLUENCE TO BE OBTAINED

According to the SEC's complaint, from at least 2004 to 2007, Peterson secretly acquired millions of dollars in real estate investments from Morgan Stanley's funds for himself and for the former Chairman of Yongye (the "Chinese Official"). Yongye was a state-owned entity with influence over the success of Morgan Stanley's real estate business in China. Peterson had a pre-existing business and personal relationship with the Chinese Official. Peterson also arranged to have at least $1.8 million paid to himself and the Chinese Official in what he fraudulently represented were finders' fees Morgan Stanley's funds owed to third parties. In exchange for offers and payments from Peterson, the Chinese Official helped Peterson and Morgan Stanley obtain business while personally benefitting from some of these same investments.

In 2004, MSRE was negotiating to purchase a tower of a Shanghai building. To do so, MSRE required the approval of the Chinese Official. The Chinese Official approved of MSRE's purchase, but secretly, Peterson, the Chinese Official, and a Canadian attorney conspired to purchase a real estate interest in the tower. The three co-conspirators set up an offshore shell entity and misrepresented to Morgan Stanley that Yongye sought to purchase an interest through an offshore subsidiary, which was actually a shell entity collectively owned by the three conspirators. Morgan Stanley ultimately sold the interest to the shell entity at a discount, which further enriched Peterson and his co-conspirators.

ENFORCEMENT

Peterson settled with the SEC, and the court entered a final judgment against Peterson, ordering him to disgorge approximately $3.82 million (comprised of his shares in the investment vehicle, worth $3.4 million, $241,589 in cash, and prejudgment interest). The SEC also permanently barred Peterson from associating with investment advisors, broker-dealers, municipal securities dealers, municipals advisors, transfer agents, and other nationally recognized ratings organizations.

In a related criminal action brought by the DOJ, Peterson pleaded guilty to conspiring to evade Morgan Stanley's internal controls and was sentenced to nine months in prison.

See DOJ Digest Number B-131.

KEY FACTS

Citation. *SEC v. Peterson*, No. 1:12-cv-2033 (E.D.N.Y. May 3, 2012).

Date Filed. May 3, 2012.

Country. China.

Date of Conduct. 2004 – 2007.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Offshore shell company.

Foreign official. Executive at Shanghai Yongye Enterprise (Group) Co. Ltd. ("Yongye"), a state-owned, limited liability corporation incorporated by the Luwan District government.

FCPA Statutory Provision. Anti-Bribery; Internal Controls.

Other Statutory Provision. Aiding and Abetting (Sections 206(1) and 206(2) of the Advisers Act).

Disposition. Consent Order.

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. United States.

Total Sanction. $3,822,613.44.

Related Enforcement Actions. *United States v. Peterson*.

Total Combined Sanction. $3,822,613.44.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

107. SEC V. BIOMET, INC. (D.D.C. 2012)

NATURE OF THE BUSINESS

Biomet, Inc. is a manufacturer of orthopedic medical devices. Biomet is an issuer in the United States, is incorporated in Indiana, and has its principal place of business in Warsaw, Indiana. Until 2007, Biomet's shares were registered with the SEC pursuant to Section 12(b) of the Exchange Act. After 2007, it was subject to the reporting requirements of Section 15(d).

INFLUENCE TO BE OBTAINED

The SEC alleges that Biomet and its four wholly owned subsidiaries (Biomet Argentina SA, Biomet International Corporation, Biomet China, and Scandimed AB) paid bribes to doctors employed at public hospitals in Argentina, Brazil, and China. Between 2000 and August 2008, bribes were allegedly paid directly by Biomet subsidiaries or through the distributors who sold Biomet's products. Even though Biomet's compliance and internal audit functions were made aware of the payments as early as 2000, they failed to take any action to stop the payments.

According to the SEC's complaint, employees of Biomet Argentina SA paid kickbacks ranging from 15 to 20 percent of each sale to doctors in Argentina. Invoices were created to justify the payments, which were improperly recorded as "consulting fees" or "commissions" in Biomet's books and records.

The SEC alleges that Biomet's subsidiary Biomet International used a distributor to bribe doctors in Brazil by paying them between 10 and 20 percent of the value of their medical device purchases. The distributor, Biomet International employees, and Biomet's executives and internal auditors in the United States openly discussed the payments in communications.

The SEC also alleges that two other subsidiaries, Biomet China and Scandimed AB, acting through a Chinese distributor, provided doctors with money and travel in exchange for their purchases of Biomet products. These allegations include payments of "consulting fees" of between 10 and 15 percent of sales, providing a cash payment of 25 percent to one surgeon upon completion of a surgery, and providing a dinner for another doctor followed by a possible trip to Switzerland to visit his daughter. Additionally, Biomet organized a trip for 20 surgeons to Spain for training, where a substantial portion of the trip was devoted to sightseeing and entertainment at Biomet's expense.

The SEC alleged that the payments were improperly recorded in Biomet's books and records and that Biomet failed to maintain adequate internal controls.

ENFORCEMENT

On March 26, 2012, the SEC filed a civil complaint against Biomet. On March 27, 2012, Biomet consented to the entry of a court order permanently enjoining it from any future FCPA violations and agreed to pay approximately $5.57 million in disgorgement and prejudgment interest. The SEC ordered Biomet to retain an independent corporate compliance monitor for a period of eighteen months.

In a related criminal proceeding, Biomet entered into a three-year deferred prosecution agreement with the DOJ, under which Biomet agreed to pay a

KEY FACTS

Citation. *SEC v. Biomet*, Inc., No. 1:12-cv-00454 (D.D.C. Mar. 27, 2012).

Date Filed. March 27, 2012.

Country. Argentina, Brazil, China.

Date of Conduct. 2006 – 2013.

Amount of the Value. $1.536 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Subsidiaries, Third-party distributors.

Foreign official. Health care providers employed by publicly owned and operated hospitals in Argentina, Brazil, and China.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $5,575,731.

Compliance Monitor/Reporting Requirements. Compliance Monitor; Three-year Reporting Requirement.

Related Enforcement Actions. *United States v. Zimmer Biomet Holdings, Inc.*; *United States v. Jerds Luxembourg Holding S.ÀR.L..United States v. Biomet, Inc.*; *SEC v. Biomet, Inc.*

Total Combined Sanction. $22,855,731.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

monetary penalty of $17.28 million and to retain an independent corporate compliance monitor for a minimum period of eighteen months, self-monitoring and reporting for the remainder of the DPA period. *See* DOJ Digest Number B-182 and 130. *See* SEC Digest Number D-168. *See* Ongoing Investigation Numbers F-56.	

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

106. SEC V. NOBLE CORPORATION (S.D. TEX. 2012)
SEC V. MARK A. JACKSON AND JAMES J. RUEHLEN (S.D. TEX. 2012)
SEC V. THOMAS F. O'ROURKE (S.D. TEX. 2012)

NATURE OF THE BUSINESS

Noble Corporation is an international oil and gas drilling contractor that owns and operates drilling rigs through its subsidiaries and affiliates. In March 2009, Noble re-domesticated from the Cayman Islands and is now incorporated in Switzerland. The company is headquartered in Sugar Land, Texas. Noble Drilling (Nigeria) Ltd. is a wholly owned Noble subsidiary, incorporated in Nigeria. Noble's common stock is registered under Section 12(b) of the Exchange Act and is traded on the New York Stock Exchange.

Defendant Mark A. Jackson was Noble's CFO from September 2000 to February 2006. By the time he retired from Noble in 2007, Jackson had also served as CEO, President, and COO of Noble. Defendant James J. Ruehlen is the current Director and Division Manager of Noble Nigeria and is responsible for all of Noble-Nigeria's operations. He reported directly to Jackson from May 2005 to 2007. Defendant Thomas O'Rourke was Noble's former Director of Internal Audit and controller.

INFLUENCE TO BE OBTAINED

According to the SEC, from 2003 to 2007, Noble authorized its subsidiary in Nigeria to make improper payments to customs agents in Nigeria to obtain temporary importation permits for its drilling rigs and avoid costly sanctions for non-compliance or expensive efforts to move the rigs out of the country as required by the temporary permits.

Specifically, Noble-Nigeria operated oil rigs offshore in Nigeria pursuant to one-year TIPs granted by the Nigerian Customs Service. At the expiration of the TIPs and TIP extensions, the rigs were required to be exported and re-imported under a new TIP or be permanently imported with the payment of sizable duties. Then, according to the SEC, Ruehlen, with Jackson's approval, and Noble's customs agent created false documents showing that the rigs moved out of and back into Nigerian waters and bribed NSC officials to process these documents. The alleged scheme thus spared Noble Corporation the operational costs associated with exporting and re-importing rigs from Nigeria to qualify for new TIPs and allowed Noble to retain business under lucrative drilling contracts.

Further, according to the SEC's complaint filed against Jackson and Ruehlen, Jackson and Ruehlen allegedly bribed NCS officials with hundreds of thousands of dollars to (1) favorably process false paperwork; (2) grant temporary import permits ("TIPs") for oil rigs based on that false paperwork; and (3) abuse their discretion in granting extensions to these illicit TIPs. The complaint also alleges that Jackson approved the bribe payments and concealed the payments from Noble's audit committee by misleading the auditors while Ruehlen processed and paid the bribes.

According to the O'Rourke Complaint, O'Rourke allegedly assisted officials at Noble's Nigerian subsidiary in bribing Nigeria Customs Service officials to grant and extend temporary import permits for oil rigs based on false paperwork, facilitated the approval of these charges, and hid the true nature of the charges from the company's audit committee.

KEY FACTS

Citation. *SEC v. Noble Corp.*, No. 4:10-cv-04336 (S.D. Tex. Nov. 12, 2010); *SEC v. Jackson et al.*, No. 4:12-cv-00563 (S.D. Tex. July 3, 2014); *SEC v. O'Rourke*, No. 4:12-cv-00564 (S.D. Tex. Mar. 28, 2012).

Date Filed. November 12, 2010 (Noble); July 3, 2014 (Jackson & Ruehlen); March 28, 2012 (O'Rourke).

Country. Nigeria.

Date of Conduct: 2003 – 2007.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Subsidiary; Customs agent.

Foreign official. Nigerian customs officials.

FCPA Statutory Provision.

- **Noble**. Anti-Bribery; Books-and-Records; Internal Controls.
- **Jackson**. Anti-Bribery (Agent of Issuer); Books-and-Records (Individual); Internal Controls (Individual); Aiding and Abetting (Anti-Bribery; Books-and-Records; Internal Controls).
- **Ruehlen**. Anti-Bribery (Other Persons); Books-and-Records (Individual); Internal Controls (Individual); Aiding and Abetting (Anti-Bribery; Books-and-Records; Internal Controls).
- **O'Rourke**. Aiding and Abetting (Anti-Bribery); Books-and-Records (Individual); Internal Controls (Individual).
- **Daniel Perez**. Conspiracy (Anti-Bribery; Books-and-Records; Internal Controls).

Other Statutory Provision.

- **Jackson**. Exchange Act Rules 13b2-2 and 13a-14 (Certification of disclosure in annual and quarterly reports) (Wire Fraud); Criminal Forfeiture.

Disposition.

- **Noble**. Consent Order.
- **Jackson**. Consent Order.
- **Ruehlen**. Consent Order.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

ENFORCEMENT

On November 12, 2010, Noble consented to the entry of a final judgment against it for violations of the anti-bribery, books-and-records, and internal controls provisions of the FCPA. Noble agreed to pay $5,576,998 in disgorgement and prejudgment interest. In a related criminal action, the DOJ entered into a non-prosecution agreement with Noble.

On May 8, 2012, Jackson and Ruehlen filed motions to dismiss the complaint, arguing that the complaint failed to plead adequately 1) the involvement of a foreign official; 2) that the payments were not facilitation payments; and 3) that the defendants acted corruptly. On December 11, 2012, the Southern District for Texas granted in part and denied in part the motion to dismiss, largely based on deficient pleadings regarding the statute of limitations. Judge Keith Ellison held that 1) the SEC did not need to plead the identity of the foreign official with specificity (acknowledging his disagreement with fellow S.D. Texas Judge Lynn Hughes, who stated differently in the DOJ's case against John O'Shea); 2) the SEC pleaded sufficient facts to support the conclusion that the payments made to obtain new TIPs were corrupt and were not facilitation payments; but 3) the SEC did not plausibly allege facts that support the allegation that granting the TIPS extensions was a matter of discretion (and thus potentially excluded from the definition of "facilitation payments").

On January 25, 2013, the SEC filed an amended complaint, which Jackson and Ruehlen moved to dismiss on February 22, 2013. The parties then jointly moved to grant the SEC leave to file a second amended complaint with corrected pleadings regarding the statute of limitations, which the court granted. The SEC filed its second amended complaint on March 25, 2013, to which Jackson and Ruehlen filed answers on April 19, 2013, denying most of the SEC's allegations.

On February 24, 2012, without admitting or denying the allegations, O'Rourke consented to the entry of an order permanently enjoining him from further FCPA violations and requiring him to pay a civil money penalty of $35,000. The order notes that O'Rourke agreed to cooperate with the SEC's subsequent investigation. The action was terminated on February 28, 2012.

In July 2014, the SEC settled the outstanding suit against Jackson and Ruehlen. The consent orders merely enjoined Jackson and Ruehlen from violating the FCPA in the future and did not require any disgorgement or civil monetary penalty. If it had not settled, the case would have marked the first instance the SEC pursued FCPA-related charges to trial.

See DOJ Digest Number B-107.
See SEC Digest Number D-81.

- **O'Rourke**. Consent Order.

Defendant Jurisdictional Basis. Issuer (Noble); Aider/Abettor, Agent of Issuer (Jackson; Ruehlen, O'Rourke).

Defendant's Citizenship. Switzerland (Noble); United States (Jackson; Ruehlen; O'Rourke).

Total Sanction.

- **Noble**. $5,576,998.
- **Jackson**. Enjoined from violating Section 13(b)(2)(A) of the Exchange Act.
- **Ruehlen**. Enjoined from aiding and abetting any violation of Section 13(b)(2)(A) of the Exchange Act.
- **O'Rourke**. Enjoined from violating Sections 30A, 13(b)(5), 13b2-1, and 13(b)(2)(A) of the Exchange Act; and aiding and abetting Section 13(b)(2)(B); civil penalty of $35,000.

Related Enforcement Actions: *In re Noble Corp.*

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

105. SEC V. SMITH & NEPHEW PLC (D.D.C. 2012)

NATURE OF THE BUSINESS

Smith & Nephew plc is a global medical company incorporated in England and Wales. It issued and maintained a class of publicly-traded securities which traded on the New York Stock Exchange. Smith & Nephew, Inc. ("S&N Inc.") was a wholly-owned subsidiary of Smith & Nephew plc, and was a global manufacturer and supplier of orthopedic medical devices. S&N Inc. was incorporated in Delaware and headquartered in Memphis, Tennessee.

INFLUENCE TO BE OBTAINED

From about 1998 to about 2008, Smith & Nephew, through certain executives, employees, and affiliates, funded an offshore slush fund by selling products at full list price to a Greek distributor based in Athens and then paying the "distributor discount" to an offshore shell company controlled by the distributor. The distributor then paid cash incentives and other things of value to publicly-employed Greek health care providers to induce the purchase of medical devices manufactured by Smith & Nephew. The funds were recorded as "marketing services" to conceal the true nature of the payments in the consolidated books and records of Smith & Nephew and its subsidiaries.

ENFORCEMENT

On February 6, 2012, the SEC filed a civil complaint against S&N plc. Without admitting or denying the allegations against it, S&N plc reached a settlement with the SEC and agreed to pay $5.43 million in disgorgement of profits, including prejudgment interest. On March 6, 2012, the court issued a final judgment in which the court permanently enjoined S&N plc from future violations of Sections 30A, 13(b)(2)(A), and 13(b)(2)(b) of the Securities Exchange Act of 1934 and ordered S&N plc to retain an independent compliance monitor for a period of 18 months to review its FCPA compliance program.

In a related criminal action, the DOJ entered into a three-year deferred prosecution agreement with S&N Inc.

See DOJ Digest Number B-128.

KEY FACTS

Citation. *SEC v. Smith & Nephew plc*, No. 1:12-cv-00187 (D.D.C. 2012).

Date Filed. March 6, 2012.

Country. Greece.

Date of Conduct. 1998 – 2008.

Amount of the Value. $9.4 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Shell entity; subsidiary company.

Foreign official. Healthcare providers and doctors employed by publicly-owned Greek hospitals.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United Kingdom.

Total Sanction. $5,426,799.

Reporting Requirements. Independent Compliance Monitor.

Related Enforcement Actions. *United States v. Smith & Nephew, Inc.*

Total Combined Sanction. $22,226,799.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

104. SEC V. MAGYAR TELEKOM, PLC. AND DEUTSCHE TELEKOM, AG (S.D.N.Y. 2011) SEC V. ELEK STRAUB, ANDRAS BALOGH, AND TAMAS MORVAI (S.D.N.Y. 2011)

NATURE OF THE BUSINESS

Magyar Telekom, Plc. ("Magyar Telekom") is the largest telecommunications company in Hungary, and during the relevant time its American Depository Receipts were registered with the SEC pursuant to Section 12(b) of the Exchange Act. Deutsche Telekom, AG ("Deutsche Telekom"), a private stock corporation organized under the laws of Germany, owns a controlling interest in Magyar Telekom. Elek Straub was the Chairman and Chief Executive Officer of Magyar Telekom from July 17, 1995, until December 5, 2006. Andras Balogh was the Director of Central Strategic Organization of Magyar Telekom from April 1, 2002 until August 8, 2006, and Tamas Morvai was the Director of Business Development and Acquisitions in the Central Strategic Organization of Magyar Telekom from July 2004 until July 10, 2006. All three individual defendants are Hungarian citizens.

INFLUENCE TO BE OBTAINED

The SEC alleged that Elek Straub, Andras Balogh, and Tamas Morvai (collectively, the "senior executives") executed a scheme between 2005 and 2006 to bribe Macedonian government officials to obtain certain regulatory and business benefits. In particular, the senior executives allegedly retained a Greek "lobbying consultant" to negotiate a secret agreement with a senior government official, called the "Protocol of Cooperation," pursuant to which the government would refrain from tendering a license to Magyar Telekom's mobile phone competitor under a newly-enacted law and would mitigate other adverse effects under the law for Magyar Telekom's subsidiaries. In return, the government official was promised up to €10 million in bribes. The Protocol of Cooperation was allegedly approved by Straub and Balogh and, according to the complaint against the senior executives, by executives at Deutsche Telekom.

Balogh and Morvai allegedly entered a second Protocol of Cooperation, identical to the first, with a senior government official of Macedonia's minority political party. In addition, the senior executives allegedly offered the minority political party the opportunity to designate the beneficiary of a valuable business opportunity in exchange for its support of the benefits sought by Magyar Telekom.

According to the SEC, as a result of these promises, the Macedonian government delayed the introduction of a mobile phone competitor until 2007 and unlawfully reduced the frequency fee tariffs imposed on Magyar Telekom's subsidiaries. In exchange, the senior executives allegedly authorized Magyar Telekom's subsidiaries to channel payments of €4.875 million to the officials through entities affiliated with the Greek intermediary. These payments were purportedly made under the guise of six bogus "consulting" and "marketing" contracts that were specifically designed to evade Magyar Telekom's internal controls and were recorded as consulting expenses in Magyar Telekom's books and records.

In 2005, Straub, Balogh, and Morvai allegedly executed a second corrupt scheme in which they authorized payments of €7.35 million to government officials in the Republic of Montenegro. The payments were intended to facilitate Magyar Telekom's acquisition of super-majority ownership of Telekom Crne Gore A.D. ("TCG"), a former state-owned public

KEY FACTS

Citation. *SEC v. Magyar Telekom,* Plc., et al., No. 11-cv-09646 (S.D.N.Y. 2011).; *SEC v. Straub,* et al., No. 11-cv-09645 (S.D.N.Y. 2011).

Date Filed.

- **Magyar Telekom**. January 3, 2012.
- **Deutsche Telekom**. January 3, 2012.
- **Straub**. April 26, 2017.
- **Balogh**. April 26, 2017.
- **Moravai**. February 15, 2017.

Country. Macedonia, Montenegro

Date of Conduct. 2005 – 2006.

Amount of the Value. €12,225,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Shell companies; Third-party intermediary.

Foreign official. Unnamed Macedonia and Montenegrin government officials.

FCPA Statutory Provision.

- **Magyar Telekom, Deutsche Telekom**. Anti-Bribery; Books-and-Records; Internal Controls; Aiding and Abetting (Anti-Bribery; Books-and-Records; Internal Controls).
- **Straub, Balogh, Moravai**. Anti-Bribery; Books-and-Records; Internal Controls; Aiding and Abetting (Anti-Bribery; Books-and-Records; Internal Controls).

Other Statutory Provision.

- **Magyar Telekom, Deutsche Telekom**. None.
- **Straub, Balogh, Moravai**. False Statements to Accountant or Auditor (Exchange Act Rule 13b2-2).

Disposition.

- **Magyar Telekom**. Consent Order.
- **Deutsche Telekom**. Consent Order.
- **Straub**. Consent Order.
- **Balogh**. Consent Order.
- **Moravai**. Consent Order.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

telecommunications services provider in Montenegro. The Government of Montenegro sold its 51% stake to Magyar Telekom though a public tender process, but Magyar Telekom was unsuccessful in acquiring shares from the minority shareholders due to a budget set by Deutsche Telekom. Straub, Balogh, and Morvai offered bribes to Montenegrin officials to induce the government to contribute €0.30 per share to private shareholders, which enabled Magyar Telekom to acquire additional shares.

After the government facilitated the TCG deal, Straub and Balogh allegedly funneled €4.47 million to Montenegrin officials through "consulting" contracts between Magyar Telekom's subsidiaries and entities in Mauritius and the Seychelles. Straub, Balogh, and Morvai also allegedly funneled €580,000 to the sister of a Montenegrin official through a sham consulting agreement with a purported New York-based counter-party and entered a fourth sham consulting agreement with a shell company purportedly based in England, under which it paid €2.3 million.

The SEC further alleged that Straub, Balogh, and Morvai lied to Magyar Telekom's auditors by failing to disclose the purpose and existence of the contracts used to pay government officials. The false entries in Magyar Telekom's books and records were consolidated into the books and records of Deutsche Telekom.

ENFORCEMENT

The SEC charged Magyar Telekom with violations of the anti-bribery, books-and-records, and internal controls provisions of the FCPA. Magyar Telekom agreed to pay $31.2 million in disgorgement and prejudgment interest to settle the charges. Magyar Telekom also agreed to pay a $59.6 million criminal penalty as part of a deferred prosecution agreement with the DOJ.

Deutsche Telekom was also charged with books and records and internal controls violations. Deutsche Telekom settled the SEC's charges, and as part of a non-prosecution agreement with the Department of Justice agreed to pay a penalty of $4.36 million.

Straub, Balogh, and Morvai were charged with violating or aiding and abetting violations of the anti-bribery, books and records, and internal controls provisions of the FCPA; knowingly circumvented internal controls and falsifying books and records; and making false statements to the company's auditor. The SEC sought disgorgement and penalties and the imposition of permanent injunctions in its actions against Straub, Balogh, and Morvai.

On October 29, 2012, Straub, Balogh, and Morvai filed a motion to dismiss the civil charges, arguing that the court lacks personal jurisdiction over the defendants because they are foreign national defendants and their alleged conduct occurred wholly outside, and without a nexus to, the United States. Furthermore, the defendants argued that the SEC's claims are time-barred. Lastly, the defendants argued that the complaint failed to state the claims alleged because it did not adequately plead that the defendants corruptly made use of interstate commerce and that the intended payment recipients were "foreign officials" under the FCPA; it did not sufficiently allege facts to support the aiding and abetting claims; and the complaint did not meet the heightened pleading requirements under Rule 9 of the Federal Rules of Civil Procedure, which requires allegations of individual culpable conduct by each defendant.

On February 8, 2013, Judge Richard Sullivan of the Southern District of New York denied the defendants' motion to dismiss the complaint in the action,

Defendant Jurisdictional Basis.

- **Magyar Te**lekom. Issuer.
- **Deutsche Telekom**. Agent of Issuer.
- **Straub, Balogh, Moravai**. Agent of Issuer.

Defendant's Citizenship.

- **Magyar Telekom**. Hungary.
- **Deutsche Telekom**. Germany.
- **Straub**. Hungary.
- **Balogh**. Hungary.
- **Moravai**. Hungary.

Total Sanction.

- **Magyar Telekom**. $36,211,491.
- **Deutsche Telekom**. $4,000,000.
- **Straub**. $250,000.
- **Balogh**. $150,000.
- **Moravai**. $60,000.

Compliance Monitor/Reporting Requirements. Two-Year Reporting Requirement.

Related Enforcement Actions. *United States v. Magyar Telekom, Plc.*; *In re Deutsche Telekom AG* (DOJ non-prosecution letter December 29, 2011).

Total Combined Sanction. $95,171,491.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

finding that 1) the court had personal jurisdiction over the defendants, 2) the SEC's claims were not time-barred, and 3) the SEC had sufficiently stated its claims. On August 5, 2013, the Court also denied the defendants' motion for leave to file an interlocutory appeal.

In March 2014, the SEC elected to drop its claims against Straub, Balogh, and Morvai for alleged bribes paid to Montenegrin officials in 2005. Citing the complexity and scope of the investigation, the SEC opted to only pursue a second set of claims involving bribes paid to Macdedonian officials.

In September 2016, the court partially granted the SEC's and defendants' motions for summary judgment. In so ruling, the court held that Commission's case against the three executives could proceed on the grounds that participating in the preparation of false securities filings, which were later posted to the Commission's U.S.-based EDGAR website, was sufficient to establish the Commission's jurisdiction over the defendants. A trial in the case was scheduled to begin in May 2017, but Moravai entered into a Consent Agreement in February 2017 in which he agreed to pay a civil penalty of $60,000 to settle the charges against him. On the eve of trial, Straub and Balogh also consented to judgments against them on April 24, 2017, agreeing to pay civil penalties of $250,000 and $150,000, respectively.

See DOJ Digest Number D-126.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

103. SEC V. AON CORPORATION (D.D.C 2011)

NATURE OF THE BUSINESS

Aon Corporation is a Delaware corporation that provides risk management services, insurance, and reinsurance brokerage worldwide. Its common stock is registered with the SEC pursuant to Section 12(b) of the Exchange Act and is listed on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

The SEC alleged that, from 1983 until 2007, Aon's subsidiaries made over $3.6 million in improper payments to various parties as a means of obtaining or retaining insurance business in Costa Rica, Egypt, Vietnam, Indonesia, the United Arab Emirates, Myanmar, and Bangladesh. The improper payments allegedly made by Aon's subsidiaries fall into two general categories: (i) training, travel, and entertainment provided to employees of foreign government-owned clients and third parties; and (ii) payments made to third-party facilitators. The complaint alleges that none of these payments were accurately reflected in Aon's books and records and that Aon failed to maintain an adequate internal control system designed to detect and prevent the improper payments.

In Costa Rica, Aon's U.K. subsidiary, Aon Limited, allegedly administered two funds which disbursed approximately $865,000 to pay for travel and entertainment expenses for officials at the Instituto Nacional de Seguros ("INS"), a government-owned reinsurance company. The purported purpose of the funds was to provide training and education for INS employees, but a substantial number of the expenses served no legitimate business purpose. The majority of the amounts paid out by the two funds were to a tourism company in Costa Rica with which the director of reinsurance at INS was connected.

The SEC further alleges that, from 1998 through 2007, Aon Risk Services paid $100,000 to fund trips to the United States for a delegation of officials from the Egyptian Armament Authority and the Egyptian Procurement Office, an Egyptian government-owned company for which Aon served as an insurance broker. The SEC alleged that these delegation trips included a disproportionate amount of leisure activities and lasted longer than their business component would justify.

The SEC also alleges that Aon's subsidiaries made payments to third-party facilitators in Vietnam, Indonesia, the United Arab Emirates, Myanmar, and Bangladesh in connection with prospective accounts with government-owned companies. The third parties appeared to have performed no legitimate services in relation to these accounts. Certain employees of Aon subsidiaries were allegedly aware that part of the payments to these third parties would ultimately be funneled to officials at the government-owned entities to secure and retain business for Aon's subsidiaries.

ENFORCEMENT

Without admitting or denying the allegations, Aon consented to the entry of a final judgment permanently enjoining it from future violations of the books and records and internal control provisions of the FCPA and ordering the company to pay $14,545,020 in disgorgement and prejudgment interest. Separately, Aon entered into a non-prosecution agreement with the DOJ and agreed to

KEY FACTS

Citation. *SEC v. Aon Corp*., No. 1:11-cv-02256 (D.D.C. Dec. 22, 2011).

Date Filed. December 22, 2011.

Country. Bangladesh, Costa Rica, Egypt, Indonesia, Myanmar, United Arab Emirates, Vietnam.

Date of Conduct. 2006 – 2013.

Amount of the Value. Approximately $6,235,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Third-party travel agencies/consultants.

Foreign official. Officials at a government-owned reinsurance company in Costa Rica; Officials at the Egyptian Armament Authority, an Egyptian government-owned company, and its U.S. arm, the Egyptian Procurement Office; Unnamed individuals associated with Vietnam Airlines; Unnamed Indonesian government officials; Senior Manager at Myanmar Insurance, a government-owned entity; the son of a high-ranking government official in Bangladesh.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $14,545,020.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In re Aon Corp.*

Total Combined Sanction. $16,309,020.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

pay a $1.764 million penalty. *See* DOJ Digest Number D-125.	

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

102. SEC V. URIEL SHAREF, ULRICH BOCK, CARLOS SERGI, STEPHAN SIGNER, HERBERT STEFFEN, ANDRES TRUPPEL, AND BERND REGENDANTZ (S.D.N.Y. 2011)

NATURE OF THE BUSINESS

Siemens AG is an engineering company headquartered in Munich, Germany. Siemens Business Services GmbH & Co. ("SBS") and Siemens S.A. ("Siemens Argentina") are both subsidiaries of Siemens AG.

All of the defendants are non-U.S. citizens. Uriel Sharef, a dual citizen of Germany and Israel, was a member of Siemens AG's Managing Board. German citizen Herbert Steffen was group president of Siemens AG's transportation systems operating group, and was previously CEO of Siemens Argentina. Andres Truppel, a dual citizen of Germany and Argentina, was a consultant to Siemens, and previously CFO of Siemens Argentina. German citizen Ulrich Bock was a consultant to Siemens and previously commercial head of SBS's Major Projects subdivision. German citizen Stephan Signer worked for SBS as a commercial director. German citizen Bernd Regendantz was CFO of SBS. Argentine citizen Carlos Sergi was a businessman with extensive high-level government contacts in Argentina.

INFLUENCE TO BE OBTAINED

According to the SEC's complaint, from approximately 1996 until early 2007, senior executives at Siemens and its regional company in Argentina, Siemens Argentina, paid bribes to senior Argentine government officials. The bribes were initially paid to secure a $1 billion government contract (the "DNI Contract") to produce national identity cards for every Argentine citizen. SBS was the operating group responsible for managing the DNI Contract. The defendants allegedly worked to conceal the illicit payments through various means, including sham contracts and shell companies associated with Sergi and other intermediaries. In May 1999, however, the Argentine government suspended the DNI project. When a new government took power in Argentina, and in the hopes of getting the DNI project resumed, the defendants allegedly paid additional bribes to the incoming officials. When the project was terminated in May 2001, the defendants allegedly responded with a multi-faceted strategy to overcome the termination. According to the complaint, the defendants sought to recover the anticipated proceeds of the DNI project, notwithstanding the termination, by causing Siemens AG to file a fraudulent arbitration claim against the Republic of Argentina. Defendants allegedly caused Siemens to actively hide from the arbitral tribunal the fact that the DNI Contract had been secured through corruption. The complaint also alleges that between 2002 and 2006 defendant Regendantz signed quarterly and annual certifications pursuant to the Sarbanes-Oxley Act, falsely representing that the financial statements of SBS did not contain fraudulent or misleading statements.

ENFORCEMENT

On December 13, 2011, the SEC filed a civil complaint against the defendants, alleging they aided and abetted violations of the anti-bribery, books-and-records, and internal controls provisions of the FCPA. The SEC also alleged substantive violations of the anti-bribery provision of the FCPA. On the same day, defendant Regendantz consented to a final judgment with the SEC without admitting or denying the SEC's allegations. Regendantz was permanently enjoined from future violations and ordered to pay a civil penalty of $40,000, deemed satisfied by his payment of a €30,000 administrative fine

KEY FACTS

Citation. *SEC v. Sharef, et al.*, No. 11-cv-09073 (S.D.N.Y. 2011).

Date Filed. December 13, 2011 (Regendantz); February 19, 2013 (Steffen); April 12, 2013 (Sharef); October 29, 2013 (Sergi); November 16, 2013 (Signer, Bock, Truppel).

Country. Argentina.

Date of Conduct. 1996 – 2007.

Amount of the Value. Approximately $100 million.

Amount of Business Related to the Payment. Approximately $1 billion.

Intermediary. Consultants and agents; Shell companies.

Foreign official. Argentine government officials.

FCPA Statutory Provision. Anti-Bribery; Internal Controls (Individual); Aiding and Abetting (Anti-Bribery, Internal Controls, Books-and-Records).

Other Statutory Provision.

- **All Defendants**. Exchange Act Rule 13b2-1 (Falsifying Documents).
- **Regendantz**. Exchange Act Rule 13b-2 (Falsifying Internal Certifications).

Disposition.

- **Regendantz**. Consent Order.
- **Steffan**. Dismissed (Lack of Personal Jurisdiction).
- **Sharef**. Consent Order.
- **Sergi**. Dismissed.
- **Singer**. Default Order.
- **Bock**. Default Order.
- **Truppel**. Consent Order.

Defendant Jurisdictional Basis.

- **Regendantz**. Agent of Issuer.
- **Steffan**. None.
- **Sharef**. Agent of Issuer.
- **Sergi**. Agent of Issuer.
- **Singer**. Agent of Issuer.
- **Bock**. Agent of Issuer.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

ordered by the Public Prosecutor General in Munich, Germany. Also on December 13, 2011, the DOJ filed a criminal indictment alleging similar facts against many of the defendants in the SEC case, adding two additional defendants (Eberhard Reichert and Miguel Czysch), but notably excluding Regendantz, the only SEC defendant to have settled with the authorities as of the date of the criminal indictment.

In October 2012, Steffen moved to dismiss the civil complaint, arguing that the court lacked personal jurisdiction over him and the SEC's claims are time barred by statute. On February 19, 2013, Steffen's motion was granted for lack of personal jurisdiction.

On April 12, 2013, Uriel Sharef consented to entry of final judgment with the SEC without admitting or denying the allegations of the complaint. Sharef was permanently enjoined from future violations and ordered to pay a civil penalty of $275,000.

In October 2013, the SEC voluntarily dismissed the complaint against Sergi.

On November 16, 2013, the SEC requested that the court enter a default and final judgment against Singer and Bock and further requested that they be permanently enjoined from future violations and ordered to pay civil penalties and disgorgement of ill-gotten gains. Upon review of the SEC's motion, on February 3, 2014, Judge Shira A. Scheindlin of the Southern District of New York entered a default judgment against Ulrich Bock and Stephen Singer after both refused to appear or answer the SEC's complaint. Following the default entry, Judge Scheindlin ordered each defendant to pay $524,000 in civil penalties. In addition, Judge Scheindlin ordered Bock to disgorge $413,957. These sanctions were among the highest civil penalties ever ordered against individuals in an SEC proceeding.

On the same day, Judge Scheindlin approved a settlement between the SEC and Truppel whereby Truppel agreed to pay a civil penalty of $80,000 in exchange for the Commission's agreement to drop its claims against him.

Previous DOJ and SEC actions against Siemens AG and its subsidiaries were filed and settled in 2008, in part based on the alleged conduct in Argentina. In the criminal action, all corporate defendants pleaded guilty to conspiring to violate the FCPA and agreed to pay criminal fines totaling $450 million. In the parallel SEC action against the corporate defendants, Siemens AG agreed to disgorge more than $350 million in ill-gotten profits. Siemens also settled with German authorities, agreeing to pay a total of €596 million in penalties.

See DOJ Digest Numbers B-124 and B-78.
See SEC Digest Numbers D-56.
See Parallel Litigation Digest Numbers H-A11, H-C24, and H-H1.

- **Truppel**. Agent of Issuer.

Defendant's Citizenship.

- **Regendantz**. Germany.
- **Steffan**. Germany.
- **Sharef**. Germany, Israel.
- **Sergi**. Argentina.
- Singer. Germany.
- **Bock**. Germany.
- **Truppel**. Germany, Argentina.

Total Sanction.

- **Regendantz**. $40,000.
- **Steffan**. None.
- **Sharef**. $275,000.
- **Sergi**. Dismissed.
- **Singer**. $524,000.
- **Bock**. $937,957.
- **Truppel**. $80,000.

Compliance Monitor/Reporting Requirements. Not Applicable.

Related Enforcement Actions: *United States v. Sharef et al.*

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

101. IN THE MATTER OF WATTS WATER TECHNOLOGIES, INC. AND LEESEN CHANG (2011)

NATURE OF THE BUSINESS

Watts Water Technologies, Inc. ("Watts") is a Delaware corporation that designs, manufactures, and sells water valves and related products. Its common stock is registered pursuant to Section 12(b) of the Exchange Act and is traded on the New York Stock Exchange. Leesen Chang, a U.S. citizen, was the vice president of sales at Watts' Chinese subsidiary.

INFLUENCE TO BE OBTAINED

Between 2006 and 2009, Watts's Chinese subsidiary, Watts Valve Changsha Co., Ltd. ("CWV"), produced and supplied large valve products for infrastructure projects in China. Leesen Chang was vice president of sales at the Watts subsidiary that managed CWV. In China, state-owned design institutes are frequently retained by the government to assist in the design and construction of infrastructure projects. Under Chang's watch, CWV employees allegedly made improper payments to employees of certain design institutes to influence the institutes to recommend CWV valve products and create design specifications that favored CWV products. The improper payments were facilitated by a sales incentive policy created by CWV's Chinese predecessor, before it had been acquired by Watts. The sales policy provided, among other things, that sales personnel could utilize their commissions to make payments to design institutes. As a result, the payments to design institutes were improperly recorded in Watts' books and records as sales commissions.

ENFORCEMENT

In 2009, Watts became aware of potential FCPA violations at CWV and retained outside counsel to conduct an internal investigation. Watts publicly disclosed the internal investigation and on October 13, 2011, the SEC issued an administrative cease-and-desist order against Watts and Chang. Under the order, Watts was ordered to pay disgorgement of $2,755,815, prejudgment interest of $820,791, and a civil money penalty of $200,000. Chang was ordered to pay a civil money penalty of $25,000.

See Parallel Litigation Digest Number H-G1.

KEY FACTS

Citation. *In the Matter of Watts Water Techs.*, Inc. & Leesen Chang, Admin. Pro. File No. 3-14585 (Oct. 13, 2011).

Date Filed. October 13, 2011.

Country. China.

Date of Conduct. 2006 – 2009.

Amount of the Value. Unknown.

Amount of Business Related to the Payment. Approximately $2.7 million.

Intermediary. Local subsidiary.

Foreign official. Employees of design institutes owned by the Chinese government.

FCPA Statutory Provision.

- **Watts**. Books-and-Records; Internal Controls.
- **Chang**. Internal Controls (Individual).

Other Statutory Provision. Exchange Act Rule 13b2-1.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer (Watts); Agent of Issuer (Chang).

Defendant's Citizenship. United States (Watts); United States (Chang).

Total Sanction. $3,576,606.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $3,576,606.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

100. IN THE MATTER OF DIAGEO PLC (2011)

NATURE OF THE BUSINESS

Diageo plc ("Diageo") is a U.K. company that produces and distributes a wide variety of alcoholic beverages. Through its various direct and indirect subsidiaries, Diageo maintains operations in more than 180 countries.

INFLUENCE TO BE OBTAINED

The SEC found that from 2003 to 2009, Diageo India Pvt. Ltd. (Diageo's wholly-owned indirect subsidiary based in India, "DI") paid $792,310 through third-party distributors to employees of Indian government liquor stores to increase sales and improve product placement, as well as $186,299 in "cash service fees" to reimburse these distributors. The SEC also found that DI reimbursed $530,955 and made plans to reimburse an additional $79,364, to third-party sales promoters. The promoters made improper cash payments to Indian government employees of the military Canteen Stores Department to promote DI's products, obtain listings and registration for Diageo's brands and secure the release of seized shipments. The SEC found that DI also paid $78,622 in commissions to reimburse distributors for payments to Indian excise officials to secure import permits and administrative approvals. DI allegedly failed to properly account for these payments and fees.

In Thailand, the SEC found that from April 2004 to July 2008, Diageo Moet Hennessy Thailand (a joint venture of Diageo based in Thailand, "DT") paid $599,322 to a consulting firm, knowing this money was for the benefit an active Thai government official. The official lobbied on behalf of DT on customs and tax disputes between Diageo and the government, meeting with senior commerce, finance, and customs authorities, as well as the Prime Minister, and members of the Thai parliament. DT allegedly improperly accounted for the monthly retainer paid to the Thai official.

According to the SEC, Diageo also faced significant tax and customs issues in South Korea. During negotiations on a difficult tax dispute, Diageo Korea Co. Ltd. (Diageo's wholly-owned indirect subsidiary based in South Korea, "DK") paid $109,253 in travel and entertainment costs to Korean customs and other government officials. After negotiations with South Korean officials on tax issues, a DK manager allegedly paid the equivalent of $86,339 to a Korean Customs Service official by means of a kickback to a third-party customs broker. The SEC found that DK improperly and falsely accounted for this cash reward payment and for the travel and entertainment expenses to other officials. The SEC also found that from 2002 to 2006, DK made payments in the form of holiday or business development gifts to South Korean military officers to obtain or maintain business and secure a competitive business advantage. DK allegedly failed to properly account for these gifts.

ENFORCEMENT

On July 27, 2011, the SEC issued a cease-and-desist order, alleging that Diageo and its subsidiaries failed to account for the various illicit payments in their books and records, and failed to devise and maintain internal account controls sufficient to detect and prevent such payments. Without admitting to any of the allegations, Diageo agreed to cease and desist from committing or causing any further violations, and agreed to pay disgorgement of $11,306,081, prejudgment interest of $2,067,739 and a civil penalty of $3,000,000 based on Diageo's cooperation with the SEC investigation.

KEY FACTS

Citation. *In the Matter of Diageo plc*, Admin Proc. File No. 3-14490 (July 27, 2011).

Date Filed. July 27, 2011.

Country. India, Thailand, South Korea.

Date of Conduct. 2002 – 2009.

Amount of the Value. Over $2.7 million.

Amount of Business Related to the Payment. Over $11 million in increased sales in India; approximately $50 million in tax rebates in South Korea; amount in Thailand unknown.

Intermediary. Third-party distributors, third-party sales promoters.

Foreign official. Employees of Indian Government Liquor Stores; employees of the Indian Military Canteen Stores Department; Indian government officials (North Region of India, State of Assam); Thai commerce, finance, and customs officials; members of the Thai Parliament; South Korean Customs Service officials; South Korean government officials; South Korean military officers.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United Kingdom.

Total Sanction. $16,373,820.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $16,373,820.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

99. SEC V. ARMOR HOLDINGS, INC. (2012)

NATURE OF THE BUSINESS

Manufacture and sales of military, law enforcement, and personal safety equipment. On July 31, 2007, after the conduct described in the complaint occurred, Armor Holdings, Inc. ("Armor Holdings"), a Delaware corporation, was acquired by BAE Systems, Inc., an indirect wholly-owned U.S. subsidiary of Britain's BAE Systems PLC. Armor Products International, Ltd. ("API") was a U.K. subsidiary of Armor Holdings. Armor Holdings Products, LLC ("AHP") was a U.S. subsidiary of Armor Holdings.

INFLUENCE TO BE OBTAINED

According to the SEC's complaint, between 2001 and 2006, certain agents of Armor Holdings participated in a bribery scheme in which corrupt payments were authorized to be made to an official at the U.N. for the purpose of obtaining and retaining U.N. contracts for the supply of body armor to be used in U.N. peacekeeping missions. The agents allegedly caused API to enter into a sham consulting agreement with a third-party intermediary for purportedly legitimate services in connection with the sale of goods to the U.N. The complaint alleges that the intermediary charged illegitimate or inflated commissions for its purported consulting services, and that Armor Holdings agents knew or consciously disregarded that some portion of these commissions would be offered to a U.N. official.

AHP also allegedly employed a separate accounting practice that disguised in the books and records of Armor Holdings commissions paid to third-party intermediaries who brokered the sale of goods to foreign governments. Even after being warned by internal and external accountants that this practice violated U.S. GAAP, the subsidiary continued the improper accounting practice. As a result, approximately $4,371,278 in commissions was not properly disclosed in the books and records of the company.

ENFORCEMENT

Without admitting or denying any of the SEC's allegations, Armor Holdings consented to entry of a permanent injunction against further violations and agreed to pay $1,552,306 in disgorgement, $458,438 in prejudgment interest, and a civil money penalty of $3,680,000. Separately, Armor Holdings entered into a non-prosecution agreement with the DOJ, and agreed to pay a $10.29 million fine.

See DOJ Digest Numbers B-121 and B-96.

KEY FACTS

Citation. *SEC v. Armor Holdings, Inc.*, 1:11-cv-01271 (D.D.C. July 23, 2012).

Date Filed. July 23, 2012.

Country. Indonesia, Iraq.

Date of Conduct. 2001 – 2006.

Amount of the Value. Approximately $4,594,028.

Amount of Business Related to the Payment. More than $7.1 million in revenues and more than $1.5 million in profits.

Intermediary. Sales Agent/Consultant.

Foreign official. Officials at the United Nations.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $5,690,744.

Compliance Monitor/Reporting Requirements. Two-year Reporting Requirement.

Related Enforcement Actions. *In re Armor Holdings, Inc*; *United States v. Bistrong.*

Total Combined Sanction. $16,590,744.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

98. IN RE TENARIS, S.A. (2011)[103]

NATURE OF THE BUSINESS

Tenaris S.A. ("Tenaris") is a corporation organized under the laws of Luxembourg. Tenaris is a global manufacturer and supplier of steel pipe products and related services to the oil and gas industry throughout the world. Tenaris's operations include supplying steel pipe and related services in the Caspian Sea region, including Uzbekistan, through Tenaris's offices in Azerbaijan and Kazakhstan.

INFLUENCE TO BE OBTAINED

During 2006 and 2007, Tenaris utilized the services of an agent to bid on a series of contracts with OJSC O'ztashgineftgaz ("OAO"). In or around February 2007, Tenaris entered into an agreement to pay the agent a commission of 3.5% for access to confidential bid information. Using the confidential bid information, Tenaris was awarded the contract and OAO agreed to pay Tenaris $2,719,720 for pipe used in oil and gas development in Uzbekistan. In or around April and May 2007, Tenaris entered into an agreement to pay the agent a commission of 3% for bid information related to three additional OAO contracts. By using confidential bid information Tenaris was awarded the three contracts. Tenaris's then-regional sales personnel understood that a portion of the commissions paid to the agent would be used to pay OAO officials.

Tenaris's then-regional sales personnel also agreed to make payments to the Uzbek government agency, Uzbekexpertiza JSC ("Uzbekexpertiza"), to encourage Uzbekexpertiza not to investigate the bidding process. However, evidence of such payment was not found. According to the SEC, in or around 2007, Tenaris also failed to accurately account for these transactions with the agent and payments to OAO officials on their books and records. Tenaris's system of internal controls also allegedly failed to detect or prevent payments to OAO officials, including a failure to ensure that proper due diligence was conducted on the agent.

ENFORCEMENT

In 2009, Tenaris disclosed the improper activity to the SEC, and in 2010, launched a world-wide investigation and took steps to update and improve its existing compliance programs. On May 17, 2011 Tenaris entered into a deferred prosecution agreement with the SEC, under which Tenaris agreed to pay disgorgement in the amount of $4,786,438 plus prejudgment interest of an estimated $641,900, totaling $5,428,338. Tenaris is the first company to ever enter into a deferred prosecution agreement with the SEC. Tenaris agreed to implement compliance measures, cooperate with the ongoing investigation, toll the statute of limitations, and observe and enhance reporting obligations. The deferred prosecution agreement allowed Tenaris to "neither admit nor deny" the allegations with only the proviso that it could not dispute the facts in any subsequent SEC proceeding. Tenaris must also refrain from seeking or accepting a U.S. federal or state tax credit or deduction for any monies paid pursuant to the deferred prosecution agreement.

On May 17, 2011, the DOJ and Tenaris also entered into a two-year

KEY FACTS

Citation. *In re Tenaris, S.A.* (SEC Mar. 29, 2011) (deferred prosecution agreement).

Date Filed. March 29, 2011.

Country. Uzbekistan.

Date of Conduct. 2006 – 2007.

Amount of the Value. More than $32,140.

Amount of Business Related to the Payment. Unknown.

Intermediary. Agent.

Foreign official. Officials at OJSC O'ztashqineftgaz ("OAO"), a subsidiary of Uzbekneftegaz, the state-owned holding company of Uzbekistan's oil and gas industry.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Non-Prosecution Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Luxembourg.

Total Sanction. $5,428,338.

Compliance Monitor/Reporting Requirements. Two-year Reporting Requirement.

Related Enforcement Actions. *In re Tenaris, S.A.*

Total Combined Sanction. $8,928,338.

[103] Matter resolved through deferred prosecution agreement (May 2011).

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

non-prosecution agreement, under which Tenaris agreed to pay a monetary penalty in the amount of $3,500,000, implement rigorous compliance measures, toll the statute of limitations, adhere to enhanced reporting obligations, disclose required information, and cooperate fully with all law enforcement agencies. *See* DOJ Digest Number B-122.	

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

97. IN THE MATTER OF ROCKWELL AUTOMATION, INC. (2011)

NATURE OF THE BUSINESS

Rockwell Automation, Inc. ("Rockwell") is a global company that designs and manufactures industrial automation products and services. Rockwell is incorporated in Delaware and has its principal offices in Milwaukee, Wisconsin. Rockwell Automation Power Systems (Shanghai) Ltd. ("RAPS-China") was a wholly-owned subsidiary of Rockwell headquartered in Shanghai, China. In 2007, Rockwell sold RAPS-China to Baldor Electric Company. RAPS-China supplied industrial mechanical power transmission products and industrial motors and drives.

INFLUENCE TO BE OBTAINED

The SEC alleged that, from 2003 through 2006, employees of RAPS-China, relying on third-party intermediaries, made over $1,065,000 in payments and funded approximately $450,000 in leisure travel for employees of Chinese state-owned design institutes (which were typically state-owned design engineering and technical integration enterprises) and other Chinese government-owned companies to influence sales contracts and obtain business from end-user state-owned customers. RAPS-China allegedly recorded these payments as legitimate business expenses in its books and records and failed to implement or maintain a system of internal accounting controls sufficient to prevent and detect the payments. Rockwell self-reported the payments after discovering them in 2006 through its normal financial review process.

ENFORCEMENT

On May 3, 2011, without admitting or denying the allegations, Rockwell consented to the entry of an order requiring it to cease and desist from violating the books and records and internal controls provisions of the FCPA and ordering Rockwell to pay disgorgement of $1,771,000, prejudgment interest of $590,091, and a civil money penalty of $400,000. The cease-and-desist order notes that Rockwell voluntarily self-reported the improper payments to the SEC and cooperated with the SEC's subsequent investigation. Rockwell also undertook numerous remedial measures with respect to its internal controls and compliance program.

KEY FACTS

Citation. *In the Matter of Rockwell Automation, Inc.*, Admin. Proc. File No. 3-14364 (May 3, 2011).

Date Filed. May 3, 2011.

Country. China.

Date of Conduct. 2003 – 2006.

Amount of the Value. Travel and cash payments of over $1,500,000.

Amount of Business Related to the Payment. Approximately $1,771,000 in net profits.

Intermediary. Third-party intermediaries.

Foreign official. Employees of state-owned Chinese design institutes and employees of other unspecified Chinese state-owned companies.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $2,761,091.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $2,761,091.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

96. SEC V. JOHNSON & JOHNSON (D.D.C. 2011)

NATURE OF THE BUSINESS

Sale of medical devices and pharmaceuticals manufactured by DePuy, Inc. ("DePuy") and DePuy International, both wholly-owned subsidiaries of Johnson & Johnson, a U.S.-based manufacturer and seller of health care products. Other subsidiaries, employees, and agents of Johnson & Johnson allegedly paid bribes to publicly-employed health care providers in Poland and Romania and paid kickbacks to the former government of Iraq in connection with the U.N. Oil for Food Program.

INFLUENCE TO BE OBTAINED

From at least 1998 to 2006, DePuy International, through a Greek distributor which it later acquired, allegedly paid bribes to public doctors in Greece who selected DePuy's surgical implants. The scheme featured a complicated web of transactions involving distributors and agents paid through commissions overseas and allegedly resulted in $24,258,072 in profit.

In Poland, a Johnson & Johnson subsidiary, MD&D Poland, allegedly made improper payments to publicly-employed doctors and hospital administrators in Poland to use their medical devices and award them medical device tenders from 2000 to 2006. This scheme was carried out through sham civil contracts and false travel invoices and resulted in approximately $4,348,000 in profit for the company. The SEC further alleged that, from 2000 to 2007, employees of Johnson & Johnson's Romanian subsidiary, Pharma Romania, made improper payments to publicly-employed doctors and pharmacists in Romania to prescribe Johnson & Johnson products through cash and travel payments. Pharma Romania used local distributors to generate the cash that was ultimately paid to the doctors in exchange for the doctors prescribing Johnson & Johnson products. The purported profit to Johnson & Johnson from these sales was $3,515,500.

Finally, two other Johnson & Johnson subsidiaries in Europe – Cilag AG International and Janssen Pharmaceutica N.V. – were accused of paying a Lebanese agent an inflated commission that included a 10% kickback to the former government of Iraq for participation in the U.N. Oil for Food Program. The stated reason for the high commission to the Lebanese agent was "promotional activities," yet that agent was unable to provide detailed evidence or description of any of those activities. There are allegations of $857,387 in kickbacks in connection with nineteen U.N. Oil for Food contracts. The total profit on those contracts is alleged to be $6,106,255.

ENFORCEMENT

Apart from the Oil-for-Food allegations, Johnson & Johnson had self-disclosed some wrongdoing and had conducted wide-reaching internal investigations. On April 8, 2011, without admitting or denying the facts alleged in the SEC's complaint, Johnson & Johnson consented to the entry of a court order permanently enjoining it from future violations of the anti-bribery, books and records, and internal control provisions of the FCPA; ordering it to pay $38,227,826 in disgorgement and $10,438,490 in prejudgment interest; and ordering it to comply with an FCPA compliance program.

See DOJ Digest Number B-120.
See Ongoing Investigation Number F-2.
See Parallel Litigation Digest Numbers H-F21 and H-F24.

KEY FACTS

Citation. *SEC v. Johnson & Johnson*, 1:11-cv-00686 (D.D.C. Apr. 13, 2011).

Date Filed. April 13, 2011.

Country. Greece, Iraq, Poland, Romania.

Date of Conduct. 1998 – 2006.

Amount of the Value. Unspecified.

Amount of Business Related to the Payment. $38,227,826.

Intermediary. Greek distributor; Lebanese agent.

Foreign official. Publicly-employed doctors in Greece; publicly-employed doctors and hospital administrators in Poland; publicly-employed doctors and pharmacists in Romania; top Ministry of Health officials in Iraq.

FCPA Statutory Provision. Conspiracy (Anti-Bribery, Internal Controls); Anti-Bribery.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $48,666,316.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In re Johnson & Johnson*.

Total Combined Sanction. $70,066,316.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

95. SEC V. COMVERSE TECHNOLOGY, INC. (E.D.N.Y. 2011)

NATURE OF THE BUSINESS

Purchase orders between a telecommunications company partially owned by the Greek government and Comverse Limited, an Israeli operating subsidiary of Comverse Technology, Inc. ("Comverse"), a provider of software systems and applications incorporated in New York.

INFLUENCE TO BE OBTAINED

In early 2003, Comverse Limited allegedly engaged an agent to facilitate sales in Greece through Fintron. According to the SEC, Comverse Limited employees negotiated orders with customers, directed the agent's activities, and used Fintron to process and funnel improper payments made to procure that business. Comverse Limited allegedly paid the agent a fee, 85% of which was used as a bribe amount to customers (including OTE), and then falsely recorded these bribes as commissions to Fintron and the agent. According to the SEC, the arrangement continued through 2006 and included $536,000 in improper payments to employees of OTE to obtain or retain business.

ENFORCEMENT

On April 6, 2011, the SEC filed a complaint against Comverse, alleging that it had violated the books and records and internal controls provisions of the FCPA. Six days later, following a settlement with the SEC, judgment was entered against Comverse and it was ordered to pay $1,608,501 in disgorgement and prejudgment interest. Comverse consented to the judgment, but neither admitted nor denied the SEC's allegations.

See DOJ Digest Number B-119.

KEY FACTS

Citation. *SEC v. Comverse Tech,. Inc.*, No. 11-cv-1704 (E.D.N.Y. Apr. 11, 2011).

Date Filed. April 11, 2011.

Country. Greece, Cyprus, Israel.

Date of Conduct. 2003 – 2006.

Amount of the Value. $536,000.

Amount of Business Related to the Payment. $1,200,000 in net profits.

Intermediary. Employees of Hellenic Telecommunications Organisation S.A. ("OTE"), which is partially owned by the Greek government, and certain of its subsidiaries.

Foreign official. Unnamed employees and executives of Chinese stated-owned instrumentalities.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $1,608,501.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In re Comverse Technology, Inc.*

Total Combined Sanction. $2,808,501.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

94. IN THE MATTER OF BALL CORPORATION (2011)

NATURE OF THE BUSINESS

Ball Corporation, an Indiana corporation headquartered in Colorado, manufactures metal packaging for beverages, foods, and household products. Ball Corporation also provides aerospace and other technological services to commercial and government customers. Formametal, based in Argentina, is a wholly-owned subsidiary of Ball Corporation that manufactures aerosol cans.

INFLUENCE TO BE OBTAINED

In 2006, Ball Corporation acquired Formametal and discovered that its newly acquired subsidiary had, in the past, made questionable payments associated with Argentinean customs. Despite this knowledge, Ball Corporation allegedly undertook insufficient remedial steps to ensure that illegal payments would not recur.

According to the SEC, from July 2006 until October 2007, Formametal senior officials authorized at least ten unlawful payments to Argentinean government officials, totaling approximately $106,749.00, for two purposes. First, Formametal allegedly paid bribes in excess of $100,000 to circumvent Argentinean law prohibiting the importation of used equipment and parts. Formametal disguised the alleged bribes as "customs fees" by detailing them on non-governmental customs agents' invoices and identifying them as "customs advice" or professional fees which were booked to an "other expenses" account or to accounts associated with the related equipment.

In early 2007, two accountants at Ball Corporation discovered that Formametal reimbursed the Vice President of Institutional Affairs because the Vice President had allegedly personally paid one of the bribes to government officials for importation of used equipment and parts. To reimburse him, Formametal had given the Vice President a car, and to disguise the bribe, Formametal allegedly booked the transfer of the car as an interest expense. When Ball Corporation discovered that the car was reimbursement for a bribe, it allegedly rebooked the transfer as a miscellaneous expense.

Second, in October 2007, Formametal's President allegedly authorized improper payments in an attempt to gain governmental approval to export copper scrap metal at reduced tariffs. After six months of attempts to secure the waiver legitimately, Formametal allegedly paid five bribes to customs officials through third-party customs agents to avoid payment of tariffs. Formametal inaccurately recorded the payment as "Advice fees for temporary merchandise exported" in an "other expenses" account.

ENFORCEMENT

Without admitting or denying the SEC's findings, Ball Corporation consented to the entry of an order (i) ordering Ball Corporation to cease and desist from future violations of the books and records and internal controls provisions of the FCPA and (ii) ordering it to pay a civil penalty of $300,000. The order recognized remedial acts promptly undertaken Ball Corporation, Ball Corporation's voluntary disclosure of the violations, and the company's cooperation with the SEC investigation.

KEY FACTS

Citation. *In the Matter of Ball Corp.*, Admin. Proc. File No. 3-14305 (Mar. 24, 2011).

Date Filed. March 24, 2011.

Country. Argentina.

Date of Conduct. 2006 – 2007.

Amount of the Value. $106,749.

Amount of Business Related to the Payment. Unspecified.

Intermediary. Customs Agents.

Foreign official. Customs Officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $300,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $300,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

93. SEC V. INTERNATIONAL BUSINESS MACHINES CORPORATION (D.D.C. 2011)

NATURE OF THE BUSINESS

International Business Machines Corporation ("IBM") is a New York corporation that manufactures and develops computer and information technology products and services. IBM-Korea is a South Korean corporation that sells IBM products in South Korea. IBM-Korea is an indirect subsidiary of IBM International Group B.V., which in turn is wholly-owned by IBM. IBM-China Investment Company Limited and IBM Global Services (China) Co., Ltd. (collectively "IBM-China") are owned by IBM China/Hong Kong Limited, a Hong Kong company and wholly-owned subsidiary of IBM. LG IBM PC Co., Ltd. ("LG-IBM") is a joint venture formed by IBM-Korea and LG Electronics to sell personal computers in South Korea. IBM holds a majority interest in LG-IBM.

INFLUENCE TO BE OBTAINED

The SEC complaint alleges that, between 1998 and 2003, employees of IBM-Korea and LG-IBM made cash payments totaling $207,157 and provided entertainment, travel and gifts to South Korean government officials at 16 South Korean government entities in exchange for confidential bidding information and sales contracts for mainframe and personal computers.

The complaint further alleges that two key managers of IBM-China, and 100 IBM-China employees overall, provided trips, entertainment, and improper gifts to Chinese government officials from at least 2004 to early 2009. According to the SEC, IBM-China employees created slush funds to pay for the travel and entertainment expenses of these officials. In exchange, IBM-China was awarded contracts with government-owned or government-controlled entities for the provision of hardware, software, and other services. The SEC purported to identify at least 114 instances of invoices being fabricated, trips improperly documented, unapproved sightseeing activities, trips funded involving little or no business content, and provision of per diem payments and gifts to officials.

The complaint alleges that IBM failed to accurately record these payments in its books and records and lacked sufficient internal controls to detect and prevent these alleged violations.

ENFORCEMENT

On March 18, 2011, without admitting or denying the SEC's allegations, IBM consented to the entry of a final judgment that permanently enjoins the company from violating the books and records and internal control provisions of the FCPA. IBM also agreed to pay $5,300,000 in disgorgement, $2,700,000 in prejudgment interest, and a $2,000,000 civil penalty. U.S. District Judge Richard Leon, however, refused to approve the settlement unless it included a requirement that the company submit periodic reports to the SEC and the court regarding its efforts to comply with the FCPA, as well as any future violations of the FCPA and any new criminal or civil investigations. IBM and the SEC initially resisted, but ultimately consented to the additional requirement. The amended settlement was approved by Judge Leon on July 25, 2013.

See Ongoing Investigations Number F-59.

KEY FACTS

Citation. *SEC v. Int'l Bus. Mach. Corp.*, No. 1:11-cv-00563 (D.D.C. July 25, 2013).

Date Filed. July 25, 2013.

Country. China, South Korea.

Date of Conduct. 1998 – 2009.

Amount of the Value. $207,157 in cash payments; entertainment, travel, and gifts of unspecified total value.

Amount of Business Related to the Payment. Contracts worth over $52,000,000.

Intermediary. Employees of IBM Korea and IBM-China and two key IBM-China managers.

Foreign official. Korean and Chinese government officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $10,000,000.

Compliance Monitor/Reporting Requirements. Two-year Reporting Requirement.

Related Enforcement Actions. None.

Total Combined Sanction. $10,000,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

92. SEC V. TYSON FOODS, INC. (D.D.C. 2011)

NATURE OF THE BUSINESS

Tyson Foods, Inc. ("Tyson"), headquartered in Arkansas, produces protein based and prepared food products. Tyson de Mexico, Tyson's wholly owned subsidiary, operates three meat processing facilities in Mexico and processes prepared foods for sale in Mexico and abroad.

INFLUENCE TO BE OBTAINED

The SEC alleges that, from 2004 to 2006, Tyson executives permitted Tyson de Mexico to make illegal payments to Mexican government employed veterinarians responsible for administering a federal inspection program for meat exports at Tyson de Mexico's plants. Some of these payments were allegedly concealed in the form of salaries paid to the wives of the veterinarians for services never performed. The complaint further alleges that, in August 2004, Tyson executives terminated the salaries of the veterinarians' wives and increased the amount of the service invoices paid to the veterinarians by the sum of the wives' salaries. The improper payments were purportedly recorded as legitimate expenses in Tyson de Mexico's books and records.

ENFORCEMENT

On February 10, 2011, the SEC filed a civil complaint against Tyson. Tyson consented to entry of a final judgment on February 14, 2011 without admitting or denying the SEC's allegations. The judgment requires Tyson to pay a $1,214,477 penalty (including disgorgement of profits and prejudgment interest), engage in various compliance activities, and periodically report such activities to the SEC. In a related DOJ action, Tyson signed a deferred prosecution agreement that requires Tyson to pay a $4 million penalty.

See DOJ Digest Number B 117.

KEY FACTS

Citation. *SEC v. Tyson Foods, Inc.*, No. 1:11 cv 00350 (D.D.C. Feb. 15, 2011).

Date Filed. February 15, 2011.

Country. Mexico.

Date of Conduct. 20064 – 2006.

Amount of the Value. More than $100,311.

Amount of Business Related to the Payment. Net profits of more than $880,000.

Intermediary. The wives of two Mexican government employed veterinarians.

Foreign official. Veterinarians responsible for certifying meat exports under a federal inspection program in Mexico.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $1,214,477.

Compliance Monitor/Reporting Requirements. Two-year Reporting Requirement.

Related Enforcement Actions. *United States v. Tyson Foods, Inc.*

Total Combined Sanction. $5,214,477.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

91. SEC V. MAXWELL TECHNOLOGIES INC. (D.D.C. 2011)

NATURE OF THE BUSINESS

Marketing and sales of high-voltage capacitors to Chinese state-owned entities by Maxwell S.A., a wholly-owned Swiss subsidiary of Maxwell Technologies, Inc. ("Maxwell"), a Delaware corporation that manufactures energy storage and power delivery products.

INFLUENCE TO BE OBTAINED

Maxwell S.A. allegedly paid more than $2.5 million to a third-party sales agent in China to secure sales contracts for high-voltage capacitors with Chinese state-owned manufacturers of electrical-utility infrastructure. The complaint alleges that the agent accomplished these payments by inflating purchase orders by 20%, then distributing the extra amount to officials at the state-owned entities. Maxwell accounted for these fees as commission expenses in Maxwell's books and records. Maxwell's U.S. management discovered the bribery scheme in late 2002. However, the bribery scheme continued until 2009, when it was reported to the company's new CEO by a new sales director. The sales and profits from these contracts purportedly helped Maxwell offset losses that it incurred to develop new products now expected to become Maxwell's future source of revenue growth.

ENFORCEMENT

Without admitting or denying the allegations in the SEC's complaint, Maxwell consented to the entry of a final judgment on January 31, 2011 that permanently enjoins the company from future violations of the anti-bribery, books and records, and internal control provisions of the FCPA. The judgment also ordered Maxwell to pay $5,654,576 in disgorgement and $696,314 in prejudgment interest and to undertake remediation and implementation of its FCPA compliance measures. Maxwell entered into a three-year deferred prosecution agreement in a related criminal case brought by the DOJ and agreed to pay an $8 million penalty.

See DOJ Digest Numbers B-144 and B-116.

KEY FACTS

Citation. *SEC v. Maxwell Techs. Inc.*, No. 1:11 cv-00258 (D.D.C Feb. 8, 2011).

Date Filed. February 8, 2011.

Country. China.

Date of Conduct. 2002 – 2009.

Amount of the Value. Approximately $2,500,000 million.

Amount of Business Related to the Payment. Over $5,600,000 in profits.

Intermediary. Sales Agent/Consultant.

Foreign official. Officials at Chinese state owned entities.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $6,350,890.

Compliance Monitor/Reporting Requirements. Two-year Reporting Requirement.

Related Enforcement Actions. *United States v. Maxwell Technologies, Inc.*

Total Combined Sanction. $14,350,890.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

90. SEC V. PAUL W. JENNINGS (D.D.C. 2011)

NATURE OF THE BUSINESS

Paul W. Jennings, a dual citizen of the U.K. and the U.S. and former CFO and CEO of Innospec, Inc., which manufactures and sells fuel additives and other specialty chemicals. Innospec is incorporated in Delaware, and its common stock traded on the New York Stock Exchange pursuant to Section 12(b) of the Exchange Act.

INFLUENCE TO BE OBTAINED

From 2000 to 2007 Innospec paid more than $6.3 million in bribes and promised another $2.8 million in illicit payments to Iraqi and Indonesian government officials to obtain contracts for sales of tetraethyl lead (TEL). The SEC alleges that Jennings approved of these bribes beginning in mid- to late-2004 during his tenure as Chief Financial Officer, and continuing after he became Chief Executive Officer in 2005.

In Iraq, Jennings allegedly approved of bribery payments to Iraqi Ministry of Oil officials, through Innospec's agent, Ousama M. Naaman. Through these payments, Innospec allegedly obtained additional TEL orders and favorable exchange rates, and facilitated TEL shipments. The SEC also alleges that Jennings was aware that payments were made to fund lavish trips for Iraqi government officials, and that various bribe payments were improperly booked as legitimate commission payments on Innospec's books and records. In Indonesia, Jennings allegedly approved of bribes that were paid under various euphemisms, such as "the Indonesian Way," "the Lead Defense Fund," and "TEL Optimization." Bribes were allegedly paid to Indonesian officials through Innospec's Indonesian agent, to generate more TEL sales. The SEC alleges that Jennings was involved in discussions regarding the bribery scheme and approved of, or was aware of, the payments to Indonesian government officials.

ENFORCEMENT

Without admitting or denying any of the SEC's allegations, Jennings was ordered to disgorge $116,092, representing profits gained as a result of the alleged conduct, together with prejudgment interest thereon of $12,945, and a civil penalty of $100,000. Innospec has agreed to pay $40.2 million as part of a global settlement with the SEC, the DOJ, the United Kingdom's Serious Fraud Office ("SFO"), and the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"). Innospec agreed to pay disgorgement of $11.2 million to the SEC, a criminal fine of $14.1 million to the DOJ, a criminal fine of $12.7 million to the SFO and $2.2 million to OFAC. Innospec also agreed to injunctive relief and certain undertakings regarding its FCPA compliance program, including an independent monitor for three years. Ousama Naaman, the agent in Iraq, and David Turner, a former Innospec employee, also settled with the SEC on related allegations.

See DOJ Digest Numbers B-98 and B-81.
See SEC Digest Numbers D-76 and D-70.
See Ongoing Investigation Number F-2.

KEY FACTS

Citation. *SEC v. Jennings,* 1:11-cv-00144 (D.D.C. Jan. 26, 2011).

Date Filed. January 26, 2011.

Country. Indonesia, Iraq.

Date of Conduct. 2000 – 2007.

Amount of the Value. $9,217,965.

Amount of Business Related to the Payment. $60,071,613 in profits.

Intermediary. Sales Agent/Consultant.

Foreign official. Iraqi government officials (Ministry of Oil) and Indonesian government officials and officials of state-owned oil and gas companies in Indonesia (BP Migas and Pertamina).

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls; Accounting (Individual).

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. United States; United Kingdom.

Total Sanction. $229,037.

Related Enforcement Actions. *United States v. Innospec, Inc.; SEC v. Innospec Inc.*

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

89. SEC V. ALCATEL-LUCENT, S.A. (S.D. FLA. 2010)

NATURE OF THE BUSINESS

Alcatel-Lucent, S.A. is a French-based provider of telecommunications equipment and services and other technology products. It was created after the merger of Alcatel, S.A. (a French corporation) and Lucent Technologies, Inc. (a U.S. corporation) in 2006. During the relevant period of time, Alcatel maintained a class of shares on the New York Stock Exchange pursuant to Section 12(b) of the Exchange Act.

INFLUENCE TO BE OBTAINED

According to a complaint filed by the SEC, between 2001 and 2006, Alcatel S.A. ("Alcatel") and its subsidiaries, including Alcatel CIT, S.A., Alcatel Standard, A.G., and Alcatel de Costa Rica, S.A., paid bribes to government officials in Costa Rica, Honduras, Taiwan, and Malaysia, to obtain or retain telecommunications contracts. The payments were allegedly undocumented or improperly recorded as consulting fees in the books of Alcatel's subsidiaries. All of the alleged payments took place before Alcatel's merger with Lucent Technologies in November 2006. Lucent Technologies itself entered into a separate agreements in December 2007 with the DOJ and the SEC related to pre-merger offenses.

ENFORCEMENT

On December 29, 2010, Alcatel-Lucent consented to entry of a final judgment without admitting or denying the allegations in the SEC's complaint, which had been filed on December 27, 2010. Alcatel-Lucent was ordered to pay disgorgement of $28,990,937 and prejudgment interest of $16,381,063, for a total of $45,372,000, and to engage an independent compliance monitor for a term of three years.

On December 20, 2010, Alcatel-Lucent entered into a deferred prosecution agreement with the DOJ connected to similar charges.

See DOJ Digest Numbers B-115, B-58, and B-46.
See SEC Digest Number D-46.

KEY FACTS

Citation. *SEC v. Alcatel-Lucent, S.A.*, No. 10-cv-24620 (S.D. Fla. 2010).

Date Filed. December 30, 2010.

Country. Costa Rica, Honduras, Malaysia, Taiwan.

Date of Conduct. 2001 – 2006.

Amount of the Value. Approximately $463 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Consultants; Subsidiaries.

Foreign official. Officials of state-owned entities and government agencies including, but not limited to, Instituto Costarricense de Electricidad S.A. (Costa Rica); Empresa Hondureña de Telecomunicaciones (Honduras); Comisión Nacional de Telecomunicaciones (Honduras); Telekom Malaysia Berhad (Malaysia); and Taiwan Railway Administration (Taiwan).

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. France.

Total Sanction. $45,372,000.

Compliance Monitor/Reporting Requirements. Independent Compliance Monitor.

Related Enforcement Actions. *United States v. Alcatel-Lucent, S.A.*; *In re Lucent Techs. Inc.*; *United States v. Sapsizian*; *SEC v. Lucent Techs. Inc.*

Total Combined Sanction. $137,372,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

88. SEC V. RAE SYSTEMS INC. (D.D.C. 2010)

NATURE OF THE BUSINESS

RAE Systems Inc. ("RAE") is a Delaware corporation based in San Jose, California that develops and manufactures rapidly-deployable, multi-sensor chemical and radiation detection monitors and networks. Its operations in China involve two Chinese joint ventures: RAE-KLH (Beijing) Co., Limited ("RAE-KLH"), which is 96% owned by RAE, and RAE Coal Mine Safety Instruments (Fushun) Co., Ltd. ("RAE-Fushun"), which is 70% owned by RAE.

INFLUENCE TO BE OBTAINED

According to the SEC's complaint, when RAE sought to acquire an interest in KLH it carried out due diligence through which it uncovered that KLH sales personnel historically financed their sales activities with state-owned companies through cash advances reimbursed by the company and that such cash advances were used to pay bribes. After acquiring its interest in KLH in 2004, RAE allegedly communicated to RAE-KLH personnel and officers that bribery practices should stop, but did not institute sufficient internal controls or discontinue the system of cash-advance reimbursements which facilitated the bribery practices.

Throughout 2005 and 2006, RAE allegedly failed to investigate and remediate through the implementation of adequate internal controls when it encountered evidence of multiples instances of bribery and kickback activities taking place at RAE-KLH. For example, during a visit to China in 2005 RAE's then Vice President and Chief Financial Officer allegedly observed that RAE-KLH had not received proper receipts for $500,000 in cash advances and reported that it was possible the cash had been used for "grease payments." In response, RAE-KLH put in place a compliance program, but, according to the government, controls remained insufficient to prevent bribery from taking place. Moreover, the company improperly recorded cash advances connected to bribes as business fees and travel and entertainment expenses.

Through 2007 bribery continued at both RAE-KLH, paid directly and through a third-party agent, and at a new joint venture entered by RAE in China, RAE-Fushan, according to the government. In addition to cash bribes, both companies allegedly provided luxury gifts to employees of state owned entities such as notebook computers, jade, fur coats, appliances, suits, and expensive liquor.

ENFORCEMENT

On December 10, 2010, without admitting or denying the SEC's allegations, RAE consented to the entry of final judgment, under which it is enjoined from violating the anti-bribery, books and records, and internal controls provisions of the FCPA. Under the terms of the settlement, RAE will pay a total of $1,257,012 in disgorgement and prejudgment interest. RAE will also continue to review its internal controls and modify them to ensure no further violations of the books and records or anti-bribery provisions of the FCPA, among other remediation steps. RAE also agreed to self-report any questionable or corrupt payments it discovers it has made or false entries in its books and records to the SEC. Over three years, RAE must undertake internal reviews of its remediation efforts and report them to the SEC. The court entered final judgment in the case on December 15, 2010.

See DOJ Digest Number B-113

KEY FACTS

Citation. *SEC v. RAE Systems Inc.*, No. 1:10-cv-02093 (D.D.C. 2010).

Date Filed. December 15, 2010.

Country. China.

Date of Conduct. 2004 – 2008.

Amount of the Value. Approximately $400,000.

Amount of Business Related to the Payment. Approximately $3,000,000 in revenues.

Intermediary. Joint venture; Third-party agent.

Foreign official. Employees of Chinese state-owned entities including employees of the Dagang Oil Field.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $1,257,012.

Compliance Monitor/Reporting Requirements. Three-year Reporting Requirement.

Related Enforcement Actions. *In re RAE Systems Inc.*

Total Combined Sanction. $2,957,012.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

87. SEC V. GLOBALSANTAFE CORP. (D.D.C. 2010)

NATURE OF THE BUSINESS

Offshore oil and gas drilling services for oil and gas exploration companies incorporated in the Cayman Islands and headquartered in Texas. GlobalSantaFe Corp.'s ("GSF") direct subsidiary, Global Offshore Drilling Ltd., operated in West Africa. In November 2007, GSF merged with a subsidiary of Transocean Inc. In December 2008, the listed company became Transocean Ltd.

INFLUENCE TO BE OBTAINED

Between January 2002 and July 2007, GSF allegedly, through its customs brokers, made illegal payments to NCS officials to obtain preferential treatment during the customs process for the purpose of assisting GSF in retaining business in Nigeria. Instead of moving its oil drilling rigs out of Nigerian waters as required by Nigerian law when GSF's permit to temporarily import the rigs into Nigeria expired, GSF's customs brokers allegedly made payments to obtain documentation reflecting that the rigs had moved out of Nigerian waters, when in fact, the rigs had not moved at all. In addition, GSF allegedly made a number of suspicious payments to government officials in Gabon, Angola, and Equatorial Guinea. These payments were described on invoices as, for example, "customs vacation," "customs escort," "costs extra police to obtain visa," "official dues," and "authorities fees." According to the SEC, these payments were not accurately reflected in GSF's books and records, nor was GSF's system of internal accounting controls adequate at the time to detect and prevent these illegal payments.

ENFORCEMENT

On October 22, 2010, GSF consented to the entry of a court order permanently enjoining it from violating the anti-bribery and record keeping and internal controls provisions of the FCPA. Without admitting or denying the SEC's allegations, GSF also consented to the entry of a court order requiring GSF disgorge profits of $2,694,405 plus prejudgment interest of $1,063,760, and pay a civil penalty of $2.1 million.

See DOJ Digest Numbers B-112, B-111, B-110, B-109, and B-108.
See SEC Digest Numbers D-86, D-85, D-83, and D-82.

KEY FACTS

Citation. *SEC v. GlobalSantaFe Corp.*, No. 1:10-cv-01890 (D.D.C. 2010).

Date Filed. November 5, 2010.

Country. Nigeria, Gabon, Angola, Equatorial Guinea.

Date of Conduct. 2002 – 2007.

Amount of the Value. Approximately $469,400.

Amount of Business Related to the Payment. Approximately $2.7 million in profits.

Intermediary. Customs brokers.

Foreign official. Nigerian Customs Service ("NCS") officials and unspecified Gabon, Angolan, and Equatorial Guinean government officials.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Cayman Islands.

Total Sanction. $5,858,165.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $5,858,165.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

86. SEC V. PANALPINA, INC. (S.D. TEX. 2010)

NATURE OF THE BUSINESS

Panalpina, Inc., a New York corporation, is the U.S.-based subsidiary of Panalpina World Transport (Holding) Ltd., a global freight forwarding and logistics service firm based in Basel, Switzerland.

INFLUENCE TO BE OBTAINED

Between 2002 and 2007, Panalpina, Inc. and its affiliates (collectively, "Panalpina") allegedly paid bribes to customs officials in at least five different countries, on behalf of their customers, to circumvent local customs regulations.

In Nigeria, Panalpina allegedly bribed officials to circumvent temporary importation authorization regulations and to secure the release of goods from customs prior to the completion of the inspection process. Panalpina also made payments on behalf of its customers to obtain improper benefits concerning customs and immigration matters.

In Angola, Panalpina allegedly made illegal payments to Angolan officials on behalf of its customers to avoid fines, expedite or facilitate the approval or correction of incomplete or inaccurate documentation, avoid customs duties, circumvent Angolan immigration law, and illegally use military cargo aircraft to transport commercial goods.

In Brazil, Panalpina allegedly made illegal payments to Brazilian officials on behalf of its customers to expedite the customs clearance process, avoid fines and penalties, and otherwise circumvent Brazilian customs requirements.

In Russia and Kazakhstan, Panalpina allegedly made illegal payments to Russian and Kazakh officials on behalf of its customers to secure improper advantages with respect to customs, internal transportation, taxation, and labor-related matters.

ENFORCEMENT

On November 4, 2010, without admitting or denying the SEC's findings, Panalpina, Inc. consented to entry of an order of judgment against it. Under the order, Panalpina must cease and desist from violating the anti-bribery provision of the FCPA, and from aiding and abetting the books and records provision and the internal controls provision of the FCPA. Panalpina was also ordered to pay a disgorgement of $11,329,369.

Panalpina, Inc. and Panalpina World Transport (Holding) Ltd. settled related charges with the DOJ on November 4, 2010. Also on November 4, 2010, three of Panalpina's customers in the oil exploration and production industry pleaded guilty to and settled related charges with the DOJ and SEC.

See DOJ Digest Numbers B-112, B-111, B-110, B-109, and B-108.
See SEC Digest Numbers D-87, D-85, D-84, D-83, and D-82.

KEY FACTS

Citation. *SEC v. Panalpina, Inc.*, No. 4:10-cv-4334 (S.D. Tex. 2010).

Date Filed. November 9, 2010.

Country. Angola, Brazil, Kazakhstan, Nigeria, Russia.

Date of Conduct. 2002 – 2007.

Amount of the Value. Approximately $49 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Subsidiary and agent.

Foreign official. Nigerian Customs Service officials; Angolan customs, immigration, and military officials; Brazilian government officials in charge of customs and imports; Russian customs officials; Kazakh customs officials.

FCPA Statutory Provision. Anti-Bribery; Aiding and Abetting (Anti-Bribery); Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $11,329,369.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Panalpina World Transport (Holding) Ltd.*

Total Combined Sanction. $81,889,369.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

85. IN THE MATTER OF ROYAL DUTCH SHELL PLC (2010)

NATURE OF THE BUSINESS

Royal Dutch Shell plc ("Shell") is an English-chartered company which focuses on oil, gas, and power production and exploration. Shell's wholly owned subsidiary, Shell International Exploration and Production Inc. ("SIEP"), a Delaware company, acted on behalf of Shell to obtain and run business in Nigeria connected to Shell's Bonga Project.

INFLUENCE TO BE OBTAINED

From 2002 to 2005, SIEP allegedly authorized dealings with companies acting as customs brokers and freight forwarders, involving suspicious payments to Nigerian customs officials. Through these payments, Shell allegedly obtained preferential treatment during the customs process in Nigeria relating to Shell's Bonga Project.

While the freight forwarder was not specifically identified by the SEC, the deferred prosecution agreement in the related DOJ criminal proceeding and the DOJ's subsequent press release indicate that Panalpina World Transport (Holding) Ltd. ("Panalpina") was the freight forwarder that allegedly made suspicious payments on Shell's behalf.

ENFORCEMENT

On November 4, 2010, without admitting or denying the SEC's findings, Shell consented to entry of an order requiring it to cease-and-desist from violating the anti-bribery, books and records, and internal controls provisions of the FCPA. Under the order, Shell must pay disgorgement and pre-judgment interest for a total of $18,149,459.

SNEPCO settled related charges with the DOJ on November 4, 2010.

See DOJ Digest Numbers B-112, B-111, B-110, B-109, and B-108.
See SEC Digest Numbers D-87, D-86, D-84, D-83, and D-82.

KEY FACTS

Citation. *In the Matter of Royal Dutch Shell plc & Shell Int'l Expl. & Prod. Inc.*, Admin. Proc. File No. 3-14107 (Nov. 4, 2010).

Date Filed. November 4, 2010.

Country. Nigeria.

Date of Conduct. 2002 – 2005.

Amount of the Value. Approximately $3.5 million.

Amount of Business Related to the Payment. Approximately $14 million.

Intermediary. Agents, subsidiaries, subcontractor, freight forwarder.

Foreign official. Nigerian Customs Service officials.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United Kingdom.

Total Sanction. $18,149,459.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Shell Nigeria Expl. & Prod. Co. Ltd.*

Total Combined Sanction. $48,149,459.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

84. SEC V. TRANSOCEAN INC. (D.D.C. 2010)

NATURE OF THE BUSINESS

Transocean Inc. ("Transocean") was a Cayman Islands corporation that is now a wholly-owned subsidiary of Transocean Ltd., a Swiss corporation. Transocean and its affiliates provide offshore drilling services and equipment to oil companies worldwide.

INFLUENCE TO BE OBTAINED

From 2002 to 2007, Transocean allegedly made illicit payments through its customs agents to Nigerian government officials to extend importation permits, obtain false paperwork associated with its rigs, and obtain clearance authorization and a bond registration. It also made illicit payments through Panalpina World Transport (Holding) Ltd. ("Panalpina"), a freight forwarder, to expedite the import of various goods, equipment and materials into Nigeria.

ENFORCEMENT

On November 4, 2010, without admitting or denying the SEC's findings, Transocean consented to entry of an order requiring it to cease and desist from violating the anti-bribery, books and records and internal controls provisions of the FCPA and pay disgorgement and pre-judgment interest of $7,265,080.

On the same day, Transocean also entered into a deferred prosecution agreement with the DOJ.

See DOJ Digest Numbers B-112, B-111, B-110, B-109, and B-108.
See SEC Digest Numbers D-87, D-86, D-85, D-83, and D-82.

KEY FACTS

Citation. *SEC v. Transocean Inc.*, No. 1:10-cv-1891 (D.D.C. 2010).

Date Filed. November 9, 2010.

Country. Nigeria.

Date of Conduct. 2002 – 2007.

Amount of the Value. Approximately $813,000.

Amount of Business Related to the Payment. Approximately $6 million.

Intermediary. Freight forwarder, agent.

Foreign official. Nigerian Customs Service officials.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Cayman Islands.

Total Sanction. $7,265,080.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Transocean Inc.*

Total Combined Sanction. $20,705080.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

83. SEC V. TIDEWATER INC. (E.D. LA. 2010)

NATURE OF THE BUSINESS

Tidewater, Inc. ("Tidewater") is a Delaware corporation that owns and operates offshore service and supply vessels that are chartered by energy exploration, development, and production companies.

INFLUENCE TO BE OBTAINED

From 2001 to 2005, Tidewater allegedly made payments totaling approximately $160,000 to an entity in Dubai, knowing that the funds would go to tax officials in Azerbaijan to obtain favorable results in an audit of Tidewater's Azeri offices.

From 2002 to 2007, Tidewater allegedly reimbursed improper payments made by its Nigerian agent, "the Nigerian affiliate of a major international freight forwarding and customs clearing agent based in Switzerland," to Nigerian customs officials. While the SEC did not identify the Nigerian agent by name, the DOJ's press release regarding its criminal action against Tidewater's Panamanian subsidiary, Tidewater Marine International, Inc. ("TMII"), states that it was the Nigerian subsidiary of Panalpina World Transport (Holding) Ltd. ("Panalpina"). These payments were made on behalf of Tidewater to circumvent certain regulations regarding the importation of Tidewater's vessels in Nigerian waters.

ENFORCEMENT

On November 4, 2010, without admitting or denying the SEC's findings, Tidewater consented to entry of an order requiring it to cease and desist from committing further violations of the anti-bribery, books and records and internal control provisions of the FCPA and pay disgorgement of $8,321,000.

On the same day, TMII also entered into a deferred prosecution agreement with the DOJ.

See DOJ Digest Numbers B-112, B-111, B-110, B-109, and B-108.
See SEC Digest Numbers D-87, D-86, D-85, D-84, and D-82.

KEY FACTS

Citation. *SEC v. Tidewater Inc.*, No. 2:10-cv-4180 (E.D. La. 2010).

Date Filed. November 8, 2010.

Country. Azerbaijan, Nigeria.

Date of Conduct. 2001 – 2007.

Amount of the Value. Approximately $1.76 million.

Amount of Business Related to the Payment. Approximately $6.62 million.

Intermediary. Freight forwarder, agent.

Foreign official. Azeri tax officials; Nigerian customs officials.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $11,321,362.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Tidewater Marine Int'l, Inc.*

Total Combined Sanction. $18,671,362.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

82. SEC V. PRIDE INTERNATIONAL, INC. (S.D. TEX. 2010)

NATURE OF THE BUSINESS

Pride International Inc. ("Pride"), a Delaware corporation, owns and operates numerous oil and gas drilling rigs throughout the world.

INFLUENCE TO BE OBTAINED

From 2003 to 2005, Pride allegedly paid bribes to foreign officials in eight different countries to obtain various benefits related to oil services.

In Venezuela, Pride's Venezuelan subsidiary allegedly paid bribes totaling approximately $414,000 to officials in Venezuela's state-owned oil company to secure extensions of drilling contracts and the payment of receivables.

In India, Pride's Indian subsidiary allegedly paid approximately $500,000 to Indian administrative judges to secure a favorable ruling in a customs litigation involving Pride.

In Mexico, Pride's Mexican subsidiary allegedly paid a $10,000 bribe to Mexican customs officials to obtain favorable treatment in an inspection.

In Kazakhstan, Pride's Kazakh subsidiary allegedly paid bribes totaling $364,000 through a freight forwarding agent and a tax consultant to Kazakh government officials to reduce customs-related penalties and taxes, and to otherwise obtain favorable customs treatment.

In Nigeria, Pride's Nigerian subsidiary allegedly paid bribes totaling at least $202,000 to Nigerian customs and tax officials through freight forwarder and tax agents to circumvent import permit requirements, avoid customs inspections and duties, and to reduce taxes.

In Saudi Arabia, Pride's Saudi subsidiary allegedly paid a $10,000 bribe to a Saudi customs official to assure expedited customs clearance of a rig that Pride's Saudi affiliate was seeking to import into Saudi Arabia.

In the Republic of Congo, Pride's Congolese subsidiary allegedly made a payment of $8,000 to a Congolese Merchant Marine official to resolve a paperwork deficiency and thus avoid an official penalty.

In Libya, Pride's Libyan subsidiary allegedly made payments totaling $116,000, through an unidentified third-party tax agent, to Libyan social security agency officials to reduce social security taxes and penalties.

Pride voluntarily disclosed to the DOJ and SEC possible FCPA violations discovered in a routine audit. While the SEC complaint does not specifically identify the freight forwarder Pride used in Nigeria and Kazakhstan, the DOJ noted in a press release that, during the course of its cooperation with the DOJ and SEC, Pride provided information and in the investigation of Panalpina World Transport (Holding) Ltd. ("Panalpina").

ENFORCEMENT

On November 4, 2010, without admitting or denying the SEC's findings, Pride consented to entry of an order of judgment against it. Under the order, Pride must cease and desist from further violations of the anti-bribery, books and records, and internal controls provisions of the FCPA and pay disgorgement of $19,341,870. On the same day, Pride also entered into a deferred prosecution

KEY FACTS

Citation. *SEC v. Pride Int'l,* Inc., No. 10-cv-4335 (S.D. Tex. 2010).

Date Filed. Nov. 10, 2010.

Country. India, Mexico, Venezuela, Kazakhstan, Nigeria, Saudi Arabia, Libya, Republic of Congo.

Date of Conduct. 2003 – 2005.

Amount of the Value. Approximately $2 million.

Amount of Business Related to the Payment. Approximately $19.3 million.

Intermediary. Subsidiary company, agent, freight forwarder, consultant.

Foreign official. Officials at Petróleos de Venezuela S.A., a Venezuelan state-owned oil company; judges at the Customs, Excise, and Gold Appellate Tribunal, an administrative tribunal in India; Mexican customs officials; Kazakh customs and tax authorities; Nigerian customs and tax officials; Saudi customs officials; Congolese Merchant Marine officials; Libyan social security agency officials.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $17,529,718.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *United States v. Pride Int'l, Inc.*; *SEC v. Benton; SEC v. Summers.*

Total Combined Sanction. $50,154,718.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

agreement with the DOJ and its French subsidiary, Pride Forasol S.A.S., pleaded guilty to related charges.

Also on November 4, 2010, Panalpina and three of Panalpina's customers in the oil exploration and production industry pleaded guilty to and settled related charges with the DOJ and SEC.

See DOJ Digest Numbers B-112, B-111, B-110, B-109, and B-108.
See SEC Digest Numbers D-87, D-86, D-85, D-84, and D-83.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

81. SEC V. NOBLE CORP. (S.D. TEX. 2010)

NATURE OF THE BUSINESS

Noble Corporation ("Noble") is an international oil and gas drilling contractor that owns and operates drilling rigs through its subsidiaries and affiliates. In March 2009, Noble re-domesticated from the Cayman Islands and is now incorporated in Switzerland; the company is headquartered in Sugar Land, Texas.

INFLUENCE TO BE OBTAINED

Between January 2003 and May 2007, Noble's Nigerian subsidiary ("Noble-Nigeria") allegedly paid a total of at least $79,026 as "special handling charges" to its Nigerian customs agent. Noble-Nigeria and certain employees of Noble Drilling Services Inc., Noble's U.S.-subsidiary, had allegedly been informed that a portion of the money paid to the Nigerian customs agent would be paid to the Nigeria Customs Service officials for the purpose of illegally obtaining extensions for the temporary import permits for the rigs in the Nigerian waters, so as to avoid the need to either permanently import the rigs or export and re-import the rigs to obtain new temporary import permits.

ENFORCEMENT

In June 2007, Noble informed the SEC that it was conducting an internal investigation of its operations in Nigeria and thereafter disclosed the findings and cooperated with the government's investigations. On November 4, 2010, Noble, without admitting or denying the allegations, consented to the entry of final judgment, under which Noble would be enjoined from violating the anti-bribery, books and records, and internal controls provisions of the FCPA and pay a total of $5,576,998 in disgorgement of its profits gained and costs avoided, with prejudgment interest. On the same day, Noble entered into a non-prosecution agreement with the DOJ, agreeing to pay a monetary penalty of $2,590,000.

See DOJ Digest Number B-107.
See SEC Digest Number D-106.

KEY FACTS

Citation. *SEC v. Noble Corp.*, No. 4:10-cv-04336 (S.D. Tex. 2010).

Date Filed. November 4, 2010.

Country. Nigeria.

Date of Conduct. 2003 – 2007.

Amount of the Value. At least $79,026.

Amount of Business Related to the Payment. At least $4,294,933.

Intermediary. Customs agent.

Foreign official. Nigeria Customs Service officials.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Switzerland.

Total Sanction. $5,576,998.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In re Noble Corp.; SEC v. Noble Corp.*; *SEC v. Jackson et al.*; *SEC v. O'Rourke*.

Total Combined Sanction. $8,166,998.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

80. SEC V. BOBBY J. ELKIN, JR., BAXTER J. MYERS, THOMAS G. REYNOLDS, AND TOMMY L. WILLIAMS (D.D.C. 2010)

NATURE OF THE BUSINESS

The four defendants were executives at Dimon, Inc., which engaged in the purchase and fermentation of tobacco in Kyrgyzstan through its wholly-owned local subsidiary, Dimon International Kyrgyzstan ("DIK"), and sale to the Thailand Tobacco Monopoly ("TTM"), a government-owned entity.

Bobby Elkin was the country manager for DIK between 1996 and 2004.

Baxter Myers was Dimon's Regional Financial Director for the European and Asian Region from 1994 to 1997. He then became the Regional Financial Director of Asia until 2004.

Thomas Reynolds was Dimon's International Controller in the U.K. between 1997 and 2001, and then he became the company's Corporate Controller in the U.S. until 2008.

Tommy Williams was Dimon's Senior Vice President of Sales from 1995 to 2005, with responsibility for tobaccos sales to TTM between 2000 and 2004.

INFLUENCE TO BE OBTAINED

According to the complaint filed by the SEC, Bobby J. Elkin, Jr., a former Dimon country manager for Kyrgyzstan, authorized, directed, and paid bribes in Kyrgyzstan through a bank account in his name referred to as the "Special Account." The payments were made to obtain export licenses and gain access to government tobacco processing facilities. The SEC's complaint further alleges that defendant Baxter J. Myers, a former Dimon Regional Financial Director, authorized all fund transfers from another Dimon subsidiary's bank account to the "Special Account" and that Thomas G. Reynolds, a former Dimon Corporate Controller, formalized the accounting methodology used to record the payments made from the "Special Account" for purposes of Dimon's internal reporting.

Dimon allegedly paid bribes of approximately $542,590 to government officials of the TTM in exchange for obtaining approximately $9.4 million in sales contracts. Tommy L. Williams, a former Dimon Senior Vice President of Sales, allegedly directed the sales of tobacco from Brazil and Malawi to the TTM through Dimon's agent in Thailand and authorized the payment of bribes to officials at the TTM. These bribes were characterized in Dimon's books and records as "commissions" to Dimon's agent in Thailand.

ENFORCEMENT

The SEC alleged the four defendants violated or aided and abetted violations of the anti-bribery provisions of the FCPA. On August 26, 2010, without admitting or denying the allegations in the SEC's complaint, the defendants consented to the entry of final judgments permanently enjoining each of them from violating the anti-bribery provisions of the FCPA. Myers and Reynolds were ordered to pay monetary penalties of $40,000 each. In a separate proceeding, Dimon's successor, Alliance One International consented to the entry of a final judgment against it and agreed to pay $10 million in disgorgement.

See DOJ Digest Numbers B-105, B-104, and B-103.
See SEC Digest Numbers D-79, and D-78.

KEY FACTS

Citation. *SEC v. Elkin, Jr.*, et al., No. 1:10-cv-00661 (D.D.C. 2010).

Date Filed. August 27, 2010.

Country. Kyrgyzstan; Thailand.

Date of Conduct. 1994 – 2004.

Amount of the Value. Over $3.2 million.

Amount of Business Related to the Payment. Over $9.4 million.

Intermediary. Sales agents.

Foreign official. Tamekisi, the Kyrgyzstan governmental agency responsible for issuing tobacco export licenses, officials and Thailand Tobacco Monopoly ("TTM") officials.

FCPA Statutory Provision. Anti-Bribery; Aiding and Abetting (Books-and-Records; Internal Controls).

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Agent of Issuer.

Defendants' Citizenship. Not Stated.

Total Sanction.

- **Myers**. $40,000.
- **Reynolds**. $40,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *SEC v. Alliance One Int'l, Inc.*; *United States v. Alliance One Int'l AG; Alliance One Tobacco Osh, LLC.*

Total Combined Sanction. $80,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

79. SEC V. UNIVERSAL CORPORATION (D.D.C. 2010)

NATURE OF THE BUSINESS

Universal Corporation, a holding company incorporated in Virginia, operates primarily through its wholly owned subsidiary, Universal Leaf Tobacco Company, Incorporated ("Universal Leaf") and Universal Leaf's domestic and international subsidiaries (collectively, "Universal"). Universal purchases, processes, and sells leaf tobacco worldwide.

INFLUENCE TO BE OBTAINED

According to the complaint filed by the SEC, payments were made to government officials in Thailand and Mozambique to obtain or retain business and favorable contracts for Universal. Allegedly, between 2000 and 2004, Universal paid approximately $800,000 to government officials in Thailand and more than $165,000 to government officials in Mozambique. Between 2002 and 2003, Universal allegedly paid $850,000 to high-ranking Malawian government officials. The SEC alleges that employees at multiple levels within Universal, including management at headquarters and employees at wholly- and majority-owned and controlled foreign subsidiaries were responsible for the improper payments. The SEC alleges that Universal made these payments to secure, amongst other things, an exclusive right to purchase tobacco from regional growers and to procure legislation beneficial to the company's business.

ENFORCEMENT

On August 24, 2010, without admitting or denying the SEC's allegations Universal consented to the entry of a final judgment permanently enjoining it from violating the anti-bribery, books and records, and internal control provisions of the FCPA. Universal was also ordered to disgorge $4,581,276.

In related criminal proceedings, the DOJ brought charges against Universal Leaf Tabacos, Ltda., a Universal subsidiary in Brazil, and two of Universal competitor Alliance One's subsidiaries, charging each with violating and conspiring to violate the anti-bribery provisions of FCPA. They entered into a plea agreement with the DOJ to settle the charges against them.

See SEC Digest Numbers B-105, B-104, and B-103.
See SEC Digest Numbers D-80 and D-78.

KEY FACTS

Citation. *SEC v. Universal Corp.*, No. 10-cv-1318 (D.D.C. 2010).

Date Filed. August 25, 2010.

Country. Malawi, Mozambique, Thailand.

Date of Conduct. 2000 – 2007.

Amount of the Value. Approximately $1.8 million.

Amount of Business Related to the Payment. Over $11.5 million in sales contracts.

Intermediary. Sales agents.

Foreign official. Officials of the Thailand Tobacco Monopoly ("TTM"), officials of the Malawian government, and officials of the Mozambique government.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $4,581,276.

Compliance Monitor/Reporting Requirements. Independent Compliance Monitor.

Related Enforcement Actions. *United States v. Universal Leaf Tabacos Ltda.*

Total Combined Sanction. $8,981,276.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

78. SEC V. ALLIANCE ONE INTERNATIONAL, INC. (D.D.C. 2010)

NATURE OF THE BUSINESS

Dimon, Inc. ("Dimon") and Standard Commercial Corporation ("Standard") merged in May 2005 to form Alliance One International, Inc. ("Alliance One"), a Virginia corporation. Like its predecessors, Alliance One purchases, processes, and sells leaf tobacco worldwide.

INFLUENCE TO BE OBTAINED

According to the complaint filed by the SEC, from 2000 to 2004, Dimon and Standard together paid bribes of more than $1.2 million to government officials of the TTM. Standard also provided gifts, travel, and entertainment expenses to foreign government officials in the Asia region, including China and Thailand, and in 2004 it made a $50,000 payment to a political candidate, who was also its tobacco sales agent in Thailand. According to the SEC, in 2003, a Dimon subsidiary in Greece paid $96,000 to a Greek tax official in exchange for an agreement not to pursue tax irregularities in an audit, and another Dimon subsidiary in Indonesia made a $44,000 cash payment to an Indonesian tax official in exchange for a tax refund. Dimon allegedly characterized the payment of bribes to TTM officials as commissions paid to Dimon's agent in Thailand. Similarly, Standard personnel allegedly authorized improper payments to TTM officials and failed to record those payments accurately in Standard's books and records. The SEC alleges that most of these payments were delivered in bags filled with $100 bills to a high-ranking government official.

In addition, the SEC alleged that employees of Dimon International Kyrgyzstan, a subsidiary of Dimon, paid approximately $3 million in bribes from 1996 to 2004 to various officials in the Republic of Kyrgyzstan, including officials of the Kyrgyz Tamekisi, a government entity that controlled and regulated the tobacco industry in Kyrgyzstan. Dimon employees allegedly paid bribes totaling $254,262 to five local provincial government officials, known as "Akims," to obtain permission to purchase tobacco from local growers during the same period. In addition, the employees allegedly paid approximately $82,000 in bribes to officers of the Kyrgyz Tax Police to avoid penalties and lengthy tax investigations.

ENFORCEMENT

On August 26, 2010, without admitting or denying the SEC's allegations, Alliance One consented to the entry of a final judgment permanently enjoining it and its subsidiaries from violating the anti-bribery, books and records, and internal control provisions of the FCPA. Alliance One was also ordered to disgorge $10,000,000. In related criminal proceedings, the DOJ brought criminal actions against two Alliance One subsidiaries, charging each with conspiring to violate the anti-bribery provisions of FCPA and violating the anti-bribery provisions of the FCPA. The subsidiary corporations entered into plea agreements with the DOJ, agreed to pay criminal penalties of $9,450,000 and $4,400,000, respectively, and agreed to retain an independent monitor for at least three years. In other related civil proceedings, the SEC charged four Dimon executives with FCPA violations in connection with business in Kyrgyzstan. Without admitting or denying the charges, the four executives consented to injunctive relief and two paid monetary penalties.

See DOJ Digest Numbers B-105, B-104, and B-103.
See SEC Digest Numbers D-80 and D-79.

KEY FACTS

Citation. *SEC v. Alliance One Int'l*, Inc., No. 10-cv-01319 (D.D.C. 2010).

Date Filed. August 27, 2010.

Country. Greece, Indonesia, Kyrgyzstan, Thailand.

Date of Conduct. 1996 – 2004.

Amount of the Value. Approximately $4,400,000.

Amount of Business Related to the Payment. Over $18.3 million in sales contracts.

Intermediary. Sales agents.

Foreign official. Officials of the Thailand Tobacco Monopoly ("TTM"); Tax officials in Greece and Indonesia.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $10,000,000.

Compliance Monitor/Reporting Requirements. Independent Compliance Monitor.

Related Enforcement Actions. *United States v. Alliance One Int'l AG; Alliance One Tobacco Osh, LLC*; *SEC v. Elkin, Jr., et al.*

Total Combined Sanction. $19,450,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

77. SEC V. ABB LTD (D.D.C. 2010)

NATURE OF THE BUSINESS

ABB Ltd. is a Swiss public corporation which provides power and automation products and services around the globe. Two of its subsidiaries, ABB Inc., a Delaware corporation based in Sugar Land, TX, and ABB Ltd. – Jordan, provide products and services to electrical utilities, including state-owned utilities.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil-for-Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value. The government did not allege bribery of any individual foreign governmental officials.

Six subsidiaries of ABB Ltd. allegedly paid more than $800,000 in kickbacks to the former Iraqi government to obtain 27 contracts for the sale of goods under the U.N. Oil-for-Food Program, and promised to pay additional kickbacks of $239,501 on three other contracts. The total revenues on the contracts were approximately $13,577,727 and profits were $3,801,367. ABB Ltd. – Jordan acted as a conduit for other ABB subsidiaries by making the kickback payments on ABB Ltd. – Jordan contracts, as well as on contracts awarded to other ABB subsidiaries, in the form of bank guarantees and cash payments. ABB Ltd. – Jordan allegedly concealed these kickbacks on its books by mischaracterizing them as legitimate after-sales service fees, consultation costs, or commissions.

Additionally, from 1997 to 2004, ABB Inc. allegedly paid bribes that totaled approximately $1.9 million to government officials and others in Mexico to obtain and retain business with two government owned electrical utilities, CFE and Luz y Fuerza del Centro. The bribes were allegedly funneled through phony invoices for local services submitted by several intermediary companies. ABB Ltd. failed to conduct due diligence on the use or payment terms used with these companies, or to conduct any review of the payments. As a result of this alleged scheme, ABB Inc. was awarded contracts that generated over $90 million in revenues and $13 million in profits. The illicit payments were recorded on ABB Ltd.'s books as payments for commissions and services on the government utilities projects.

The complaint also alleges that ABB Ltd. failed to devise and maintain an effective system of internal controls to prevent or detect either of these anti-bribery and books and records violations.

ENFORCEMENT

On September 29, 2010, the SEC filed a settled enforcement action against ABB Ltd., charging it with violations of the anti-bribery, books and records, and internal control provisions of the FCPA. Without admitting or denying the allegations in the complaint, ABB Ltd. consented to the entry of a final judgment that 1) permanently enjoined the company from similar future violations, 2) ordered the company to pay $22,804,262 in disgorgement and

KEY FACTS

Citation. *SEC v. ABB Ltd*, No. 10-cv-01648 (D.D.C. 2010).

Date Filed. September 29, 2010.

Country. Iraq; Mexico.

Date of Conduct. 1999 – 2013.

Amount of the Value. Approximately $2.7 million.

Amount of Business Related to the Payment. At least $100 million.

Intermediary. Local subsidiaries.

Foreign official. Officials at Comisión Federal de Electricidad ("CFE"), a Mexican state-owned utility company; regional companies of the Iraqi Electricity Commission.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Switzerland.

Total Sanction. $39,314,262.

Compliance Monitor/Reporting Requirements. Three-year Reporting Requirement.

Related Enforcement Actions. *United States v. ABB Ltd*; *United States v. ABB Inc.*

Total Combined Sanction. $86,834,262.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

prejudgment interest, 3) ordered the company to pay a $16,510,000 civil penalty, and 4) required the company to comply with certain undertakings regarding its FCPA compliance program. In related criminal proceedings, ABB Ltd. entered a deferred prosecution agreement with the DOJ under which it agreed to pay $30.4 million in criminal penalties. ABB Inc., also settled the charges filed against it by the DOJ by consenting to a judgment entered against it. As part of the order, ABB Inc. agreed to pay a criminal penalty of $17.1 million.

See DOJ Digest Numbers B-102 and B-92.
See SEC Digest Number D-17.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

76. SEC V. DAVID P. TURNER AND OUSAMA M. NAAMAN (D.D.C. 2010)

NATURE OF THE BUSINESS

Ousama M. Naaman is a Lebanese/Canadian dual national, with principal business offices in Abu Dhabi, United Arab Emirates. Naaman acted as the agent in Iraq for Innospec Inc. ("Innospec"), a Delaware corporation based in the United Kingdom. In that role, Naaman negotiated contracts with the Iraqi Ministry of Oil for the provision of gasoline additives to oil refineries operating in Iraq. David Turner, a former Business Director for Innospec, was responsible for authorizing agreements with the Iraqi Ministry of Oil, as well as agreements to sell gasoline additives to various state owned oil companies in Indonesia.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil-For-Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks from humanitarian goods suppliers. From 2001 to 2008, Naaman allegedly promised or made over $3.7 million in kickback and bribery payments to Iraqi government officials in exchange for contracts with the Iraqi Ministry of Oil to purchase a gasoline additive from Innospec.

Between 2001 and 2003, Naaman negotiated five agreements under the U.N. Oil-For-Food Program, including a 10% increase in the price of each to cover the kickbacks to three Iraqi Ministry of Oil refineries. Officials at Innospec devised a scheme to pay inflated commissions to Naaman that Naaman would use to funnel kickbacks to Iraq. Naaman allegedly made improper payments of approximately $1,853,754 and offered additional kickbacks of $1,985,897 to the Iraqi government. Innospec earned revenues of approximately $45,804,915 and profits of $23,125,820 under these agreements. Allegedly, Turner was aware of the alleged kickback scheme in Iraq and made false statements to internal auditors to conceal it.

From 2004 to 2008, Turner also allegedly approved $1,369,269 in bribes to Iraqi officials under a long-term purchase agreement that Innospec entered into, through Naaman, with the Iraqi Ministry of Oil. Naaman paid these bribes and also paid an official in the Trade Bank of Iraq in exchange for a favorable exchange rate on letters of credit for purchases under the agreement. In 2008, a second long-term purchase agreement was agreed to by Turner and entered into by Naaman under which Innospec would have paid $850,000 in bribes to Iraqi ministry officials. In addition, Turner allegedly directed Naaman to pay $155,000 in bribes to Iraqi Ministry of Oil officials to ensure Innospec's competitors' product would fail field trial tests. All of these payments were improperly booked as legitimate commissions to Naaman. From 2002 to 2008, Naaman, with Turner's approval, also allegedly arranged or paid approximately $120,538 in travel, gifts, and entertainment expenses for Iraqi senior officials.

From 2000 through 2005, Turner allegedly authorized and directed the payment of bribes to Indonesian government officials in exchange for orders of gasoline additives by Indonesian state-owned oil and gas companies. These bribes were made through an Indonesian agent who submitted fictitious invoices for the payments. The illicit payments totaled approximately $2,883,507 and were inaccurately recorded in Innospec's books and records

KEY FACTS

Citation. *United States v. Turner & Naaman*, No. 10-cv-1309 (D.D.C. 2010).

Date Filed. August 10, 2010.

Country. Iraq; Indonesia.

Date of Conduct. 2000 – 2008.

Amount of the Value. Approximately $6,347,588.

Amount of Business Related to the Payment. Approximately $176,717,341 in revenues and $60,071,613 in profits.

Intermediary. Agents.

Foreign official. Iraqi Ministry of Oil and unspecified Iraqi and Indonesian government officials.

FCPA Statutory Provision. Anti-Bribery; Circumventing Internal Controls/Falsifying Books and Records; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. United Kingdom (Turner); Canada and Lebanon (Naaman).

Total Sanction. $877,106 (Naaman); $40,000 (Turner).

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Innospec Inc.; SEC v. Innospec, Inc.*

Total Combined Sanction. $917,106.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

as "sales commissions." Innospec's revenues in connection with the bribes were approximately $48,571,937 and its profits were $21,506,610.

ENFORCEMENT

On August 5, 2010, the SEC filed an enforcement action against Turner and Naaman, charging them both with violating the FCPA, falsifying documents, and aiding and abetting Innospec's violations of the FCPA. Without admitting or denying the SEC's allegations, Turner and Naaman have consented to the entry of final judgments that permanently enjoin them from similar future violations. Naaman was ordered to disgorge $810,076 plus prejudgment interest of $67,030, and pay a civil penalty of $438,038. Turner will disgorge $40,000. Turner's extensive and ongoing cooperation in the investigation was noted by the SEC

See DOJ Digest Numbers B-98 and B-81.
See Ongoing Investigation Number F-2

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

75. SEC V. GENERAL ELECTRIC CO., IONICS, INC., AND AMERSHAM PLC (D.D.C. 2010)

NATURE OF THE BUSINESS

General Electric ("GE") is an international company participating in a wide variety of markets, including the generation, transmission, and distribution of electricity, lighting, industrial automation, medical imaging equipment, motors, railway locomotives, aircraft jet engines, and aviation services. GE is headquartered in Fairfield, Connecticut.

Amersham plc, a company in GE's Technology Infrastructure segment, is based in the United Kingdom, and its American Depository Receipts are listed on the New York Stock Exchange. Ionics, Inc., a wholly owned subsidiary of GE, is based in Massachusetts and was a publicly-listed company in the United States.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil-for-Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," ("ASSF") from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value.

According to the SEC's complaint, four GE subsidiaries, Marquette, OEC-Medical, Nycomed, and Ionics Italba, only two of which, Marquette and OEC-Medical were GE subsidiaries during the relevant period, engaged in Oil-for-Food transactions involving ASSF kickbacks. These subsidiaries entered into a total of eighteen contracts in which ASSF kickbacks were either made or authorized. These subsidiaries inaccurately described the in-kind and cash ASSF payments in their books and records and failed to maintain adequate internal controls to detect or prevent the illicit payments. According to the SEC's complaint, the kickback scheme occurred from approximately 2000 to 2003.

The government did not allege bribery of any individual foreign governmental officials.

The SEC alleges that Marquette, based in Germany, either paid or agreed to pay illegal kickbacks worth $1.5 million in the form of computer equipment, medical supplies, and services to the Iraqi Ministry of Health. Marquette used an Iraqi third-party agent to obtain three contracts worth $8.8 million to cover the cost of the illegal kickbacks, Marquette increased the Iraqi agent's commission by 10%. The agent used this 10% to cover the cost of the equipment and services he kicked back to the Iraqi Ministry of Health. The U.N. contract prices were inflated by a corresponding 10% amount.

OEC-Medical, based in Switzerland, allegedly paid illegal kickbacks worth $870,000 in the form of computer equipment, medical supplies, and services to the Iraqi Ministry of Health on one contract worth $2.1 million. OEC-Medical also increased the agent's commission on the contract by approximately 10% to conceal the kickback, OEC-Medical and the agent entered into a fictitious "service provider agreement" purportedly identifying services the agent would perform to justify his increased commission.

KEY FACTS

Citation. *SEC v. Gen. Elec. Co. et al.*, No. 10-cv-01258 (D.D.C. 2010).

Date Filed. July 27, 2010.

Country. Iraq.

Date of Conduct. 2000 – 2003.

Amount of the Value. $3.6 million

Amount of Business Related to the Payment. $18.4 million.

Intermediary. Agent.

Foreign official. Iraqi Health Ministry and Iraqi Oil Ministry officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Agreement.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States (GE and Ionics, Inc.); United Kingdom (Amersham).

Total Sanction. $23,478,614.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $23,478,614.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

Nycomed, based in Norway, allegedly paid approximately $750,000 in kickbacks on nine contracts with the Iraqi Ministry of Health worth approximately $5 million in profits. A Nycomed salesperson allegedly explicitly authorized the payments and increased an agent's commission and the U.N. contract prices by 10% to conceal the kickback. GE acquired Nycomed's parent company, Amersham plc, based in the United Kingdom, in 2004, after the conduct at issue.

Ionics Italba, based in Italy, allegedly paid $795,000 in kickbacks and earned $2.3 million in profits on five contracts to sell water treatment equipment to the Iraqi Oil Ministry. Four of the five contracts were negotiated with side letters documenting the Ionics Italba's commitment to make kickback payments. These letters were concealed from U.N. inspectors. Ionics Italba artificially inflated the prices charged to the U.N. by 10% to cover the cost of the kickback payments. GE acquired Ionics Italba's parent company, Ionics, Inc., based in Massachusetts, in 2005, after the conduct at issue.

ENFORCEMENT

On July 30, 2010, without admitting or denying the allegations in the SEC's complaint, GE, Ionics, Inc., and Amersham PLC consented to entry of a final judgment enjoining them from future books and records and internal controls FCPA violations and ordering GE to disgorge $18,397,949 in profits, plus $4,080,665 in prejudgment interest, and pay a civil penalty of $1,000,000. The SEC took GE's prompt remediation and cooperation into account when determining its penalty.

See Parallel Litigation Digest Number H-D11.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

74. SEC V. ENI, S.P.A. AND SNAMPROGETTI NETHERLANDS B.V. (S.D. TEX. 2010)

NATURE OF THE BUSINESS

Engineering, procurement, and construction ("EPC") contracts for natural gas liquefaction facilities at Bonny Island in Nigeria ("Bonny Island Project") as part of a four company joint venture. Snamprogetti Netherlands B.V. ("Snamprogetti") is a corporation organized under the laws of the Netherlands and headquartered in Amsterdam. During the conduct at issue, Snamprogetti was a wholly owned subsidiary of ENI S.p.A. ("ENI"); it is currently a wholly owned subsidiary of Saipem S.p.A. ("Saipem").

INFLUENCE TO BE OBTAINED

Snamprogetti participated in a joint venture to obtain and perform EPC contracts to build and expand the Bonny Island Project for Nigeria LNG Limited, which is owned in part by the Nigerian National Petroleum Corporation. The joint venture was awarded four EPC contracts for the Bonny Island Project between 1995 and 2004. From August 1994 until June 2004, Snamprogetti and its partners in the joint venture allegedly authorized, promised, and paid bribes to Nigerian government officials, including officials in the executive branch, employees of the government owned Nigerian National Petroleum Corporation, and employees of government controlled Nigeria LNG Limited, to win and retain the EPC contracts to build the Bonny Island Project. To conceal the bribes, the joint venture allegedly entered into sham consulting or services agreements with intermediaries and held "cultural meetings" where the joint venture partners met with their agents to plan how to pay the bribes. Allegedly, the joint venture gave one consultant over $130 million for use in paying bribes to high level Nigerian government officials. Another consultant, allegedly hired to bribe lower level Nigerian officials, received over $50 million to use for that purpose.

ENFORCEMENT

On July 7, 2010, Snamprogetti and ENI entered into consent agreements to settle civil claims brought by the SEC in a complaint filed the same day by jointly agreeing to pay $125 million in disgorgement of the profits obtained as a result of the illicit payments. In its complaint, the SEC alleged that Snamprogetti violated the FCPA's anti-bribery provisions, and that both Snamprogetti and ENI violated the books-and-records and internal controls provisions of the FCPA. Snamprogetti also settled a related criminal case with the DOJ by entering into a deferred prosecution agreement and agreeing to pay a $240 million fine.

See DOJ Digest Number B-118, B-101, B-100, B-82, B-80, B-70
See SEC Digest Numbers D-72, D-57, and D-54.
See Parallel Litigation Digest Number H-F10.

KEY FACTS

Citation. *SEC v. ENI, S.p.A., & Snamprogetti Netherlands B.V.*, No. 4:10-cv-02414 (S.D. Tex. 2010).

Date Filed. July 20, 2010.

Country. Nigeria.

Date of Conduct. 1995 – 2004.

Amount of the Value. Approximately $180 million.

Amount of Business Related to the Payment. Over $6 billion.

Intermediary. Agents.

Foreign official. Officials in the executive branch of the Nigerian government, employees of Nigerian National Petroleum Corporation, and employees of Nigeria LNG Limited, controlled by the Nigerian government.

FCPA Statutory Provision.

- **ENI**. Books-and-Records; Internal Controls.
- **Snamprogetti**. Anti-Bribery; Circumventing Internal Controls/Falsifying Books and Records.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer (ENI); Agent of Issuer (Snamprogetti).

Defendant's Citizenship. Italian (ENI); Netherlands (Snamprogetti).

Total Sanction. $125,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Snamprogetti Netherlands B.V.*

Total Combined Sanction. $365,000,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

73. SEC V. VERAZ NETWORKS, INC. (N.D. CAL. 2010)

NATURE OF THE BUSINESS

Veraz Networks, Inc. ("Veraz") is a Delaware corporation based in California which sells telecommunications products that assist telecommunications service providers in transporting and managing data.

INFLUENCE TO BE OBTAINED

Between 2007 and 2008, a consultant hired by Veraz gave approximately $4,500 in gifts to officials at a telecommunications company controlled by the Chinese government to secure a business deal for Veraz. A Veraz supervisor approved what he described as the "gift scheme" by email. In addition, the consultant offered another $35,000 to an official at the telecommunications company to secure a second deal worth $233,000. The second offer was discovered by Veraz and the deal was cancelled before Veraz received any money for the transaction.

During the same period, a Singapore-based reseller through which Veraz sold products to a government-controlled telecommunications company in Vietnam made or offered improper payments to the CEO of the Vietnamese company to obtain business for Veraz. Veraz also approved and reimbursed this reseller for questionable gifts and entertainment expenses related to the Vietnamese telecommunications company.

ENFORCEMENT

On September 29, 2010, the SEC filed a settled enforcement action against Veraz, charging Veraz with violating the books and records and internal controls provisions of the FCPA by failing to accurately record the improper payments on its books and records and failing to devise and maintain a system of effective internal controls to prevent such payments. Without admitting or denying the allegations, Veraz consented to the entry of a final judgment permanently enjoining Veraz from future similar violations and requiring Veraz to pay a penalty of $300,000.

KEY FACTS

Citation. [1] *SEC v. Veraz Network, Inc.*, No. 10-cv-2849 (N.D. Cal. 2010).

Date Filed. September 20, 2010.

Country. China; Vietnam.

Date of Conduct. 2007 – 2008.

Amount of the Value. At least $40,500.

Amount of Business Related to the Payment. At least $233,000.

Intermediary. Reseller and consultant.

Foreign official. Officials at government-controlled telecommunications companies in China and Vietnam.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $300,000

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $300,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

72. SEC V. TECHNIP (S.D. TEX. 2010)

NATURE OF THE BUSINESS

Engineering, procurement, and construction ("EPC") contracts for natural gas liquefaction facilities at Bonny Island in Nigeria ("Bonny Island Project") as part of a four-company joint venture. Technip is a French corporation, headquartered in Paris.

INFLUENCE TO BE OBTAINED

Technip participated in a joint venture to obtain and perform EPC contracts to build and expand the Bonny Island Project for Nigeria LNG Limited, which is owned in part by the Nigerian National Petroleum Corporation. The joint venture was awarded four EPC contracts for the Bonny Island Project between 1995 and 2004. From August 1994 until June 2004, Technip and its partners in the joint venture allegedly authorized, promised, and paid bribes to Nigerian government officials, including officials in the executive branch, employees of the government-owned Nigerian National Petroleum Corporation, and employees of government-controlled Nigeria LNG Limited, to win and retain the EPC contracts to build the Bonny Island Project. To conceal the bribes, the joint venture allegedly entered into sham consulting or services agreements with intermediaries and held cultural meetings" where the joint venture partners met with their agents to plan how to pay the bribes. The joint venture allegedly used U.K. and Japanese agents to transfer approximately $183.5 million to Nigerian officials during the relevant time period.

ENFORCEMENT

On June 28, 2010, Technip entered into an agreement to settle civil claims brought by the SEC in a complaint filed the same day by agreeing to pay $98 million in disgorgement of the profits obtained as a result of the illicit payments. In its complaint, the SEC alleged that Technip violated the FCPA's anti-bribery and books and records provisions. Technip also settled a related criminal case with the DOJ by agreeing to pay a $240 million fine.

See DOJ Digest Numbers B-118, B-101, B-100, B-82, B-80, and B-70.
See SEC Digest Numbers D-74, D-57, and D-54.
See Parallel Litigation Digest Number H-F10.

KEY FACTS

Citation. *SEC v. Technip*, No. 10-cv-2289 (S.D. Tex. 2010).

Date Filed. June 28, 2010.

Country. Nigeria.

Date of Conduct. 1995 – 2004.

Amount of the Value. Approximately $183.5 million.

Amount of Business Related to the Payment. Over $6 billion.

Intermediary. Agents.

Foreign official. Officials in the executive branch of the Nigerian government, employees of Nigerian National Petroleum Corporation, and employees of Nigeria LNG Limited, controlled by the Nigerian government.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. France.

Total Sanction. $98,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Technip S.A.*

Total Combined Sanction. $338,000,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

71. SEC V. DAIMLER AG (D.D.C. 2010)

NATURE OF THE BUSINESS

Securing numerous contracts with government customers for the purchase of Daimler vehicles. Daimler is a German vehicle manufacturing company with business operations throughout the world.

INFLUENCE TO BE OBTAINED

The SEC alleged that between 1998 and 2008, Daimler AG ("Daimler") and its subsidiaries made improper payments worth tens of millions of dollars to foreign officials to obtain vehicle contracts in at least 22 countries. Daimler allegedly made the improper payments by various means, including certain ledger accounts, corporate "cash desks", deceptive pricing and commission arrangements, offshore bank accounts, inflated fees, and other methods. The SEC complaint included the following allegations:

- Daimler used "third-party accounts," maintained as ledger accounts on Daimler's books but controlled by third parties outside the company or by Daimler subsidiaries. Daimler employees misused these accounts to provide improper payments to foreign officials in Africa, Eastern Europe, and the Middle East. For example, Daimler paid bribes through the accounts to officials in Nigeria.
- Daimler used sham intermediaries and consultants to funnel payments to government officials, and Daimler paid bribes through its dealers and distributors.
- Daimler provided government officials with lavish travel.

The SEC also alleged that Daimler paid illegal kickbacks to the former Iraqi government to obtain contracts for the sale of vehicles to the government of Iraq under the oil-for-food program.

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil-for-Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value.

Like other companies that have been prosecuted in Oil-For-Food cases, Daimler, according to the SEC, agreed to pay a 10% commission to the Iraqi government by inflating contract prices by 10%. The payments were characterized as "after sales services fees," but no services were performed. Most of Daimler's oil-for-food contracts involved third-party intermediaries, but Daimler understood its partners would pay the illegal kickbacks to Iraqi ministries.

The government did not allege bribery of any individual foreign governmental officials.

ENFORCEMENT

On April 1, 2010, without admitting or denying the SEC's allegations, the Court issued final judgment. Daimler consented to the entry of a court order permanently enjoining it from future violations of the anti-bribery, books and

KEY FACTS

Citation. *SEC v. Daimler AG*, No. 10-cv-00473 (D.D.C. 2010).

Date Filed. March 22, 2010.

Country. 22 countries including China, Croatia, Egypt, Greece, Hungary, Indonesia, Iraq, Ivory Coast, Latvia, Nigeria, Russia, Serbia and Montenegro, Thailand, Turkey, Turkmenistan, Uzbekistan, Vietnam and others.

Date of Conduct. 1998 – 2008.

Amount of the Value. Approximately $56 million.

Amount of Business Related to the Payment. $1.9 billion.

Intermediary. Subsidiaries; Consultants.

Foreign official. Various officials involved in the purchase of vehicles around the world.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. German.

Total Sanction. $91,432,867.

Compliance Monitor/Reporting Requirements. Independent Compliance Monitor.

Related Enforcement Actions. *United States v. Daimler AG*; *United States v. DaimlerChrysler Automotive Russia SAO*; *United States v. Daimler Export and Trade Finance GmbH*; *United States v. DaimlerChrysler China Ltd.*

Total Combined Sanction. $185,032,867.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

records, and internal controls provisions of the FCPA. Daimler agreed to pay $91.4 million in disgorgement to settle the SEC's charges and to pay $93.6 million in fines to settle charges in separate criminal proceedings with the DOJ. The court order also required Daimler to comply with certain undertakings regarding its FCPA compliance program, including a provision that requires the company to retain an independent compliance monitor for three years. The SEC noted that Daimler cooperated with the ongoing investigation, conducted its own substantial internal investigation, and remediated problems as they were identified.

See DOJ Digest Number B-99.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

70. SEC V. INNOSPEC (D.D.C. 2010)

NATURE OF THE BUSINESS

Manufacture and sales of fuel additives and other specialty chemicals by Innospec, Inc. ("Innospec"), a Delaware corporation based in the United Kingdom.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil-for-Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value.

From 2000 to 2007, Innospec allegedly paid or promised more than $5.8 million in bribes and illicit payments to Iraqi government officials to obtain contracts for sales of tetraethyl lead ("TEL"). The SEC alleges that Innospec's Swiss subsidiary, Alcor, obtained U.N. Oil-for-Food Program contracts by paying kickbacks to Iraq and Iraqi officials through an Iraqi agent. According the SEC, Innospec continued to use the Iraqi agent after the Oil-for-Food Program ended to pay bribes to Iraqi officials, including officials at the Ministry of Oil, to secure TEL business from Iraq. Allegedly, the Iraqi agent also made payments to ensure the failure of a field test of a competitor's product. According to the SEC, Innospec also paid for lavish trips for Iraqi officials, including a honeymoon to Thailand for one and "pocket money" for others while on the trips.

The SEC also alleges Innospec paid $2,833,507 in bribes to Indonesian government officials and officials at state-owned oil companies to win contracts for the sale of TEL to state-owned oil and gas companies in Indonesia.

ENFORCEMENT

Without admitting or denying any of the SEC's allegations, Innospec has offered to pay $40.2 million as part of a global settlement with the SEC, the DOJ, the United Kingdom's Serious Fraud Office ("SFO"), and the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"). On March 18, 2010, Innospec agreed to pay disgorgement of $11.2 million to the SEC, a criminal fine of $14.1 million to the DOJ, a criminal fine of $12.7 million to the SFO, and $2.2 million to OFAC. Innospec also agreed to injunctive relief and certain undertakings regarding its FCPA compliance program, including the appointment of an independent monitor for at least three years.

See DOJ Digest Numbers B-81 and B-98.
See SEC Digest Number D-76.

KEY FACTS

Citation. *SEC v. Innospec, Inc.*, No. 1:10-cv-0048 (D.D.C. 2010).

Date Filed. March 26, 2010.

Country. Indonesia; Iraq.

Date of Conduct. 2000 – 2007.

Amount of the Value. More than $8.6 million.

Amount of Business Related to the Payment. More than $176 million.

Intermediary. Sales Agent/Consultant.

Foreign official. Iraqi government officials (Ministry of Oil), Indonesian government officials (Ministry of Energy and Mineral Resources), and officials of state-owned oil and gas companies in Indonesia (BP Migas and Pertamina).

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $11,200,000.

Compliance Monitor/Reporting Requirements. Independent Compliance Monitor.

Related Enforcement Actions. *United States v. Innospec Inc.*; *United States v. Turner & Naaman.*

Total Combined Sanction. $264,523,905.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

69. SEC V. NATCO GROUP INC. (S.D. TEX. 2010)

NATURE OF THE BUSINESS

NATCO Group Inc. ("NATCO"), a Delaware corporation, designs, manufactures, and markets oil and gas production equipment and systems. TEST Automation & Controls, Inc. ("TEST"), a wholly-owned subsidiary of NATCO, manufactures, sells, and services controls and automation systems.

INFLUENCE TO BE OBTAINED

According to the complaint filed by the SEC on January 11, 2010, in June 2005, TEST Kazakhstan, a branch office of TEST, won a contract to provide instrumentation and electrical services in Kazakhstan. In February 2007 and September 2007, Kazakh immigration prosecutors conducted audits and claimed that TEST Kazakhstan expatriate workers were working without proper documentation. The prosecutors threatened to fine, jail, or deport the workers if TEST Kazakhstan did not pay cash fines. Believing the prosecutors' threats were genuine, employees of TEST sought and obtained guidance from TEST's senior management in Louisiana. TEST authorized payments, initially made in two separate transactions by TEST employees, in the amount of $25,000 and $20,000. The employees were reimbursed by TEST. TEST inaccurately recorded these payments in its books as a "salary advance" and as "visa fines."

TEST Kazakhstan also allegedly used at least one consultant, who did not have a license to perform visa services, to assist in obtaining immigration documentation for its expatriate employees. This consultant allegedly had close ties to an employee at the Kazakh Ministry of Labor, the entity issuing the visas. Because Kazakh law requires companies seeking to withdraw cash from commercial bank accounts to submit supporting invoices, the consultant provided TEST Kazakh with bogus invoices. With full knowledge of the invoices' falsity, it is alleged that TEST Kazakh presented these false invoices in excess of $80,000 to the banks to withdraw the requested cash. TEST Kazakhstan later submitted the invoices to TEST for reimbursement. It is alleged that TEST reimbursed these requests despite knowing the invoices mischaracterized the true purpose of the services rendered.

ENFORCEMENT

The SEC's complaint charged NATCO violations of the books and records and internal controls provisions of the FCPA. On January 6, 2010, without admitting or denying the allegations in the complaint, NATCO agreed to pay a $65,000 penalty.

KEY FACTS

Citation. *SEC v. NATCO Grp. Inc.*, No. 10-cv-98 (S.D. Tex. 2010); *In the Matter of NATCO Grp. Inc.*, Admin. Proc. No. 3-13742 (Jan. 11, 2010).

Date Filed. January 11, 2010.

Country. Kazakhstan.

Date of Conduct. 2005 – 2007.

Amount of the Value. At least $45,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Consultant.

Foreign official. Kazakh immigration prosecutors, Kazakh Ministry of Labor.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order; Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $65,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $65,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

68. SEC V. UTSTARCOM, INC. (N.D. CAL. 2009)

NATURE OF THE BUSINESS

Provision of global telecommunications services, including the design, manufacture, and sales of network equipment and handsets by UTStarcom, Inc. ("UTStarcom"), a Delaware corporation and its wholly-owned subsidiary UTStarcom China Co. Ltd.

INFLUENCE TO BE OBTAINED

According to a complaint filed by the SEC on December 31, 2009, UTStarcom made improper payments to sham consultants in China and Mongolia while knowing they would pay bribes to foreign government officials and provided employment benefits and salaries to employees of government customers or their family members when the individuals did no work for UTStarcom. Further, between 2002 and 2007, UTStarcom allegedly paid for more than 225 overseas "training" trips for employees of Chinese government-owned telecommunications companies. In actuality, the trips were primarily for sightseeing. In addition, UTStarcom arranged for expensive gifts and all-expense paid executive training programs in the U.S. for existing and potential government customers in China and Thailand.

In 2006, UTStarcom's audit committee began an internal investigation into the improper payments which eventually uncovered and disclosed the infractions.

ENFORCEMENT

The SEC's complaint charges UTStarcom with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA. On April 13, 2010, without admitting or denying the allegations in the complaint, UTStarcom consented to entry of final judgment and agreed to a pay a $1.5 million penalty, a permanent injunction against violations of the FCPA, and to provide the SEC with annual FCPA compliance reports and certifications. In a separate proceeding, UTStarcom entered into a non-prosecution agreement with the DOJ and agreed to pay a $1.5 million penalty to settle the charges against it.

See DOJ Digest Number B-95
See Parallel Litigation Digest Number H-A9

KEY FACTS

Citation. *SEC v. UTStarcom,* Inc., No. 09-cv-6094 (N.D. Cal. 2009).

Date Filed. April 14, 2010.

Country. China, Mongolia, Thailand.

Date of Conduct. 2002 – 2007.

Amount of the Value. Approximately $7,000,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Consultants.

Foreign official. Employees of Chinese government-controlled telecommunications companies; employees of government customers in Thailand.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $1,500,000.

Compliance Monitor/Reporting Requirements. Four-year Reporting Requirement.

Related Enforcement Actions. *In re UTStarcom, Inc.*

Total Combined Sanction. $3,000,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

67. SEC V. BOBBY BENTON (S.D. TEX. 2009)
SEC V. JOE SUMMERS (S.D. TEX. 2010)

NATURE OF THE BUSINESS

Provision of drilling services for oil and gas wells by Pride International, Inc. ("Pride"), a Houston-based corporation which provides offshore drilling services. Bobby Benton, a U.S. citizen, was Vice President of Western Hemisphere Operations for Pride. Joe Summers, a U.S. citizen, was Pride's Country Manager for Venezuela.

INFLUENCE TO BE OBTAINED

The SEC alleges that in December 2004, Benton authorized the bribery of a Mexican customs official in the amount of $10,000 in return for overlooking customs deficiencies identified during an inspection of a boat transporting Pride equipment. Benton allegedly had knowledge of a second bribe totaling approximately $15,000 paid to a different Mexican customs official that same month to ensure that customs violations would not delay the export of a jack-up rig from Mexico.

The SEC alleges that between 2003 and 2005, Summers authorized or allowed payments of $384,000 to third-party companies believing that all or a portion of the funds would be given to an official at Petróleos de Venezuela S.A., Venezuela's state-owned oil company, in exchange for the extension of three drilling contracts. The SEC also alleges that Summers authorized an additional payment of $30,000 to a third party believing that all or a portion of the funds would be given to an employee at Petróleos de Venezuela S.A. to obtain payment of receivables. In an effort to conceal the bribes, Benton allegedly redacted references to the Venezuelan payments in an action plan responding to an internal audit report, and the payments were recorded as payments for goods and services received from the vendors or as marketing commission payments.

Pride is involved in an ongoing investigation into its FCPA-related practices.

ENFORCEMENT

On December 12, 2009, the SEC filed a complaint alleging Benton violated the anti-bribery, books and records, and internal controls provisions of the FCPA, and aided and abetted the violation of the anti-bribery, books and records, and internal controls provisions of the FCPA. On August 9, 2010, without admitting or denying the SEC's allegations in the complaint, Benton consented to the entry of a permanent injunction against future violations and was ordered to pay a civil penalty in the amount of $40,000.

On August 5, 2010, the SEC filed a complaint alleging Summers violated the anti-bribery, books and records, and internal controls provisions of the FCPA, and aided and abetted the violation of the anti-bribery and books and records and internal controls provisions of the FCPA. On the same day, without admitting or denying the SEC's allegations in the complaint, Summers consented to the entry of a permanent injunction against future violations and a civil penalty of $25,000.

See Parallel Litigation Digest Number H-F11.

KEY FACTS

Citation. *SEC v. Benton*, No. 4:09-cv-03963 (S.D. Tex. 2010); *SEC v. Summers*, No. 4:10-cv-02786 (S.D. Tex. 2010).

Date Filed. August 9, 2010 (Benton); August 5, 2010 (Summers).

Country. Mexico, Venezuela.

Date of Conduct. 2003 – 2005.

Amount of the Value. Approximately $439,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Agents.

Foreign official. Official of Petróleos de Venezuela S.A. and Mexican customs officials

FCPA Statutory Provision.

- **Benton**. Anti-Bribery; Circumvention of Internal Controls/Falsification of Books and Records; Aiding and Abetting (Anti-Bribery; Books-and-Records; Internal Controls)
- **Summers**. Anti-Bribery; Circumvention of Internal Controls/Falsification of Books and Records; Aiding and Abetting (Anti-Bribery; Books-and-Records; Internal Controls)

Other Statutory Provision.

- **Benton**. False Representations to Accountants (Exchange Act Rule 13b2-2)

Disposition. Consent Order.

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. United States.

Total Sanction. $40,000 (Benton); $25,000 (Summers).

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *SEC v. Pride Int'l, Inc.*; *United States v. Pride Int'l, Inc.*

Total Combined Sanction. $65,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

66. SEC V. AGCO CORP. (2009)

NATURE OF THE BUSINESS

AGCO Corp. ("AGCO") is a U.S. corporation based in Duluth, Georgia that manufactures and sells agricultural machinery and equipment.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil-for-Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value.

According to the SEC, from 2000 through 2003 AGCO's subsidiaries made approximately $5.9 million in kickback payments in connection with their sales under the U.N. Oil-for-Food Program. AGCO Ltd., AGCO's U.K. subsidiary, marketed and negotiated sales through the U.N. Program via two other European subsidiaries, AGCO S.A., located in France, and AGCO Danmark A/S, located in Denmark. In connection with winning 16 sales contracts with the Iraqi Ministry of Agriculture for the sale of farm machinery and spare parts, an AGCO Ltd. business manager and his supervisor allegedly acquiesced to demands from Iraqi ministries for kickback payments. These payments of approximately 10% of the contracts' values were made through a third-party agent based in Jordan. According to the SEC's complaint, AGCO Ltd.'s marketing staff created a fictional account in its books from which AGCO made these payments with virtually no review or verification from AGCO Ltd.'s finance department; AGCO's legal department failed to perform due diligence on or training of AGCO's Jordanian agent.

ENFORCEMENT

In a complaint filed on September 30, 2009, the SEC charged AGCO with violating the books and records and internal controls provisions of the FCPA. Without admitting or denying the allegations contained in the SEC's complaint, on July 31, 2009 AGCO consented to the entry of a final judgment, entered November 4, 2009, enjoining it from future similar violations and mandating that it disgorge $13,907,393, plus $2 million in prejudgment interest, and pay a civil penalty of $2.4 million.

AGCO also entered into a deferred-prosecution agreement with the DOJ to resolve related criminal charges and settled other Oil-for-Food related charges brought by the Danish State Prosecutor for Serious Economic Crimes related to contracts executed by AGCO's Danish subsidiary.

See DOJ Digest Number B-90.
See Ongoing Investigation Number F-2.

KEY FACTS

Citation. *SEC v. AGCO Corp.*, No. 1:09-cv-1865 (D.D.C. 2009).

Date Filed. November 04, 2009.

Country. Iraq.

Date of Conduct. 2000 – 2003.

Amount of the Value. Approximately $5,900,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Jordanian agents.

Foreign official. Unspecified Iraqi ministries.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $18,307,393.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. AGCO Corp.*

Total Combined Sanction. $19,907,393.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

65. SEC V. OSCAR H. MEZA (D.D.C. 2009)

NATURE OF THE BUSINESS

Procurement of contracts for the sale of portable computerized measurement devices and software for the manufacturing sector. Oscar H. Meza, a U.S. citizen, served as the Vice President for Asia-Pacific Sales and then, the Director of Asia-Pacific Sales for Faro Technologies, Inc. ("Faro"), a U.S. software development and manufacturing company.

INFLUENCE TO BE OBTAINED

The SEC's complaint alleges that Meza authorized bribery payments to obtain contracts for Faro. Allegedly, beginning in 2004, Meza authorized the Country Manager of Faro's subsidiary, Faro Shanghai Co., Ltd. ("Faro China"), to make bribery payments termed "referral fees" to employees of Chinese state-owned companies to obtain contracts. To conceal the bribes, Meza instructed Faro China's staff to alter account entries to delete the actual recipient of the improper payments. The complaint further alleges that in 2005, Meza and the Faro China Country Manager decided to route the corrupt payments through an intermediary to "avoid exposure," according to internal e-mails. In January 2005, Faro China entered into a false services contract with an intermediary. The intermediary would pay the bribes and send regular invoices to Faro China for payment. Meza authorized a total of $444,492 in illicit payments during the period between 2004 and 2006, generating approximately $4.5 million in sales and approximately $1.4 million in net profit.

ENFORCEMENT

On August 28, 2009, the SEC filed a settled enforcement action against Meza, charging Meza with violations of the anti-bribery, books and records, and internal control provisions of the FCPA and aiding and abetting Faro's violations of those provisions. Meza, without admitting or denying the allegations in the complaint, consented to the entry of a final judgment, which (1) permanently enjoined him from future similar violations and (2) ordered him to pay a civil penalty of $30,0000 and disgorgement and prejudgment interest of $26,707.

See DOJ Digest Number B-69.
See SEC Digest Number D-52.
See Parallel Litigation Digest Numbers H-A4 and H-F6.

KEY FACTS

Citation. *SEC v. Meza*, No. 1:09-cv-01648 (D.D.C. 2009).

Date Filed. September 25, 2009.

Country. China.

Date of Conduct. 2004 – 2006.

Amount of the Value. $444,492.

Amount of Business Related to the Payment. $4.5 million in sales, approximately $1.4 million in profit.

Intermediary. Third-party intermediary.

Foreign official. Employees of China state-owned or controlled entities.

FCPA Statutory Provision. Anti-Bribery; Circumventing Internal Controls/Falsifying Books and Records; Aiding and Abetting (Anti-Bribery; Books-and-Records; Internal Controls).

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. United States.

Total Sanction. $56,707.

Related Enforcement Actions. *In re Faro Technologies, Inc.*; *In the Matter of Faro Techs., Inc.*

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

64. IN THE MATTER OF HELMERICH & PAYNE, INC. (2009)

NATURE OF THE BUSINESS

Helmerich & Payne, Inc. ("H&P"), a U.S. corporation, engages in the contract drilling of oil and gas wells in the United States and internationally.

INFLUENCE TO BE OBTAINED

Between 2003 and 2008, H&P's Argentine and Venezuelan subsidiaries allegedly made approximately $185,673 in improper payments through their customers' brokers to customs officials in Argentina and Venezuela to allow and expedite the importation and exportation of equipment and materials that were not in compliance with the regulations of those countries. According to the SEC, those improper payments enabled the subsidiaries to avoid approximately $320,604 in expenses they would have incurred had they properly imported and exported the equipment and materials. The customs brokers allegedly disguised the improper payments on their invoices to the subsidiaries.

ENFORCEMENT

On July 30, 2009, without admitting or denying the SEC's findings, H&P consented to entry of an order of judgment against it. Under the order, H&P must cease and desist from committing books and records and internal controls FCPA violations and pay disgorgement of $375,681 including prejudgment interest. H&P also entered into a 2-year non-prosecution agreement with the DOJ, under which it agreed to pay a fine of $1 million and to take remedial actions.

See DOJ Digest Number B-89.

KEY FACTS

Citation. *In the Matter of Helmerich & Payne, Inc.*, Admin. Proc. File No. 3-13565 (July 30, 2009).

Date Filed. July 30, 2009.

Country. Argentina, Venezuela.

Date of Conduct. 2003 – 2008.

Amount of the Value. Approximately $185,673.

Amount of Business Related to the Payment. Approximately $320,604 in avoided customs-related costs.

Intermediary. Customs brokers.

Foreign official. Argentine and Venezuelan customs officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $375,681.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In re Helmerich & Payne, Inc.*

Total Combined Sanction. $1,375,681.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

63. SEC V. NATURE'S SUNSHINE PRODUCTS, INC., DOUGLAS FAGGIOLI, AND CRAIG D. HUFF (D. UTAH 2009)

NATURE OF THE BUSINESS

Importation and sale of nutritional and personal care products by Nature's Sunshine Productos Naturais, Ltda., a wholly owned Brazilian subsidiary of Nature's Sunshine Products, Inc. ("NSP"), a U.S. corporation. Douglas Faggioli is the former COO of NSP and its current CEO. Craig D. Huff is the former CFO of NSP.

INFLUENCE TO BE OBTAINED

NSP manufactures and sells nutritional and personal care products. Brazil became NSP's largest foreign market soon after it established a wholly owned subsidiary in Brazil, Nature's Sunshine Productos Naturais, Ltda. ("NSP Brazil"), in 1994. In 1999 and 2000, the Brazilian government reclassified specified vitamins, herbal products, and nutritional supplements as medicines, which required companies selling those products to register them for importation and sale in Brazil. NSP Brazil was unable to register some of its products and consequently experienced a sharp decline in sales. In an effort to circumvent the new registration requirements, NSP allegedly made over $1 million in undocumented cash payments to customs brokers. Some of these "importation advances" were allegedly paid to Brazilian customs officials to allow NSP Brazil to import unregistered products.

NSP controllers, one of whom was a former corporate officer and the corporate controller, allegedly conducted interviews with NSP Brazil's employees in December 2000. NSP Brazil's operations manager allegedly discussed the cash payments and the fact that NSP Brazil was selling unregistered products. Nevertheless, the payments were allegedly improperly recorded in NSP Brazil's books and records and later accounted for in NSP's 2001 financial statements as though they were legitimate import expenses.

ENFORCEMENT

On July 31, 2009, the SEC filed a settled complaint alleging that NSP violated the FCPA's anti-bribery, books and records, and internal controls provisions. The SEC further charged NSP with violating additional anti-fraud and issuer reporting provisions of the federal securities laws. The SEC charged Faggioli and Huff with responsibility as "control persons" within the meaning of Section 20 of the Securities Exchange Act of 1934 (15 U.S.C. § 78t(a)) for NSP's violations of the FCPA's books and records and internal control provisions. Without admitting or denying the allegations, all three defendants agreed to orders enjoining them from future violations and requiring NSP to pay a civil penalty of $600,000 and Faggioli and Huff to each pay a civil penalty of $25,000.

See Parallel Litigation Digest Number H-A5.

KEY FACTS

Citation. SEC v. Nature's Sunshine Prods., Inc., et al., No. 2:09-cv-0672 (D. Utah 2009).

Date Filed. July 31, 2008.

Country. Brazil.

Date of Conduct. 2000 – 2001.

Amount of the Value. More than $1 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Customs brokers.

Foreign official. Brazilian customs official.

FCPA Statutory Provision. Anti-Bribery.

- **Nature's Sunshine**. Anti-Bribery; Books-and-Records; Internal Controls.
- **Faggioli**. Books-and-Records; Internal Controls.
- **Huff**. Books-and-Records; Internal Controls.
- **Other Statutory Provision.** None.
- **Nature's Sunshine**. Exchange Act Section 10(b) and Rule 10b-5 (Securities Fraud); Exchange Act Section 13(a) (Securities Reporting).

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer (Nature's Sunshine); Agent of Issuer (Faggioli, Huff).

Defendant's Citizenship. United States (Nature's Sunshine, Faggioli, Huff).

Total Sanction.

- **Nature's Sunshine**. $600,000.
- **Faggioli**. $25,000.
- **Huff**. $25,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $600,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

62. SEC V. AVERY DENNISON CORPORATION (C.D. CAL. 2009) IN THE MATTER OF AVERY DENNISON CORPORATION (2009)

NATURE OF THE BUSINESS.

Procurement of sales of reflective materials in China used in printing and road signs where Chinese government required authorization for such products. Avery China, a wholly-owned subsidiary of Avery Dennison Corporation ("Avery Dennison"), a Delaware entity, sells reflective materials commonly used in printing and road signs.

INFLUENCE TO BE OBTAINED

The Chinese government requires authorization for all products used in road communications and safety. Between 2002 and 2005, Avery China attempted to pay Chinese government officials kickbacks to obtain such authorization and gain lucrative contracts. Some of the illegal payment schemes were discovered and prevented by Avery Dennison employees, while others were paid out, including a $24,752 payment to a project manager in 2005 to obtain profits of $273,213 on a sale. In addition, Avery China hosted expensive sightseeing trips to curry favor with Chinese government officials in both 2002 and 2005. In 2007, Avery Dennison acquired Paxar Corporation, a NYSE listed company. Avery Dennison later discovered that Paxar employees in Indonesia made illegal payments to customs and tax officials to obtain bonded zone licenses and to overlook bonded zone regulatory violations.

ENFORCEMENT.

On July 28, 2009, the SEC filed two settled enforcement proceedings against Avery Dennison. The SEC filed a federal civil action in California charging Avery Dennison with violations of the books and records and internal controls provisions of the FCPA and seeking a civil penalty. The SEC also issued an administrative order finding that Avery Dennison violated the same provisions of the FCPA, ordering the company to cease and desist from these violations and disgorge profits in the amount of $273,213 plus $45 257 in prejudgment interest. Avery Dennison agreed to the entry of a final judgment, entered August 18, 2009, requiring it to pay a civil penalty in the amount of $200,000.

KEY FACTS

Citation. *SEC v. Avery Dennison Corp.*, No. 1:09-cv-5493 (C.D. Cal. 2009); *In the Matter of Avery Dennison Corp.*, Admin. Proc. File No. 3-13564 (July 28, 2009).

Date Filed. August 19, 2009.

Country. China, Indonesia.

Date of Conduct. 2002 – 2005.

Amount of the Value. $81,000.

Amount of Business Related to the Payment. $1,250,218.

Intermediary. None.

Foreign official. Chinese government officials; Indonesian customs and tax officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order; Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $518,470.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $518,470.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

61. SEC V. THOMAS WURZEL (D.D.C. 2009)

NATURE OF THE BUSINESS

Thomas Wurzel ("Wurzel"), an American citizen, was President of ACL Technologies, Inc. ("ACL"), a wholly-owned subsidiary of United Industrial Corporation ("UIC"), an aerospace and defense systems contractor incorporated in Delaware. In 2007, after the conduct described herein occurred, an affiliate of Textron Inc. acquired UIC.

INFLUENCE TO BE OBTAINED

As alleged in the complaint, from late 2001 through 2002, Wurzel authorized multiple payments to an agent to secure a Contract Engineering Technical Services contract for ACL in connection with a project to build a F-16 combat aircraft depot for the EAF and provide, operate, and train labor to use the testing equipment for the depot. The complaint alleges that, in or around 1996, Wurzel was involved with hiring the agent, who was selected due to his connections with the Egyptian military community. The complaint further alleges that Wurzel knew or consciously disregarded the high probability that the agent would offer, provide, or promise at least a portion of such payments to active EAF officials.

ENFORCEMENT

On May 29, 2009, the SEC filed a complaint alleging that Wurzel violated, and aided and abetted violations of, the anti-bribery, internal controls, and books and records provisions of the FCPA. Without admitting or denying the allegations, Wurzel consented to the entry of a final judgment permanently enjoining him from future violations of the FCPA. In addition, Wurzel paid a $35,000 civil penalty.

On the same day, UIC consented to an SEC order requiring it to cease and desist from causing any future violations of the FCPA, under which UIC paid $337,679.42 in disgorgement and prejudgment interest.

See SEC Digest Number D-60.

KEY FACTS

Citation. *SEC v. Wurzel*, No. 1:09-cv-1005 (D.D.C. 2009).

Date Filed. September 30, 2016.

Country. Egypt.

Date of Conduct. 2001 – 2002.

Amount of the Value. Not provided. Three forms of illicit payments were made to an agent, with at least some of those payments allegedly being passed on to government officials: (1) payments to the agent ostensibly for labor subcontracting work; (2) a $100,000 advance payment to the agent for "equipment and materials"; and (3) a $50,000 payment to the agent for "marketing services."

Amount of Business Related to the Payment. A contract with gross revenues of approximately $5.3 million and net profits of $267,000.

Intermediary. Agent.

Foreign official. Egyptian Air Force officials.

FCPA Statutory Provision. Anti-Bribery; Aiding and Abetting (Anti-Bribery, Books-and-Records); Circumventing Internal Controls/Falsifying Books and Records.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. United States.

Total Sanction. $35,000.

Related Enforcement Actions. *In the Matter of United Indus. Corp.*

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

60. IN THE MATTER OF UNITED INDUSTRIAL CORPORATION (2009)

NATURE OF THE BUSINESS

United Industrial Corporation ("UIC"), a Delaware corporation headquartered in Hunt Valley, Maryland, focuses on the design and production of defense, training, transportation, and energy systems for the U.S. Department of Defense and domestic and international customers. ACL Technologies, Inc. ("ACL"), a wholly-owned subsidiary of UIC formerly headquartered in Brea, California, developed, operated, and maintained stationary and mobile test equipment in support of hydraulics, pneumatics, electrical, mechanical, and fuel requirements of commercial and military aircraft. In 2007, after the conduct described herein occurred, an affiliate of Textron Inc. acquired UIC.

INFLUENCE TO BE OBTAINED

As alleged in the SEC's cease-and-desist order, in late 2001 and throughout 2002, Thomas Wurzel, then President of ACL, authorized multiple payments to an agent to secure a Contract Engineering Technical Services contract for ACL in connection with a project to build a F-16 combat aircraft depot for the EAF and provide, operate, and train labor to use the testing equipment for the depot. The order further alleges that Wurzel knew or consciously disregarded the high probability that the agent would offer, provide, or promise at least a portion of such payments to active EAF officials. During this time, UIC allegedly lacked meaningful controls to prevent or detect Wurzel's authorization of illicit payments to the agent. The UIC legal department allegedly approved the retention of the agent despite a lack of documented due diligence and the failure of the agent to comply with corporate policy. The order further alleges that a UIC official approved at least one payment to the agent and that UIC mischaracterized the illicit payment in its books and records as legitimate business expenses.

ENFORCEMENT

On May 29, 2009 without admitting or denying the allegations in the order, UIC consented to an SEC order requiring it to cease and desist from committing or causing any future violations of the FCPA. In addition, UIC paid $267,571 in disgorgement and $70,108 prejudgment interest.

See SEC Digest Number D-61.

KEY FACTS

Citation. *In the Matter of United Indus. Corp.*, Admin. Proc. File No. 3-13495 (May 29, 2009).

Date Filed. May 29, 2009.

Country. Egypt.

Date of Conduct. 2001 – 2002.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Approximately $5.3 million in gross revenues; net profits of $267,000.

Intermediary. Agent.

Foreign official. Egyptian Air Force officials.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $337,679.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *SEC v. Wurzel.*

Total Combined Sanction. $337,679.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

59. SEC V. NOVO NORDISK A/S (D.D.C. 2009)

NATURE OF THE BUSINESS

Novo Nordisk is an international manufacturer of insulin, medicines, and other pharmaceutical supplies headquartered in Denmark.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil-for-Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value.

According to the SEC's complaint, Novo Nordisk paid illegal kickbacks to the former government of Iraq to secure contracts to provide insulin and other medical supplies to Iraq under the U.N. Oil-for-Food Program. Allegedly, Novo Nordisk characterized these kickbacks as "after-sales service fees," but did not provide any bona fide services. Branches of Novo Nordisk in Greece and Jordan handled the Iraqi sales. Novo Nordisk allegedly inflated the price of contracts by 10% before submitting them to the United Nations for approval, and then made the illegal payments to Kimadia, a state-owned company that was part of the Iraqi Ministry of Health, recording the payments as commissions in its books and records.

ENFORCEMENT

Without admitting or denying the allegations in the SEC's complaint, filed May 11, 2009, Novo consented, also on May 11, 2009, to entry of a final judgment (1) enjoining it from future books and records and internal controls FCPA violations; (2) ordering it to disgorge $4,321,523 in profits, plus $1,683,556 in prejudgment interest; and (3) ordering it to pay a civil penalty of $3,025,066.

The SEC considered remedial acts Novo Nordisk promptly undertook and the cooperation it afforded the SEC in its investigation. In a separate proceeding Novo Nordisk also agreed to pay a $9 million penalty under a deferred prosecution agreement with the DOJ.

See DOJ Digest Number B-87.
See Ongoing Investigation Number F-2.

KEY FACTS

Citation. *SEC v. Novo Nordisk A/S*, No. 1:09-cv-00862 (D.D.C. 2009).

Date Filed. May 13, 2009.

Country. Iraq.

Date of Conduct. 2000 – 2003.

Amount of the Value. $1.4 million.

Amount of Business Related to the Payment. €22 million.

Intermediary. Agent.

Foreign official. Kimadia, a state-owned company part of the Iraqi Ministry of Health.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Denmark.

Total Sanction. $9,030,145.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Novo Nordisk A/S.*

Total Combined Sanction. $18,030,145.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

58. SEC V. ITT CORP. (D.D.C. 2009)

NATURE OF THE BUSINESS

Sale of water pumps for large infrastructure projects in China. ITT Corporation ("ITT"), a U.S. corporation, designs and manufactures a wide range of engineered products and related services, concentrating on water and fluids management, global defense and security, and motion and flow control.

INFLUENCE TO BE OBTAINED

From 2001 through 2005, ITT's wholly-owned Chinese subsidiary, Nanjing Goulds Pumps Ltd. ("NGP"), directly through certain employees and indirectly through third-party agents, allegedly made illicit payments totaling approximately $200,000 to Chinese government officials, generating more than $4 million in sales and improper profits of more than $1 million. NGP, part of ITT's Fluid Technology division, allegedly bribed employees of Chinese state-owned design institutes that assisted in the design of infrastructure projects to ensure that they recommended NGP water pumps for use in the projects. Allegedly, the payments were disguised as commissions in NGP's books and records. The allegedly improper NGP entries were consolidated and included in ITT's financial statements contained in SEC filings for the company's fiscal years 2001 through 2005. ITT discovered the allegedly illegal payments in December 2005, after the company ombudsman received an anonymous complaint from NGP employees alleging illegal payments to Chinese government officials by NGP employees.

ENFORCEMENT

On February 11, 2009, the SEC filed a complaint alleging violations of the FCPA's books and records and internal controls provisions. ITT, without admitting or denying the allegations in the SEC's complaint, consented to the entry of a final judgment permanently enjoining it from future violations of the FCPA, and agreed to disgorge $1,041,112, together with prejudgment interest of $387,538.11, and to pay a $250,000 civil penalty.

KEY FACTS

Citation. *SEC v. ITT Corp.*, No. 1:09-cv-00272 (D.D.C. 2009).

Date Filed. March 13, 2009.

Country. China.

Date of Conduct. 2001 – 2005.

Amount of the Value. Approximately $200,000.

Amount of Business Related to the Payment. More than $4 million.

Intermediary. Agents and employees.

Foreign official. Officials of Chinese government design institutes.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $1,678,650.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $1,678,650.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

57. SEC V. HALLIBURTON CO. AND KBR, INC. (S.D. TEX. 2009)

NATURE OF THE BUSINESS

Engineering, procurement, and construction ("EPC") contracts for natural gas liquefaction facilities at Bonny Island in Nigeria ("Bonny Island Project"). During most of the time of the conduct, which occurred between 1995 and 2004, Kellogg Brown & Root LLC, a U.S. corporation, was a subsidiary of Halliburton Company ("Halliburton"). Kellogg Brown & Root LLC is now a wholly-owned subsidiary of KBR, Inc. ("KBR"). Halliburton and KBR are incorporated in Delaware and headquartered in Houston, Texas.

INFLUENCE TO BE OBTAINED

Kellogg Brown & Root LLC participated in a joint venture to obtain and perform EPC contracts to build and expand the Bonny Island Project for Nigeria LNG Limited, which is owned in part by the Nigerian National Petroleum Corporation. The joint venture received four EPC contracts for the Bonny Island Project between 1995 and 2004. According to the SEC's February 11, 2009 complaint, from at least 1995 until 2004, Kellogg Brown and Root LLC and its partners in the joint venture allegedly authorized, promised, and paid bribes to Nigerian government officials to obtain business related to the Bonny Island Project. To conceal the bribes, the joint venture allegedly entered into sham consulting or services agreements with intermediaries. The complaint alleges that one consultant received over $130 million, and another received over $50 million, for use in bribing Nigerian government officials.

ENFORCEMENT

On February 11, 2009, the SEC filed a complaint alleging that KBR, acting as an agent of Halliburton, violated the anti-bribery provisions of the FCPA; that Halliburton failed to keep accurate books and records and to maintain adequate internal controls; that KBR aided and abetted Halliburton's failure to do so; and that KBR falsified, or caused to be falsified, Halliburton's books and records. Without admitting or denying the allegations of the complaint, Halliburton and KBR consented to the entry of final judgments permanently enjoining future violations, ordering disgorgement of $177 million, requiring Halliburton to retain an independent consultant to evaluate its FCPA-related policies and procedures and adopt any recommendations, and requiring KBR to obtain an independent corporate monitor for a term of three years. Pursuant to the master separation agreement between Halliburton and KBR, Halliburton agreed to indemnify KBR for certain FCPA-related matters, and Halliburton will pay the $177 million disgorgement.

Kellogg Brown & Root LLC and KBR also settled a related DOJ action on February 11, 2009, pleading guilty to one count of conspiring to violate the FCPA and four counts of violation of the anti-bribery provisions of the FCPA. As part of the plea agreement, Kellogg Brown & Root LLC and KBR agreed to pay a $402 million fine, of which Halliburton will pay $382 million. Additionally, Kellogg Brown & Root LLC will retain an independent corporate monitor for a term of three years.

In September 2008, Albert "Jack" Stanley, former CEO and chairman of Kellogg Brown & Root LLC, pleaded guilty to conspiring to violate the FCPA, admitting that he participated in a scheme to bribe Nigerian government officials. Stanley was later sentenced on February 23, 2012 to 30 months in prison followed by three years of supervised release along with a payment of

KEY FACTS

Citation. *SEC v. Halliburton Co., et al.*, No. 4:09-cv-00399 (S.D. Tex. 2009).

Date Filed. February 17, 2009.

Country. Nigeria.

Date of Conduct. 1995 – 2004.

Amount of the Value. Approximately $180 million.

Amount of Business Related to the Payment. Over $6 billion.

Intermediary. Agents.

Foreign official. Officials in the executive branch of the Nigerian government; employees of Nigerian National Petroleum Corporation; and employees of Nigeria LNG Limited, controlled by the Nigerian government.

FCPA Statutory Provision.

- **Halliburton**. Books-and-Records; Internal Controls.
- **KBR**. Anti-Bribery; Aiding and Abetting (Books-and-Records; Internal Controls); Circumventing Internal Controls/Falsifying Books and Records.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer (Halliburton; KBR).

Defendant's Citizenship. United States (Halliburton; KBR).

Total Sanction. $177,000,000.

Compliance Monitor/Reporting Requirements. Independent Compliance Monitor Halliburton; KBR).

Related Enforcement Actions. *United States v. Stanley*; *United States v. Kellogg Brown & Root LLC*; *United States v. Tesler et al.*; *SEC v. Stanley.*

Total Combined Sanction. $579,000,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

$10.8 million in restitution.

In February 2009, the DOJ indicted two other individuals, Jeffrey Tesler and Wojciech Chodan, both U.K. citizens, alleging involvement in the scheme. Chodan and Tesler subsequently pleaded guilty to charges to conspiracy and other related charges on December 3, 2011 and March 11, 2012 respectively. Sentencing of both individuals took place in February 2012.

French, Nigerian, Swiss, and British authorities continue to investigate this matter. In an SEC filing on February 17, 2010, Halliburton first reported it was seeking plea negotiations with the United Kingdom's Serious Fraud Office. On February 16, 2011, KBR announced that its wholly-owned subsidiary, M.W. Kellogg Limited ("MWKL"), reached a civil settlement with the Serious Fraud Office, according to which MWKL paid approximately $11, 238,886 and agreed to improve its internal audit and compliance systems.

Similarly according to a February 17, 2011 SEC filing, Halliburton and KBR reached a settlement to resolve charges filed against the two corporations in Nigeria in December 2010. As a result, Halliburton agreed to pay $33 million to the Government of Nigeria and an additional $2 million for the Government of Nigeria's attorneys' fees.

A March 30, 2009 news article reported that Swiss authorities will provide Britain with bank account details related to the payments. Swiss authorities previously provided these documents to France and the U.S.

See DOJ Digest Numbers B-118, B-101, B-100, B-82, B-80, and B-70.
See SEC Digest Numbers D-74, D-72, D-54.
See Parallel Litigation Digest Number H-F10.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

56. SEC V. SIEMENS AKTIENGESELLSCHAFT (D.D.C. 2008)

NATURE OF THE BUSINESS

Siemens Aktiengesellschaft ("Siemens AG"), a German corporation, manufactures industrial and consumer products and operates in approximately 190 countries worldwide. During the relevant period, a class of Siemens' securities were registered pursuant to Section 12(b) of the Exchange Act and were traded on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

Siemens Aktiengesellschaft ("Siemens AG") and several of its subsidiaries allegedly paid more than $1.7 million in kickbacks to the Iraqi government to win 42 contracts worth more than $80 million under the U.N. Oil-for-Food Program. Additionally, Siemens AG allegedly engaged in systematic efforts to falsify books and records and circumvent internal controls to permit this and other corrupt payments to occur.

The SEC alleged a wide range of corrupt payments, spread across several of Siemens's divisions. Significantly, in some cases, the sole jurisdictional basis for certain of the bribes was based on the use of correspondent bank accounts. Siemens allegedly paid almost $19 million in bribes to Venezuelan government officials, using sham consultants and other intermediaries, in connection with mass transit systems in the Venezuelan cities of Valencia and Maracaibo.

Between 2002 and 2007, Siemens allegedly paid approximately $22 million to business consultants who used some portion of those funds to bribe government officials in China in connection with a $1 billion project to construct metro trains and signaling devices. Also in China, between 2002 and 2003, Siemens allegedly paid approximately $25 million in bribes to government customers in connection with two projects involving installation of high voltage transmission lines. The projects were worth approximately $838 million, and as in many other instances, Siemens allegedly funneled payments through multiple intermediaries. Siemens also allegedly paid approximately $14.4 million in bribes in connection with $295 million in sales of medical equipment to five Chinese state-owned hospitals, and funded expensive trips for doctors at Chinese state-owned hospitals.

In Israel, between 2002 and 2005, Siemens allegedly paid approximately $20 million in bribes through a business consultant to a former director of the state-owned electricity company in connection with four contracts worth approximately $786 million to build and service power plants.

In Bangladesh, Siemens allegedly made more than $5.3 million in corrupt payments between 2004 and 2006 to Bangladeshi government officials and senior employees of the state-owned Bangladesh Telegraph & Telephone Board ("BTTB") in connection with a BTTB mobile telephone contract worth almost $41 million, using three sham business consultants. The SEC alleged payments to the son of the former Prime Minister of Bangladesh, though it is not clear if the SEC alleged that he was a government official.

In Nigeria, Siemens allegedly made approximately $12.7 million in suspicious payments, including at least $4.5 million in bribes, in connection with four telecommunications projects with state-owned companies worth approximately $130 million. These payments were allegedly made through

KEY FACTS

Citation. *SEC v. Siemens Aktiengesellschaft*, No. 08-CV-02167 (D.D.C. 2008).

Date Filed. December 15, 2008.

Country. Argentina, Bangladesh, China, Germany, Iraq, Israel, Mexico, Nigeria, Russia Venezuela, Vietnam.

Date of Conduct. 2001 – 2007.

Amount of the Value. Over $1.4 billion.

Amount of Business Related to the Payment. Over $4.2 billion.

Intermediary. Consultants; Agents.

Foreign official. 1) Venezuelan officials; 2) Chinese officials; 3) former director of the Israeli state-owned electricity company; 4) procurement director for Bangladeshi state-owned telecommunications company; 5) Nigerian government officials, potentially including the President and Vice-President; 6) Argentine officials, including the President, the Minister of the Interior, and the Immigration Chief; 7) Vietnamese health ministry officials; 8) doctors and officials of Chinese state-owned hospitals; 9) senior officials of the Moscow Project Implementation Unit, a Russian quasi-governmental entity; 10) a senior official of the state-owned Mexican petroleum company, Pemex; 11) officials at Russian government-owned medical entities; and 12) officials at the Vietnamese defense ministry and state-owned telecommunications company.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. German.

Total Sanction. $350,000,000.

- **Compliance Monitor/Reporting Requirements.** Independent Compliance Monitor.
- **Related Enforcement Actions.** *United States v. Siemens Aktiengesellschaft*; *United States v. Siemens S.A. Argentina*; *United States v. Siemens S.A. (Venezuela)*; *United States v. Siemens Bangladesh, Ltd.*

Total Combined Sanction. $800,000,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

various intermediaries, including sham business consultants and the wife of a former Nigerian Vice-President, and the recipients were alleged to include the President and Vice-President of Nigeria.

In Argentina, Siemens allegedly paid approximately $95 million, directly or indirectly, to officials in the Argentine government, in connection with the company's bid for a project valued in excess of $1 billion involving the development of a national identification card.

Siemens allegedly paid almost $750,000 in bribes to officials of the Moscow Project Implementation Unit, a quasi-governmental entity in Russia responsible for implementing a traffic control system in Moscow. Siemens allegedly paid approximately $55 million in bribes through a Dubai intermediary to Russian state-owned hospitals in connection with sales of medical equipment.

Siemens also paid approximately $2.6 million in bribes to a business consultant in Mexico, some portion of which allegedly was routed to a senior official of the state-owned petroleum company, Pemex.

Siemens allegedly paid $383,000 in bribes in connection with $6 million in sales of medical devices on two projects involving the Vietnamese Ministry of Health. Finally, Siemens allegedly paid approximately $140,000 in bribes to officials at the Vietnamese defense ministry and state-owned telecommunications company Vietel in connection with a $35 million tender for the supply of telecommunications equipment and services.

ENFORCEMENT

On December 15, 2008, Siemens consented to the entry of final judgment enjoining it from committing further FCPA violations. Without admitting or denying the allegations, Siemens agreed to pay $350 million in disgorgement and also agreed to the imposition of an independent monitor for a period of up to four years. Theo Wiegle, a former German finance minister, will serve as the Monitor and will be assisted by a U.S. law firm, marking the first time that a non-U.S. monitor has been appointed in an FCPA case.

On the same day, Siemens AG pleaded guilty to conspiring to violate the FCPA's internal controls and books-and-records provisions; Siemens Argentina pleaded guilty to conspiring to violate the FCPA's books and records provisions; and Siemens Bangladesh and Siemens Venezuela each pleaded guilty to conspiring to violate the FCPA's anti-bribery and books-and-records provisions. Siemens AG and its subsidiaries agreed to pay criminal fines totaling $450 million. On the same day, Siemens also entered into a settlement with German authorities, agreeing to pay penalties of €395 million in addition to the €201 million in penalties that it previously paid in an earlier settlement.

In addition, the DOJ brought a forfeiture action against more than $3 million contained in several bank accounts held by or for the benefit of the son of the former Prime Minister of Bangladesh and two of the intermediaries involved in the bribery scheme involving Siemens Bangladesh.

In July 2009, Siemens reached a settlement with the World Bank over bribery allegations. The Bank's investigation focused specifically on an urban-transport project the Bank financed in Russia. Siemens agreed to pay $100 million over 15 years to help anticorruption efforts and also agreed to forgo bidding on any of the Bank's projects for two years. The settlement means that Siemens and its subsidiaries will not face additional sanctions from

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

the World Bank.

Separately, on August 12, 2009, Siemens AG stated that it would drop a case against Argentina's government in the World Bank's International Center for Settlement of Investment Disputes, which had demanded $200 million related to the cancellation of a contract to make identity cards. Siemens had been accused of paying bribes to win the contract. Siemens stated that it would continue to cooperate with investigations by Argentine authorities.

See DOJ Digest Numbers B-123 and B-78.
See SEC Digest Numbers D-99 and D-56.
See Parallel Litigation Digest Numbers H-A11, H-C24, C-27, and H-H1.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

55. SEC V. FIAT S.P.A. AND CNH GLOBAL N.V. (D.D.C. 2008)

NATURE OF THE BUSINESS

Fiat S.p.A., an Italian company, is a provider of automobiles, agricultural and construction equipment, and vehicles. During the relevant period, a class of Fiat's shares was registered with the SEC pursuant to Section 12(b) of the Exchange Act. CNH Global N.V. ("CNH Global"), is a majority-owned Dutch subsidiary of Fiat and provides agricultural and construction equipment. During the relevant period, CNH Global's American Depository Receipts were registered with the SEC pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil for Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value, though in this case sometimes as high as 15%.

From approximately 2000 through 2003, Fiat and CNH Global allegedly violated the books-and-records and internal controls provisions of the FCPA when one of Fiat's subsidiaries and two of CNH Global's subsidiaries provided the Iraqi government with approximately $4.3 million in kickback payments, improperly recorded as commissions and service fees. One of Fiat's subsidiaries, Iveco S.p.A ("Iveco"), allegedly used its Egypt office to enter into four direct contracts with Iraqi Ministries in which $1,803,880 in kickbacks were made on the sale of commercial vehicles and parts. Iveco Egypt increased its agent's commissions from 5% to between 15 and 20% of the total contract price, which the agent allegedly funneled to the Iraqi government as kickbacks. Iveco and the agent allegedly inflated the U.N. contracts by 10 to 15% to account for these payments. In November 2000, the agent became Iveco's distributor and, with Iveco's knowledge, allegedly facilitated $1,364,080 in "after sales service fees" on twelve additional contracts.

One of CNH Global's subsidiaries, Case France (now known as CNH France S.A.), allegedly engaged in three direct transactions with Iraqi ministries in which $187,720 in kickbacks were made on the sale of construction equipment in the same manner.

Another CNH Global subsidiary, New Holland (now known as CNH Italia S.p.A.), allegedly engaged in two direct transactions with Iraqi ministries in which $447,116 in kickbacks were made on the sale of tractors. The purported "after sales service fees" were recorded as cost of goods sold in New Holland's books and records. New Holland subsequently made its dealer a distributor, which allowed the dealer to purchase New Holland goods for the dealer's own account. The dealer then sold New Holland products to the Iraqi government under the dealer's secretly inflated U.N. contracts. With New Holland's knowledge, the dealer allegedly facilitated kickback payments totaling $576,861 to Iraq on three U.N. contracts and an additional kickback of $312,198 on a fourth contract was authorized but was never paid.

The government did not allege bribery of any individual foreign governmental

KEY FACTS

Citation. *SEC v. Fiat S.p.A. et al.*, No. 1:08-cv-02211 (D.D.C. 2008).

Date Filed. December 23, 2008.

Country. Iraq.

Date of Conduct. 2000 – 2003.

Amount of the Value. $4.3 million.

Amount of Business Related to the Payment. $59,000,000.

Intermediary. Distributors; Agents.

Foreign official. Unnamed Iraqi officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Italy (Fiat); Netherlands (CNH Global).

Total Sanction. $10,809,142.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In re Fiat S.p.A. et al.*; *United States v. Iveco S.p.A.*; *United States v. CNH Italia S.p.A.*; *and United States v. CNH France S.A.*

Total Combined Sanction. $17,809,142.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

officials.

ENFORCEMENT

The SEC brought suit against Fiat and CNH Global for failure to maintain internal controls and for books-and-records violations. On December 22, 2008, without admitting or denying the allegations of the Complaint, Fiat and CNH Global entered into a consent agreement with the SEC. The agreement called for disgorgement of $5,309,632 in profits, prejudgment interest of $1,899,510, and a civil penalty of $3,600,000. In a related action, Fiat agreed to pay a criminal penalty of $7 million.

See DOJ Digest Number B-74.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

54. SEC V. ALBERT JACKSON STANLEY (S.D. TEX. 2008)

NATURE OF THE BUSINESS

Engineering, procurement, and construction ("EPC") contracts to build liquefied natural gas ("LNG") facilities on Bonny Island, Nigeria. Albert "Jack" Stanley ("Stanley") is a U.S. citizen and a former officer and director of Kellogg, Brown & Root, Inc. ("KBR"), which was a subsidiary of Halliburton during the relevant period.

INFLUENCE TO BE OBTAINED

KBR participated in a joint venture seeking EPC contracts to build LNG facilities on Bonny Island, Nigeria. Four EPC contracts were awarded to the joint venture by Nigeria LNG Ltd, the largest shareholder the Nigerian government owned Nigerian National Petroleum Corporation. Stanley and others allegedly approved entering into sham transactions with two agents to pay bribes to Nigerian government officials. From 1995 to 2004, the joint venture paid the two agents a total of $182 million. Stanley admitted that the agents' fees were to be used in part to bribe government officials. The payments were allegedly falsely characterized as "commissions" or "services" fees in the company's books and records, for example, in internal bid documents and in due diligence materials.

ENFORCEMENT

Without admitting or denying the allegations, Stanley consented to an entry of final judgment in the SEC case enjoining him from committing further FCPA violations on September 3, 2008. He agreed to cooperate with the SEC's ongoing investigations into the matter. Stanley also pleaded guilty in a related DOJ action on the same day, and was later sentenced to 30 months in prison and three years' supervised release, as well as $10.8 million in restitution set by the terms of Stanley's plea agreement.

On February 11, 2009, KBR and Halliburton settled related actions with the DOJ and SEC. Two alleged co conspirators, Wojciech Chodan and Jeffrey Tesler, were indicted on February 17, 2009, and they pleaded guilty on December 6, 2010 and March 11, 2011, respectively. They were sentenced in February 2012.

See DOJ Digest Numbers B 118, B 101, B 100, B 82, B 80, and B 70.
See SEC Digest Number D 74, D 72, and D 57.

KEY FACTS

Citation. *SEC v. Stanley*, No. 08 cv 2680 (S.D. Tex. 2008).

Date Filed. September 25, 2008.

Country. Nigeria.

Date of Conduct. 1995 – 2004.

Amount of the Value. $182 million.

Amount of Business Related to the Payment. $6 billion.

Intermediary. Two agents.

Foreign official. Officials of the Nigerian Government.

FCPA Statutory Provision. Anti-Bribery; Circumventing Internal Controls/Falsifying Books and Records.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. United States.

Total Sanction. $10.8 million.

Related Enforcement Actions. *United States v. Stanley*; *United States v. Kellogg Brown & Root LLC*; *United States v. Tesler et al.*; *SEC v. Stanley; SEC v. Halliburton Co., et al.*

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

53. SEC V. CON WAY INC. (D.D.C. 2008) IN THE MATTER OF CON WAY INC. (2008)

NATURE OF THE BUSINESS

Shipping logistics.

INFLUENCE TO BE OBTAINED

Emery Transnational, a former subsidiary of Con way Inc., based in the Philippines allegedly paid $244,000 in improper payments to officials of the Philippines Bureau of Customs and the Philippines Economic Zone area. These payments allegedly consisted of hundreds of small payments designed to induce officials to violate customs regulations, settle customs disputes, and reduce or not enforce legitimate fines.

In addition to the payments to customs officials, Emery also allegedly paid approximately $173,000 in cash to officials of state owned airlines that did business in the Philippines between 2000 and 2003 to induce the airline officials to either improperly reserve space for Emery Transnational on their airplanes (called "weight shipped") payments or to induce the airline officials to falsely under weigh the shipments, resulting in lower shipping charges (called "gain share" payments).

ENFORCEMENT

On August 27, 2008, without admitting or denying the allegations in the SEC's complaint, Con way agreed to pay a civil penalty of $300,000. On the same day, the Commission issued a settled cease and desist order that requires the company to cease and desist from causing or committing any future FCPA violations. Con way consented to the issuance of the order without admitting or denying any of the Commission's findings.

KEY FACTS

Citation. *SEC v. Con Way Inc.*, No. 1:08 cv 01478 (D.D.C. 2008); *In the Matter of Con way Inc.*, Admin. Proc. File No. 3 13148 (Aug. 27, 2008).

Date Filed. September 3, 2008.

Country. Philippines.

Date of Conduct. 2000 – 2003.

Amount of the Value. $417,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign official. Officials of the Philippines Bureau of Customs; officials at the Philippine Economic Zone Area; officials and fourteen state owned airlines.

FCPA Statutory Provision. Books-and-Records; Internal Controls; Circumventing Internal Controls/Falsifying Books and Records.

Other Statutory Provision. None.

Disposition. Consent Order; Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $300,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $300,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

52. IN THE MATTER OF FARO TECHNOLOGIES, INC. (2008)

NATURE OF THE BUSINESS

Procurement of contracts for the sale of portable computerized measurement devices and software for the manufacturing sector.

INFLUENCE TO BE OBTAINED

Faro Technologies, Inc. ("Faro"), a U.S. corporation, develops and markets portable computerized measurement devices and software for the manufacturing sector. Faro began direct sales in China in 2003 through a subsidiary, Faro Shanghai Co., Ltd. ("Faro China"). In 2004 and 2005, the then Country Sales Manager of Faro China made corrupt payments, authorized by the then Director of Asia Pacific Sales of Faro, directly to employees of Chinese state owned or controlled entities on several occasions. The payments were referred to internally as "referral fees" and generated approximately $4,500,000 in sales, from which Faro received a net profit of $1,411,306.

In 2005, the then Director of Asia Pacific Sales of Faro and the Country Sales Manager of Faro China decided to route the corrupt payments through third party intermediaries or "distributors" to "avoid exposure," according to internal e mails. Faro China funneled cash payments through these intermediaries from early 2005 until early 2006.

Faro falsely recorded corrupt payments as legitimate "selling expenses" in Faro's books and records. During the period of improper payments, Faro also failed to devise and maintain a system of internal controls to ensure compliance with the FCPA.

ENFORCEMENT

A cease and desist order was entered in the matter on June 5, 2008 under which Faro agreed to pay disgorgement of $1,411,306 and prejudgment interest of $439,637.32 and to retain an independent consultant and compliance monitor for a period of two years to review and evaluate Faro's internal controls, record keeping, and financial reporting and compliance.

See DOJ Digest Number B 69.
See SEC Digest Number D 65.
See Parallel Litigation Digest Numbers H A4 and H-F6.

KEY FACTS

Citation. *In the Matter of Faro Techs., Inc.*, Admin. Proc. File No. 3 13059 (June 5, 2008).

Date Filed. June 5, 2008.

Country. China.

Date of Conduct. 2004 – 2006.

Amount of the Value. $444,492.

Amount of Business Related to the Payment. $4.5 million.

Intermediary. Agent.

Foreign official. Employees of Chinese state owned or controlled entities.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $1,850,943.

Compliance Monitor/Reporting Requirements. Independent Consultant.

Related Enforcement Actions. *In re Faro Technologies, Inc.*

Total Combined Sanction. $2,950,943.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

51. SEC V. WILLBROS GROUP, INC., JASON STEPH, GERALD JANSEN, LLOYD BIGGERS, CARLOS GALVEZ (S.D. TEX. 2008)

NATURE OF THE BUSINESS

Willbros International Inc. ("Willbros International") is a Panamanian wholly owned subsidiary of Willbros Group, Inc. ("Willbros Group"), which is also a Panamanian corporation and engages in procurement of contracts for oil and gas construction projects.

Jason Steph, Lloyd Biggers, and Carlos Galvez are all U.S. citizens who formerly worked for Willbros International. Steph was the General Manager-Onshore in Nigeria for Willbros International for the relevant time period. Biggers was also assigned to Nigeria, and Galvez was employed in Bolivia. Gerald Jansen, a Canadian citizen, worked for Willbros International in Nigeria.

INFLUENCE TO BE OBTAINED

The SEC alleged that Willbros Group, through the actions of others acting on its behalf, engaged in multiple schemes to bribe foreign officials. The complaint alleges that, beginning by at least 2003, Willbros Group, via Willbros International and through the conduct of a former executive officer of Willbros International, Steph as General Manager – Onshore in Nigeria, and others, engaged in a scheme to pay over $6 million in bribes to Nigerian government officials and to employees of an operator of a joint venture majority owned by the Nigerian government to obtain significant contracts for construction of a natural gas pipeline. As part of this scheme, the SEC alleged that, in 2005, after Willbros began an internal investigation into allegations of corruption, Steph assisted in the payment of $1.85 million, mostly in cash, to satisfy a portion of these earlier commitments. It is alleged that consultants were also used to help obtain offshore oil platform repair projects for which Willbros promised Nigerian officials over $5 million in bribes. The SEC alleged that these contracts resulted in cumulative revenue for Willbros Group of approximately $487 million and net profits of approximately $8.9 million.

In addition to Steph, the SEC alleged that Jansen was responsible for submitting consultants' invoices for payment to Willbros Group headquarters in Houston, Texas. The complaint further alleged that Willbros Group, through acts by a former executive officer, Steph, Jansen, Biggers, and others, employed a long running scheme of using fabricated invoices to procure cash from the company's administrative headquarters in Houston to, among other things, bribe Nigerian tax and court officials, and also to fund, in part, the bribes paid in 2005.

The SEC also alleged that Willbros International, in a scheme orchestrated by its former President, paid officials of state owned PetroEcuador and its subsidiary PetroComercial to obtain contracts in Ecuador which generated revenues of approximately $3.4 million.

The SEC alleged that Willbros Group recorded all of the above payments as contract costs for legitimate consulting services or vendor goods and services.

The SEC also alleged that a subsidiary of Willbros International devised a scheme to buy false invoices through a consultant to fraudulently claim VAT tax credits to reduce tax liability, in violation of books and records requirements. The SEC alleged that Galvez, in his role as an accounting and administrative supervisor in Bolivia, used the fictitious invoices to further the scheme by, among other things, preparing false returns and related records.

KEY FACTS

Citation. *SEC v. Willbros Grp, Inc. et al.*, No. 8-cv-1494 (S.D. Tex. 2008).

Date Filed. May 27, 2008.

Country. Nigeria, Ecuador, Bolivia.

Date of Conduct: 2003 – 2005.

Amount of the Value. Approximately $11.7 million.

Amount of Business Related to the Payment. More than $490 million.

Intermediary. Consultants; Joint-venture.

Foreign official. Nigerian National Petroleum Corporation ("NNPC") officials; Officials of NNPC's wholly owned subsidiary National Petroleum Investment Management Services ("NAPIMS"); Officials of NNPC's majority owned joint venture operator, Shell Petroleum Development Company of Nigeria ("SPDC"); Senior officials in the executive branch of the Nigerian federal government and political parties in Nigeria; Officials of PetroEcuador and PetroComerical in Ecuador.

FCPA Statutory Provision.

- **Willbros**. Anti-Bribery; Circumventing Internal Controls/Falsifying Books and Records; Books-and-Records; Internal Controls.
- **Steph**. Anti-Bribery; Aiding and Abetting (Anti-Bribery; Books-and-Records; Internal Controls); Circumventing Internal Controls/Falsifying Books and Records.
- **Jansen**. Aiding and Abetting (Anti-Bribery; Books-and-Records; Internal Controls); Circumventing Internal Controls/Falsifying Books and Records.
- **Biggers**. Aiding and Abetting (Anti-Bribery; Books-and-Records); Circumventing Internal Controls/Falsifying Books and Records.
- **Galvez.** Aiding and Abetting (Books-and-Records; Internal Controls); Circumventing Internal Controls/Falsifying Books and Records.

Other Statutory Provision.

- **Willbros**. Securities Act Section 17(a) (Securities Fraud); Exchange Act Section 10(b) and Rule 10b-5 (Securities Fraud); Exchange Act Section 13(a) (Securities Reporting).

Disposition. Consent Order.

Defendant Jurisdictional Basis.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

For these alleged acts, the SEC charged Willbros Group and Galvez for violation of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934.

ENFORCEMENT

On May 14, 2008 the SEC filed a settled complaint against Willbros Group, Steph, Jansen, Biggers, and Galvez. The SEC alleged that Willbros Group violated the anti bribery provisions of the FCPA and the anti fraud, books and records, internal controls, and reporting provisions of the federal securities laws. The SEC alleged that Steph violated the bribery provisions of the FCPA and aided and abetted violations of the FCPA and books and records and internal control provisions of the federal securities laws. The SEC alleged that Jansen aided and abetted violations of the FCPA and books and records and internal control provisions of the federal securities laws. The SEC alleged that Biggers aided and abetted violations of the FCPA and the books and records provisions of the federal securities laws. The SEC alleged that Galvez illegally falsified books and records and aided and abetted violations of the anti fraud, books and records, internal controls, and reporting provisions of the federal securities laws.

Willbros Group did not admit or deny the Commission's allegations, but agreed to disgorge $8.9 million in profits and pay $1.4 million in prejudgment interest. The court ordered Willbros Group to pay the $10.3 million in installments of $2.575 million within 10 days of the entry of final judgment, and three $2.575 million payments with post judgment interest annually for three years from entry of the final judgment. Jansen consented to an entry of judgment and did not admit or deny the Commission's allegations. He received a $30,000 penalty. Biggers consented to an entry of judgment and did not admit or deny the Commission's allegations. He received no penalty. Galvez consented to an entry of judgment and did not admit or deny the Commission's allegations. He received a $35,000 penalty. All consented to being permanently enjoined from future violation of the provisions alleged. Final judgment with respect to Willbros Group, Jansen, Biggers, and Galvez was entered on May 14, 2008, as was an interlocutory judgment against Steph effecting an injunction against any future violation. The court stayed determination of his penalty, if any, pending resolution of the criminal matter against him. On January 28, 2010, Steph was sentenced in the criminal matter to 15 months of imprisonment.

In a related action, Willbros Group and Willbros International entered into a three year deferred prosecution agreement with the DOJ, pursuant to which they agreed, jointly and severally, to a fine of $22 million

See DOJ Digest Numbers B 76, B 67, B 54, and B 45.
See SEC Digest Number D 28.
See Parallel Litigation Digest Number H A8.

- **Willbros**. Issuer.
- **Steph**. Agent of Issuer.
- **Jansen**. Agent of Issuer.
- **Biggers**. Agent of Issuer.
- **Galvez**. Agent of Issuer.

Defendant's Citizenship.

- **Willbros**. Panama.
- **Steph**. United States.
- **Jansen**. Canada.
- **Biggers**. United States.
- **Galvez**. United States.

Total Sanction.

- **Willbros**. $10.3 million.
- **Jansen**. $30,000.
- **Galvez**. $35,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Willbros Grp., Inc., et al.*; *United States v. Steph*; *United States v. Brown*; *SEC v. Brown.*

Total Combined Sanction. $32.3 million.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

50. SEC V. AB VOLVO (D.D.C. 2008)

NATURE OF THE BUSINESS

AB Volvo is a Swedish company that provides commercial transport solutions, including trucks, buses, and construction equipment. Through the relevant period, AB Volvo's American Depository Receipts were registered with the SEC and traded on the NASDAQ exchange.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil for Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value.

From approximately 1999 through 2003, AB Volvo allegedly violated the books-and-records and internal controls provisions of the FCPA when two of its subsidiaries provided the Iraqi government with approximately $6,206,331 in kickback payments and authorized additional payments of $2,388,419. One of AB Volvo subsidiaries, Renault Trucks SAS ("Renault"), contracted to provide vehicles to various Iraqi ministries. In performing these contracts, Renault hired a Swiss "bodybuilder" to tailor the vehicles to the buyer's specifications. Renault provided the "bodybuilder" with additional payments to be passed on to the Iraqi government. The purpose of these payments was to procure additional contracts for Renault. AB Volvo's other subsidiary, Volvo Construction Equipment International ("Volvo Construction"), also contracted to sell vehicles to various Iraqi ministries. Volvo Construction sold these vehicles through a Jordanian consulting firm and a Tunisian distributor. Large kickbacks were included in the contract prices to procure the contract. Volvo Construction also made additional illicit payments, including providing money to purchase a car for the Iraqi Ministry of the Interior.

The government did not allege bribery of any individual foreign governmental officials.

ENFORCEMENT

The SEC brought suit against Volvo for failure to maintain internal controls and for books and records violations. On March 20, 2008, without admitting or denying the allegations of the Complaint, the parent company, AB Volvo, entered into a consent agreement with the SEC. The agreement called for disgorgement of $7,299,208, prejudgment interest of $1,303,441, a civil penalty of $4,000,000, and Volvo's agreement to be permanently restrained and enjoined from violations of the FCPA's books and records provisions. Separately, AB Volvo entered into a deferred prosecution agreement with the DOJ, agreeing to pay a fine totaling $7 million for FCPA violations by Volvo Construction and Renault. In June 2011, the court granted the DOJ's motion to dismiss the information against AB Volvo because it had complied with the terms of the deferred prosecution agreement.

In March 2009, three unnamed executives at Volvo Construction were criminally charged by Swedish prosecutors for their involvement in the bribery

KEY FACTS

Citation. *SEC v. AB Volvo*, No. 1:08 cv 00473 (D.D.C. 2008).

Date Filed. March 26, 2008.

Country. Iraq.

Date of Conduct. 1999 – 2003.

Amount of the Value. $8,594,750.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Distributors; Agents.

Foreign official. None.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Sweden.

Total Sanction. $12,602,649.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. AB Volvo et al.*

Total Combined Sanction. $19,602,649.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

scandal. They could face jail sentences if convicted. *See* DOJ Digest Number B 65. *See* Ongoing Investigation Number F 2.	

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

49. SEC V. FLOWSERVE CORP. (D.D.C. 2008)

NATURE OF THE BUSINESS

Flowserve Corporation, a New York corporation, sells pumps, valves, seals, and related services to the power, oil, gas, and chemical industries. Its common stock is registered with the SEC pursuant to Section 12(b) of the Exchange Act.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil for Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value.

Flowserve was involved in the U.N. Oil for Food Program through two if its foreign subsidiaries: Flowserve Pompes SAS, a French subsidiary, and Flowserve B.V., a Dutch subsidiary. These two foreign subsidiaries allegedly entered into 20 contracts in which kickback payments to the Iraqi government were either made or authorized. In total, payments of $646,488 were made through two Jordanian agents with Flowserve Pompes SAS making payments totaling $604,651, and Flowserve B.V. making payments totaling $41,836. According to the SEC, Flowserve Pompes authorized an additional $173,758 in payments which were never made.

ENFORCEMENT

The SEC alleged in its complaint, filed in February 2008, that Flowserve either knew of or was reckless in not knowing of the kickback payments being made by Flowserve Pompes and Flowserve B.V., which Flowserve knew were illegal under the U.N. Oil for Food Program. The complaint further alleged that Flowserve violated the books and records provision of the FCPA by failing to properly account for these payments and that Flowserve violated the internal controls provision of the FCPA by failing to implement internal controls sufficient to prevent this type of misconduct.

Without admitting or denying the allegations contained in the SEC's complaint, Flowserve consented to the entry of a final judgment entered March 18, 2008 enjoining it from violating the FCPA, and mandating that it disgorge $2,720,861, plus $853,364 in prejudgment interest, and pay a civil penalty of $3,000,000. In a related action, Flowserve entered into a deferred prosecution agreement with the DOJ under which it agreed to pay a penalty of $4 million.

See DOJ Digest Number D 64.
See Ongoing Investigation Number F-57 and F 2.

KEY FACTS

Citation. *United States v. Flowserve Corp.*, No. 08-cv-00294 (D.D.C. 2008).

Date Filed. February 21, 2008.

Country. Iraq.

Date of Conduct. 2001 – 2003.

Amount of the Value. $820,246.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Agents.

Foreign official. Not Stated.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $6,574,225.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Flowserve Corp.*; *United States v. Flowserve Corp.*

Total Combined Sanction. $10,574,225.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

48. SEC V. WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORP. (E.D. PA. 2008) IN THE MATTER OF WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION (2008)

NATURE OF THE BUSINESS

Westinghouse Air Brake Technologies Corporation ("Wabtec), a Delaware corporation, manufactures brake subsystems and related products for locomotives, freight cars, and passenger vehicles. Its common stock is registered with the SEC pursuant to Section 12(b) of the Exchange Act.

INFLUENCE TO BE OBTAINED

From 2001 to 2005, Pioneer Friction Limited ("Pioneer"), an Indian subsidiary of Westinghouse, and its employees and agents made various payments to officials of the Indian Railway Board ("IRB"), a government agency which is part of India's Ministry of Railroads, to have its competitive bids for government business granted or considered. In connection with the improper payments, Wabtec failed to keep accurate books and records and failed to devise and maintain effective internal accounting controls.

ENFORCEMENT

In February 2008, without admitting or denying the allegations in the SEC's complaint, Wabtec consented to the entry of a final judgment and paid a $87,000 civil penalty. In a separate proceeding, Wabtec consented to the entry of a cease-and-desist order detailing the same allegations and requiring disgorgement of $259,000 and prejudgment interest of $29,351 and the appointment of a compliance consultant.

See DOJ Digest Number B 63.

KEY FACTS

Citation. *SEC v. Westinghouse Air Brake Techs. Corp.*, No. 08 cv 706 (E.D. Pa. 2008); *In the Matter of Westinghouse Air Brake Techs. Corp.*, Admin. Proc. File No. 3 12957 (Feb. 14, 2008).

Date Filed. February 15, 2008.

Country. India.

Date of Conduct. 2001 – 2005.

Amount of the Value. $137,400.

Amount of Business Related to the Payment. $259,000.

Intermediary. Agents.

Foreign official. Officials of the Indian Railway Board.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order; Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $375,351.

Compliance Monitor/Reporting Requirements. Independent Compliance Monitor.

Related Enforcement Actions. *In re Westinghouse Air Brake Techs. Corp.*

Total Combined Sanction. $675,351.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

47. IN THE MATTER OF IMMUCOR, INC. AND GIOACCHINO DE CHIRICO (SEPTEMBER 27, 2007) SEC V. GIOACCHINO DE CHIRICO (N.D. GA 2007)

NATURE OF THE BUSINESS

Immucor, Inc., a U.S. corporation, is a medical equipment company specializing in products used in the pre transfusion diagnostics of human blood. Gioacchino De Chirico, an Italian citizen and legal resident of the U.S., was the President and Chief Operating Officer of Immucor. As of September 2009, he continues to serve as President and CEO.

INFLUENCE TO BE OBTAINED

In January 2002, Immucor Italia S.p.A., a wholly owned subsidiary of Immucor, sold blood testing units to Niguarda Hospital, a public hospital in Milan, Italy. The associated contract included additional services that Immucor would provide to the hospital over time to assist in the usage of the equipment. In 2003, De Chirico allegedly arranged for the director of Niguarda Hospital to chair a medical conference in Italy on the topic of an Immucor product and agreed to compensate the hospital director for his role at the conference in a method that would enable him to avoid paying income taxes.

According to the SEC, in 2004, Immucor Italia, acting through a sales agent, offered the hospital director a payment of 13,500 Euros to influence his decision to award a contract. De Chirico allegedly authorized Immucor's German subsidiary to pay 13,500 Euros to the hospital director through a Swiss bank account. Immucor's German subsidiary allegedly categorized the 2004 payment as a payment for consulting services, but no consulting services were rendered and the payment was, in fact, made in exchange for preferential treatment from the hospital director in selecting suppliers.

ENFORCEMENT

On September 27, 2007, Immucor and De Chirico consented to the SEC issuing a cease-and-desist order ordering them to cease from committing or causing any further violations of the books and records or internal controls provisions of the FCPA. In addition, without admitting or denying the allegations in the complaint, De Chirico consented to the district court of the Northern District of Georgia entering a final judgment against him on October 2, 2007 requiring him to pay a $30,000 civil penalty.

See Parallel Litigation Digest Number H A6.

KEY FACTS

Citation. *In the Matter of Immucor, Inc. & Gioacchino de Chirico*, Admin. Proc. File No. 3 12846 (Sept. 27, 2007); *SEC v. De Chirico*, No. 1:07 cv 2367 (N.D. Ga 2007).

Date Filed. October 2, 2007.

Country. Italy.

Date of Conduct. 2004.

Amount of the Value. $16,119 (€13,500).

Amount of Business Related to the Payment. Not Stated.

Intermediary. Agent.

Foreign official. The director of a public hospital in Milan, Italy.

FCPA Statutory Provision.

- **Immucor**. Anti-Bribery; Books-and-Records; Internal Controls.
- **De Chirico**. Circumventing Internal Controls/Falsifying Books and Records; Aiding and Abetting (Books-and-Records; Internal Controls).

Other Statutory Provision. None.

Disposition.

- **Immucor**. Cease-and-Desist Order.
- **De Chirico**. Consent Order; Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer (Immucor); Agent of Issuer (De Chirico).

Defendant's Citizenship.

- **Immucor**. United States.
- **De Chirico**. Italy.

Total Sanction. $30,000 (De Chirico).

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $30,000 (De Chirico).

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

46. SEC V. LUCENT TECHNOLOGIES INC. (D.D.C. 2007)

NATURE OF THE BUSINESS

Lucent Technologies Inc. ("Lucent"), a U.S. corporation, merged with Alcatel SA in 2006, forming a new entity, Alcatel Lucent, incorporated in France. Lucent provides communications networks for telecommunications service providers, and its common stock was registered with the SEC pursuant to Section 12(b) of the Exchange Act during the relevant time.

INFLUENCE TO BE OBTAINED

Between at least 2000 and 2003, Lucent provided approximately 315 trips to the United States to over 1,000 Chinese government officials. The trips were primarily, and sometimes wholly, for sight seeing and leisure rather than business purposes, and were booked improperly in Lucent's books and records, for example as "factory inspections" in locations where no factory existed or "services rendered – other services" (where no business related services were rendered). Lucent's internal controls provided no mechanism for assessing whether any of the trips violated the FCPA. These trips and educational expenses were intended to procure contracts for the provision of communications networks systems worth at least $3 billion.

ENFORCEMENT

Without admitting or denying the allegations in the Commission's complaint, Lucent consented to a final judgment on January 5, 2008, enjoining it from further violations of the FCPA, to implement an FCPA compliance protocol, and to pay a civil penalty of $1.5 million. Lucent also entered into a two year non prosecution agreement with the DOJ, admitting to the alleged conduct and agreeing to pay a $1 million penalty and to adopt new, or modify existing, internal controls.

See DOJ Digest Numbers B 115, B 58, and B 46.
See SEC Digest Number D 89.

KEY FACTS

Citation. *SEC v. Lucent Techs. Inc.*, No. 07 cv 02301 (D.D.C. 2007).

Date Filed. January 7, 2008.

Country. China.

Date of Conduct. 2000 – 2003.

Amount of the Value. Over $10 million.

Amount of Business Related to the Payment. Approximately $ 3 4 billion.

Intermediary. Not Stated.

Foreign official. Chinese officials employed at state owned or state controlled telecommunications enterprises.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $1,500,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In re Lucent Techs. Inc.; United States v. Sapsizian et al.*

Total Combined Sanction. $2,500,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

45. SEC V. INGERSOLL RAND CO. LTD. (D.D.C. 2007)

NATURE OF THE BUSINESS

Ingersoll Rand Co. Ltd. ("Ingersoll Rand"), a Bermuda corporation, engaged in procurement of humanitarian contracts to sell industrial equipment to Iraqi government entities under the United Nations Oil for Food Program. Ingersoll-Rand provides industrial equipment and services to transport food and perishables and secure properties, and its common stock is registered with the SEC pursuant to Section 12(b) of the Exchange Act.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil for Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value.

The SEC complaint alleges that, from October 2000 to August 2003, four wholly owned subsidiaries of Ingersoll Rand (ABG Allgemeine Baumaschinen Gesellschaft mbH; Ingersoll Rand Italiana, SpA; Thermo King Ireland Limited; and Ingersoll Rand Benelux, N.V.) entered into twelve contracts and either made, or agreed to make, "after sales service fees" payments to secure or obtain contracts to sell industrial equipment to the Iraqi government and were improperly recorded in the company's books and records. The Italian subsidiary, Ingersoll Rand Italiana, also allegedly financed leisure travel and entertainment for Iraqi government officials.

ENFORCEMENT

Without admitting or denying the allegations in the Commission's complaint, Ingersoll Rand consented to the entry of a final judgment on October 31, 2007. Ingersoll Rand agreed to a cease-and-desist order and to pay disgorgement of profits of $1,710,034 plus prejudgment interest of $560,953, and a further civil penalty of $1,950,000, and to retain a compliance monitor. Ingersoll Rand also entered into a three year deferred prosecution agreement with the DOJ, agreeing to pay a monetary penalty of $2.5 million, accept responsibility for the alleged misconduct, continue to cooperate with the DOJ, adopt an FCPA compliance program as well as a set of internal controls designed to prevent future violations, and retain an independent compliance expert for a period of three years.

See DOJ Digest Number B 57.
See Ongoing Investigation Number F 2.

KEY FACTS

Citation. *SEC v. Ingersoll Rand Co.*, No. 07 cv 1955 (D.D.C. 2007).

Date Filed. October 31, 2007.

Country. Iraq.

Date of Conduct. 2000 – 2003.

Amount of the Value. $1,515,845.

Amount of Business Related to the Payment. $2.27 million in profits.

Intermediary. Distributor.

Foreign official. Unspecified Iraqi government officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Bermuda.

Total Sanction. $4,220,987.

Compliance Monitor/Reporting Requirements. Independent Compliance Monitor.

Related Enforcement Actions. *United States v. Ingersoll-Rand Co. Ltd.*; *United States v. Ingersoll Rand Italiana SpA*; *United States v. Thermo King Ir. Ltd.*

Total Combined Sanction. $6,720,987.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

44. SEC V. AKZO NOBEL N.V. (D.D.C. 2007)

NATURE OF THE BUSINESS

Akzo Nobel N.V., a Netherlands based pharmaceutical company, manufactures human and animal health care products, decorative paints, and other chemicals.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil for Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value.

The SEC's complaint alleges that, between 2000 and 2002, two Akzo Nobel subsidiaries authorized and made $279,491 in kickback payments to the Iraqi government in connection with their sales of humanitarian goods to Iraq under the U.N. Oil for Food Program. The payments were in the form of kickbacks, characterized as "after sales services fees," and were usually 10% of the contract price. The kickback payments were masked by inflating the contract price and the commissions paid to certain agents and were improperly recorded in the company's books and records as commission payments.

The government did not allege bribery of any individual foreign governmental officials.

ENFORCEMENT

Without admitting or denying the allegations in the SEC's complaint, Akzo Nobel consented to the entry of a final judgment permanently enjoining it from future violations and ordering disgorgement and prejudgment interest of $2,231,513, as well as a civil penalty of $750,000.

The company also entered into a non prosecution agreement with the DOJ, which required the company to reach a resolution with the Dutch Public Prosecutor under which it would pay a criminal fine of no less than €381,602 in the Netherlands. According to the agreement, if Akzo Nobel fails to reach a resolution with the Dutch Public Prosecutor within 180 days or pays less than €381,602, it will pay the difference between the amount paid to the Dutch authorities and $800,000 to the U.S. Treasury.

See DOJ Digest Number B 60.

KEY FACTS

Citation. *SEC v. Akzo Nobel N.V.*, No. 07 cv 02293 (D.D.C. 2007).

Date Filed. January 4, 2008.

Country. Iraq.

Date of Conduct. 2000 – 2003.

Amount of the Value. $279,491.

Amount of Business Related to the Payment. $1,647,363 in profits.

Intermediary. None.

Foreign official. Unnamed Iraqi officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Netherlands.

Total Sanction. $2,981,513.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In re Akzo Nobel N.V.*

Total Combined Sanction. $3,781,513.[104]

[104] Sanction to be reduced by the amount of the criminal fine paid to the Dutch Public Prosecutor.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

43. SEC V. ROBERT W. PHILIP (D. OR. 2008)

NATURE OF THE BUSINESS

Robert Philip is the former President, CEO, and Chairman of Schnitzer Steel Industries, a U.S. corporation that sells scrap metal to steel mills. Schnitzer's common stock was registered with the SEC and listed on the NASDAQ National Market.

INFLUENCE TO BE OBTAINED

The SEC's complaint alleges that, from at least 1999 through 2004, Philip authorized payments of cash bribes and other gifts to managers of government owned steel mills in China to induce them to purchase scrap metal from Schnitzer. Philip also allegedly authorized payments to managers of privately owned steel mills in both China and South Korea. The payments were allegedly made in the form of cash or gifts.

ENFORCEMENT

On December 13, 2007, the SEC brought a settled civil suit charging Philip with authorizing the payment of the bribes, aiding and abetting Schnitzer's failure to keep accurate books and records, and failing to implement internal controls. The complaint alleges that the profits from the illicit payments caused Philip to receive "excess bonus compensation." Without admitting or denying the allegations, Philip settled the matter by agreeing to disgorge $169,864 in bonuses and pay $16,537 in prejudgment interest and pay a civil penalty of $75,000, in addition to agreeing to an order enjoining him from future violations.

See DOJ Digest Numbers B 51 and B 44.
See SEC Digest Numbers D 37 and D 30.

KEY FACTS

Citation. *SEC v. Philip*, No. 07 cv 1836 (D. Or. 2008).

Date Filed. February 19, 2008.

Country. South Korea, China.

Date of Conduct. 1999 – 2004.

Amount of the Value. $205,000 (foreign officials) and $1.7 million (private parties).

Amount of Business Related to the Payment. $500 million.

Intermediary. Not Stated.

Foreign official. Managers of private and government owned steel mills.

FCPA Statutory Provision. Anti-Bribery; Aiding and Abetting (Books-and-Records; Internal Controls); Circumventing Internal Controls/Falsifying Books and Records.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. Not Stated.

Total Sanction. $261,400.

Related Enforcement Actions. *In the Matter of Schnitzer Steel Indus., Inc.; United States v. SSI Int'l Far East, Ltd.*; *In re Schnitzer Steel Industries Inc.*; *SEC v. Wooh.*

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

42. SEC V. CHEVRON CORP. (S.D.N.Y. 2007)

NATURE OF THE BUSINESS

Chevron Corporation, a Delaware corporation, produces, processes, markets, and transports of crude oil, natural gas, and petroleum products. Its common stock is registered with the SEC pursuant to Section 12(b) of the Exchange Act and trades on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil for Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value.

According to the SEC's complaint, from approximately April 2001 through May 2002, Chevron allegedly purchased 78 million barrels of crude oil from Iraq pursuant to 36 contracts with third parties, paying premiums to the third parties that, in turn, were paid to Iraq's State Oil Marketing Organization as illegal surcharges, paid to bank accounts in Jordan and Lebanon controlled by the Iraqi government and in the names of Iraqi government officials and other individuals. The complaint alleges that Chevron improperly recorded the true nature of the payments.

The government did not allege bribery of any individual foreign governmental officials.

ENFORCEMENT

On November 14, 2007, the SEC filed a settled complaint against Chevron. Without admitting or denying the allegations, Chevron consented to the entry of an injunction as well as to disgorgement of $25 million ($20 million to the U.S. Attorney's Office for the Southern District of New York and $5 million to the New York County District Attorney's Office) and a civil penalty of $3 million.

Chevron also agreed to pay the Office of Foreign Asset Controls of the U.S. Department of Treasury a penalty of $2 million, and entered into a two year non prosecution agreement with the U.S. Attorney's Office for the Southern District of New York and the District Attorney of New York County, New York.

See DOJ Digest Number B 59.
See Parallel Litigation Digest Number H F8.
See Ongoing Investigation Number F 1.

KEY FACTS

Citation. *SEC v. Chevron Corp.*, No. 07 cv 10299 (S.D.N.Y. 2007).

Date Filed. November 20, 2007.

Country. Iraq.

Date of Conduct. 2001 – 2002.

Amount of the Value. Approximately $20 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Oil trading companies.

Foreign official. Unnamed Iraqi officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $28,000,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In re Chevron Corp.*

Total Combined Sanction. $30,000,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

41. SEC V. YORK INT'L CORP. (D.D.C. 2007)

NATURE OF THE BUSINESS

Procurement of contracts to supply air compressors, air conditioners, air cooled package units and spare parts to governmental entities in Iraq, the United Arab Emirates, and several other countries by York International Corporation ("York International"), a U.S. corporation, which is a major global supplier of heating, ventilation, air conditioning and refrigeration products. York International is now owned by U.S. based Johnson Controls. York International maintained subsidiary entities around the world, including York Air Conditioning and Refrigeration FZE ("York FZE") in Dubai and York Air Conditioning and Refrigeration, Inc. ("York Inc."), a Delaware corporation.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil for Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value. From 2000 to 2003, York FZE allegedly used a Jordanian company as an intermediary to make a series of indirect kickback payments to the Iraqi government in exchange for receiving contracts to supply its products to various Iraqi ministries and governmental departments. In 2003 to 2004, York Inc. allegedly used one of its own employees to make payments to an intermediary, which is suspected of passing along the payments to governmental appointees responsible for managing the construction of a luxury hotel and convention complex. From September 2001 through 2006, York International, through various subsidiaries, allegedly made hundreds of payments to secure government and private contracts in various countries.

ENFORCEMENT

On October 1, 2007, the SEC filed a complaint alleging that York International violated the anti bribery and books and records provisions of the FCPA and failed to maintain adequate internal controls. Without admitting or denying the allegations of the complaint, York International consented to the entry of a final judgment against it permanently enjoining it from future violations and ordering disgorgement of $8,949,132 in profits, plus $1,083,748 in interest, and a $2,000,000 civil penalty. York International also was ordered to retain an independent compliance monitor. The SEC noted that it took into consideration the company's internal remedial actions, cooperation and the fact that it self reported these alleged violations. The company also separately entered into a deferred prosecution agreement with the DOJ, under which it agreed to pay a $10 million fine and to submit to the appointment of an independent monitor for its compliance program. On October 1, 2010, the DOJ dismissed the criminal information on the basis that York International had fully complied with all of its obligations under the deferred prosecution agreement.

See DOJ Digest Number B 56.

KEY FACTS

Citation. *SEC v. York Int'l Corp.*, 07 cv 1750 (D.D.C. 2007).

Date Filed. October 02, 2007.

Country. Iraq, United Arab Emirates, India, China, Nigeria, Other unspecified locations in the Middle East and Europe.

Date of Conduct. 2000 – 2006.

Amount of the Value. Approximately $15 million.

Amount of Business Related to the Payment. Over $12.6 million.

Intermediary. Unnamed intermediaries.

Foreign official. UAE government appointees and officials.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $12,032,880.

Compliance Monitor/Reporting Requirements. Independent Compliance Monitor.

Related Enforcement Actions. *United States v. York Int'l Corp.*

Total Combined Sanction. $22,032,880.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

40. SEC V. MONTY FU (D.D.C. 2007)

NATURE OF THE BUSINESS

The sale of radiopharmaceutical products to and the referral of patients to medical imaging centers by state owned hospitals. Monty Fu was the founder and former CEO and Chairman of Syncor International Corp. ("Syncor"). Syncor's subsidiary, Syncor Taiwan, sells radiopharmaceuticals and runs medical imaging centers in Taiwan.

INFLUENCE TO BE OBTAINED

From 1985 through 2002, Syncor Taiwan allegedly made payments to doctors at private and public hospitals in Taiwan for the purpose of influencing them to purchase or prescribe radiopharmaceutical products and, after 1997, to influence them to refer patients to medical imaging centers owned and operated by Syncor Taiwan.

ENFORCEMENT

Without admitting or denying the allegations, Fu has agreed to settle the Commission's charges by consenting to the entry of a final judgment permanently enjoining him from future violations and ordering him to pay a civil penalty of $75,000.

In a related action, Syncor settled with the SEC and agreed to pay a civil penalty of $500,000. Syncor also pleaded guilty to the criminal charges filed against it, and agreed to pay a fine of $2 million.

See DOJ Digest Number B 28.
See SEC Digest Number D 15.
See Parallel Litigation Digest Numbers H A2 and H-B1.

KEY FACTS

Citation. *SEC. v. Fu*, No. 07 cv 01735 (D.D.C. 2007).

Date Filed. October 9, 2008.

Country. Taiwan.

Date of Conduct. 1985 – 2002.

Amount of the Value. Total annual payments averaged $30,000 per year from 1989 to at least 1993, increasing to average over $170,000 per year from at least 1997 through the first half of 2002.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Not Stated.

Foreign official. Doctors at state owned hospitals in Taiwan.

FCPA Statutory Provision. Books-and-Records; Internal Controls; Aiding and Abetting (Internal Controls).

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. Not Stated.

Total Sanction. $75,000.

Related Enforcement Actions. *SEC v. Syncor Int'l Corp.*; *United States v. Syncor Taiwan, Inc.*

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

39. IN THE MATTER OF BRISTOW GROUP INC. (2007)

NATURE OF THE BUSINESS

Reducing annual state expatriate employment taxes in Nigeria. Bristow Group Inc. ("Bristow"), a U.S. company, provides helicopter transportation services and operates oil and gas production facilities.

INFLUENCE TO BE OBTAINED

According to the cease and desist order entered with the SEC, Bristow, through its wholly owned U.S. subsidiary, AirLog International, Ltd. ("AirLog") and a Nigerian entity partially owned by Bristow, Pan African Airlines Nigeria Ltd. ("PAAN"), made payments in 2003 and 2004 to two state tax officials to reduce the annual expatriate employment taxes due to the state governments by PAAN. At the end of each year, the state government assessed taxes against PAAN, which negotiated with the state tax officials to reduce the tax in exchange for payments to the tax officials. The state government then issued new tax demand letters reflecting the lower tax amount without the separate payments. By this process, PAAN reduced its tax payment from $1,358,940 to $121,700. Taking into account the $423,300 payment, the company saved $873,940. The payments to the officials as well as the tax payments were booked in Bristow's books and records as legitimate "payroll tax expenses." During the same time period, additional Bristow affiliates, not listed in the U.S. or organized under U.S. laws, made similar payments to Nigerian tax officials.

ENFORCEMENT

Bristow consented to the entry of an SEC cease and desist order finding that the company improperly accounted for the cash payments to the government officials, inputting them in their books and records as legitimate tax expenses, and had insufficient internal controls. In addition, the company also underreported its payroll expenses to the Nigerian government and, as a result, improperly reported its payroll expenses in its books and records. As the financials of the additional Bristow affiliates not subject to the FCPA were consolidated with Bristow's financials, the order also stated that the company's books and records were inaccurate with respect to payments made by those entities. However, the SEC did not impose any fine or monetary sanction.

KEY FACTS

Citation. *In the Matter of Bristow Grp. Inc.*, Admin. Proc. File No. 3 12833 (Sept. 26, 2007).

Date Filed. September 26, 2007.

Country. Nigeria.

Date of Conduct. 2003 – 2004.

Amount of the Value. $423,000.

Amount of Business Related to the Payment. Savings of $873,940.

Intermediary. None.

Foreign official. Two state tax officials in the Delta and Lagos states of Nigeria.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. None.

Compliance Monitor/Reporting Requirements. Reporting Requirements.

Related Enforcement Actions. None.

Total Combined Sanction. None.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

38. SEC V. CHANDRAMOWLI SRINIVASAN (D.D.C. 2007)

NATURE OF THE BUSINESS

Electronic Data Systems Corporation ("Electronic Data"), a U.S. corporation, provides management consulting services. Chandramowli Srinivasan was the founder and president of A.T. Kearney Ltd. – India ("Kearney Ltd."), Electronic Data's India based subsidiary. During the relevant period of time, Electronic Data's shares were registered with the SEC pursuant to Section 12(b) of the Exchange Act.

INFLUENCE TO BE OBTAINED

Srinivasan allegedly made improper payments to prevent Kearney Ltd.'s two primary customers from canceling their existing contracts with Kearney Ltd. and to award additional contracts to Kearney Ltd. These payments were allegedly partially effected by means of phony invoices prepared by Kearney Ltd.'s outside accountant.

ENFORCEMENT

On September 25, 2007, the SEC filed a settled civil action against Srinivasan, alleging violations of the FCPA's anti bribery and internal controls provisions. Without admitting or denying the allegations, Srinivasan consented to the entry of final judgment against him enjoining future violations, and agreed to pay a penalty of $70,000. The SEC also brought a related administrative action against Electronic Data under the '34 Act on September 25, 2007, in which Electronic Data consented to a cease and desist order and agreed to pay $490,902 in disgorgement.

KEY FACTS

Citation. *SEC v. Srinivasan*, 07 cv 1699 (D.D.C. 2007).

Date Filed. September 30, 2016.

Country. India.

Date of Conduct. 2001 – 2003.

Amount of the Value. Over $720,000.

Amount of Business Related to the Payment. Over $7.5 million.

Intermediary. Not Stated.

Foreign official. Senior employees of two Indian energy companies that were partly government owned.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. Not Stated.

Total Sanction. $70,000.

Related Enforcement Actions. *In the Matter of Elec. Data Sys. Corp.*

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

37. SEC V. SI CHAN WOOH (D. OR. 2007)

NATURE OF THE BUSINESS

Si Chan Wooh was the Executive Vice President and head of SSI International Inc., a U.S.-based subsidiary of Schnitzer Steel Industries, a U.S. corporation that sells scrap metal to steel mills. Schnitzer's common stock was registered with the SEC and listed on the NASDAQ National Market.

INFLUENCE TO BE OBTAINED

From 1995 to August 2004, Wooh allegedly conspired with Schnitzer Steel, SSI, and SSI International Far East, Ltd. (a South Korea based wholly owned subsidiary of Schnitzer managed by SSI) to make payments to officers and employees of government owned customers in China and to managers of privately owned customers in China and South Korea to induce them to purchase scrap metal. The payments were made to foreign officials primarily in the form of commissions, refunds, and gratuities via off book foreign bank accounts.

ENFORCEMENT

On June 29, 2007, the SEC brought a complaint against Wooh, alleging violations of the anti bribery provisions of the FCPA and aiding and abetting violations of the books and records provisions of the FCPA. On that same day, without admitting or denying the allegations of the SEC's complaint, Wooh agreed to pay approximately $40,000 in disgorgement, interest, and civil penalties. Wooh also pleaded guilty to violating the FCPA in a related criminal prosecution brought by the DOJ. On October 17, 2011, the court granted a motion made by the DOJ to dismiss the criminal information against Wooh.

See DOJ Digest Numbers B 51 and B 44.
See SEC Digest Numbers D 37 and D 30.

KEY FACTS

Citation. *SEC v. Wooh*, No. 07 cv 957 (D. Or. 2007).

Date Filed. July 24, 2007.

Country. China, South Korea.

Date of Conduct. 1995 – 2004.

Amount of the Value. Approximately $205,000.

Amount of Business Related to the Payment. Approximately gross revenue of $96 million and net profits of approximately $6.3 million.

Intermediary. None Stated.

Foreign official. Managers of government and private customers.

FCPA Statutory Provision. Anti-Bribery; Aiding and Abetting (Books-and-Records).

Other Statutory Provision. None.

Disposition. Consent Order.

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. Not Stated.

Total Sanction. $41,131.

Related Enforcement Actions. *In the Matter of Schnitzer Steel Indus., Inc.*; *United States v. SSI Int'l Far East, Ltd.*; *In re Schnitzer Steel Industries Inc.*; *SEC v. Philip.*

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

36. SEC V. DELTA & PINE LAND CO. & TURK DELTAPINE, INC. (D.D.C. 2007) IN THE MATTER OF DELTA & PINE LAND CO. & TURK DELTAPINE, INC. (2007)

NATURE OF THE BUSINESS

Delta & Pine Land Company ("Delta"), a U.S. corporation, is engaged in the breeding, production, and marketing of cottonseed. Turk Deltapine, Inc. ("Turk") is a wholly owned, U.S. based subsidiary of Delta engaged in the production and sale of cottonseed in Turkey. Delta was acquired by Monsanto Company on June 1, 2007.

INFLUENCE TO BE OBTAINED

Turk made the payments to secure governmental reports and certifications that were necessary for it to operate in Turkey.

ENFORCEMENT

On July 25, 2007, the SEC filed a civil complaint against Delta and Turk, alleging both had violated the FCPA. Without admitting or denying the allegations of the complaint, Delta and Turk consented to the entry of a final judgment requiring a $300,000 penalty to be paid jointly and severally by them. On July 26, 2007, the SEC also filed a cease and desist order against Delta and Turk, finding that Delta had violated the books and records and internal controls provisions of the FCPA and that Turk had violated the anti bribery provisions of the FCPA. The cease and desist order required Delta to retain an independent consultant to review and recommend improvements to the company's FCPA compliance policies and procedures. Delta and Turk neither admitted nor denied the allegations of the SEC's cease and desist order.

KEY FACTS

Citation. *SEC v. Delta & Pine Land Co. et al.*, No. 07 cv 1352 (D.D.C. 2007); *In the Matter of Delta & Pine Land Co. & Turk Deltapine, Inc.*, Admin Proc. File No. 3-12712 (2007).

Date Filed. July 26, 2007; August 22, 2007.

Country. Turkey.

Date of Conduct. 2001 – 2006.

Amount of the Value. Approximately $43,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign official. Officials of the Turkish Ministry of Agricultural and Rural Affairs.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Consent Order; Cease-and-Desist.

Defendant Jurisdictional Basis. Issuer (Delta); Agent of Issuer (Turk).

Defendant's Citizenship. United States (Delta); United States (Turk).

Total Sanction. $300,000.

Compliance Monitor/Reporting Requirements. Independent Compliance Monitor.

Related Enforcement Actions. None.

Total Combined Sanction. $300,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

35. SEC V. TEXTRON INC. (D.D.C. 2007)

NATURE OF THE BUSINESS

Sales of industrial pumps, gears and other equipment to Iraq under the U.N. Oil for Food Program by three of Rhode Island based Textron, Inc.'s David Brown French subsidiaries. The investigation into the Iraq payments yielded several dozen more corrupt payments in other countries to secure 36 contracts in those places.

INFLUENCE TO BE OBTAINED

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil for Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value.

Textron's French subsidiaries allegedly used consultants to make kickback payments to the government of Iraq to secure sales of industrial pumps and gear.

In addition, the Textron subsidiaries paid bribes to officials of state owned companies in the UAE, Indonesia, Bangladesh, India, and Egypt to obtain contracts.

ENFORCEMENT

The SEC charged Textron with violations of the FCPA's internal controls and books and records provisions for failing to implement an adequate set of internal controls to detect and prevent the payments made by its subsidiaries. Without admitting or denying the allegations, Textron consented to the entry of final judgment permanently enjoining it from future violations, ordering it to disgorge $2,284,579 in profits, plus $450,461.68 in prejudgment interest, and to pay a civil penalty of $800,000. Textron is also ordered to take certain steps with respect to its FCPA compliance program.

See DOJ Digest Number B 53.
See Ongoing Investigation Number F 2.

KEY FACTS

Citation. *SEC v. Textron Inc.*, No. 07 cv 01505 (D.D.C. 2007).

Date Filed. August 31, 2007.

Country. Iraq, UAE, Bangladesh, Indonesia, Egypt, India.

Date of Conduct. 2001 – 2005.

Amount of the Value. $650,539 in Iraq; $114,995 in other countries.

Amount of Business Related to the Payment. Profits of $1,936,926 from Iraq, and $328,939 from the other countries.

Intermediary. Consultants.

Foreign official. Officials of GASCO, ZADCO, and ADCO (subsidiaries of state owned Abu Dhabi National Oil Company), Pertamina (Indonesian state owned oil company), and unidentified government owned companies in Bangladesh, India, and Egypt.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Complaint and Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $3,535,040.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In re Textron Inc.*

Total Combined Sanction. $4,685,040.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

34. SEC V. BAKER HUGHES INC. AND ROY FEARNLEY (S.D. TEX 2007)

NATURE OF THE BUSINESS

Baker Hughes Inc. ("Baker Hughes"), a U.S. corporation, provides oil field development services. Roy Fearnley is a former Kazakhstan based Baker Hughes business executive.

INFLUENCE TO BE OBTAINED

Baker Hughes allegedly made payments to agents in Kazakhstan to secure a major services contract relating to the development of Karachaganak, a large gas and oil field in northwestern Kazakhstan. Although Baker Hughes was unofficially notified that it would win the contract, Kazakhoil representatives insisted prior to official notification that Baker Hughes retain an Isle of Man based consultant and agree to pay it a percentage commission of the revenues from the Karachaganak contract. Baker Hughes and its subsidiaries complied, making payments totaling approximately $4.1 million to the consultant from May 2001 to November 2003. Baker Hughes also allegedly engaged in a host of other violations, including paying nearly $1.1 million in commission payments to another agent in Kazakhstan to influence government decision making. The SEC's complaint further alleges that Baker Hughes failed to conduct adequate due diligence to assure itself that several payments, including (among others) a $10.3 million payment to an Angolan agent and payments totaling approximately $5.3 million to an agent active in Russia, Uzbekistan, and Kazakhstan were not partly or entirely passed on to government officials in those countries.

ENFORCEMENT

On April 26, 2007, Baker Hughes agreed, without admitting or denying the SEC's allegations, to pay over $23 million in disgorgement and prejudgment interest for these alleged violations, as well as an additional $10 million penalty for violating an existing SEC cease and desist order issued against it in 2001 pursuant to an investigation of a bribe paid to an Indonesian tax official. The settlement also permanently enjoins Baker Hughes from further violations of the FCPA or the 2001 cease and desist order. On January 26, 2010, the court entered a default judgment against Roy Fearnley, who never appeared in the case, providing for the same injunctive relief and disgorgement and prejudgment interest in the amount of $12,635.

See DOJ Digest Number B 48.
See SEC Digest Number D 11.
See Parallel Litigation Digest Numbers H F4 and H F9.

KEY FACTS

Citation. *SEC v. Baker Hughes Inc.*, No. 4:07 cv 01408 (S.D. Tex. 2007).

Date Filed. April 26, 2007 (Baker Hughes); January 26, 2010 (Fearnley).

Country. Kazakhstan, Angola, Nigeria, Indonesia, Russia, Uzbekistan.

Date of Conduct. 1998 – 2003.

Amount of the Value. At least $5.2 million in Kazakhstan; approximately $10.3 million in Angola; indeterminate amounts in Nigeria, Indonesia, Russia, and Uzbekistan.

Amount of Business Related to the Payment. At least $208 million in Kazakhstan; undisclosed amounts in Angola, Nigeria, Indonesia, Russia, and Uzbekistan.

Intermediary. Agents; Tax Consultant; Customs Brokers; Freight Forwarders.

Foreign official. Officials of Kazakhoil and KazTransOil, Kazakhstani state owned entities; officials of Sonangol, an Angolan state owned oil company; Nigerian tax and customs officials; Indonesian customs officials; government officials in Russia and Uzbekistan.

FCPA Statutory Provision.

- **Baker Hughes Inc.** Anti-Bribery; Books-and-Records; Internal Controls.
- **Fearnley**. Aiding and Abetting (Anti-Bribery; Books-and-Records; Internal Controls); Anti-Bribery.

Other Statutory Provision. Violation of SEC Cease-and-Desist Order (Baker Hughes).

Disposition.

- **Baker Hughes Inc.** Complaint and Consent Order.
- **Fearnley**. Complaint and Default Judgment.

Defendant Jurisdictional Basis. Issuer (Baker Hughes); Agent of Issuer (Fearnley).

- **Defendant's Citizenship.** United States.
- **Baker Hughes Inc.** United States.
- **Fearnley**. United States (Baker Hughes); United Kingdom (Fearnely).

Total Sanction. $33,078,015.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *United States v. Baker Hughes Servs. Int'l, Inc.*; *United States v. Baker Hughes Inc.*

Total Combined Sanction. $44,078,015.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

33. SEC V. CHARLES MICHAEL MARTIN (D.D.C. 2007)

NATURE OF THE BUSINESS

Monsanto Co., a U.S. corporation, is a global producer of technology and agricultural products, including for the cultivation of genetically modified crops in Indonesia. Charles Michael Martin ("Martin"), a U.S. citizen, was a former employee of Monsanto.

INFLUENCE TO BE OBTAINED

Martin was employed in 2002 by Monsanto as its Government Affairs Director for Asia. In that capacity, he authorized and directed an Indonesian consulting firm to pay a $50,000 bribe to a local Indonesian government official to induce the official to repeal a government decree. The decree required an environmental impact assessment study prior to cultivation of certain agricultural products, and would have prevented Monsanto from cultivating certain of its genetically modified crops in Indonesia. Martin directed the consulting firm to create a set of invoices to falsely bill Monsanto and subsequently approved the invoices and caused Monsanto to falsify its books and records, thus, violating and aiding and abetting violations of the anti bribery and books and records provisions of the FCPA.

ENFORCEMENT

On February 28, 2007, without admitting or denying the allegations against him, Martin agreed to pay a fine of $30,000 and to an injunction not to violate the FCPA. In a related earlier case, on January 6, 2005, Monsanto entered into a non prosecution agreement with DOJ and a settlement agreement with the SEC. As part of the settlement, Monsanto agreed to, among other things, pay a fine of $1.5 million and to appoint independent consultants to review its business practices over a three year period, when the criminal charges against it would be dropped permanently by DOJ. Several Monsanto employees in Indonesia were fired.

See DOJ Digest Number B 36.
See SEC Digest Number D 21.

KEY FACTS

Citation. *SEC v. Martin*, No. 07 cv 00434 (D.D.C. 2007).

Date Filed. March 8, 2007.

Country. Indonesia.

Date of Conduct. 2001 – 2002.

Amount of the Value. $50,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Consulting Firm.

Foreign official. Local Indonesian government official.

FCPA Statutory Provision. Anti-Bribery; Aiding and Abetting (Anti-Bribery; Internal Controls, Books-and-Records); Internal Controls; Books-and-Records.

Other Statutory Provision. None.

Disposition. Complaint and Consent Order.

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. United States.

Related Enforcement Actions. *In re Monsanto Co.*

Total Sanction. $30,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

32. SEC V. THE DOW CHEMICAL CO. (D.D.C. 2007)

NATURE OF THE BUSINESS

The Dow Chemical Company ("Dow"), a U.S. corporation, manufactures and sells chemicals, plastics, and agricultural and other products.

INFLUENCE TO BE OBTAINED

From 1996 until 2001, DE Nocil Crop Protection Ltd. ("DE Nocil"), a Dow subsidiary, made payments to a variety of Indian governmental officials, including payments to an official in India's Central Insecticides Board to expedite the registration of DE Nocil products. The payments were made through contractors, sometimes using false invoices or fictitious charges in bills.

ENFORCEMENT

On February 13, 2007, the SEC filed a settled civil action against Dow under the FCPA, alleging violations of both its internal controls and its books and records provisions. The SEC also concurrently filed a cease and desist order against Dow, finding that Dow had also violated the corresponding provisions of the '34 Act. Without admitting or denying any of the foregoing allegations, Dow consented to pay a $325,000.00 civil penalty for its violations of the FCPA and consented to the entry of the cease and desist order under the '34 Act.

KEY FACTS

Citation. *SEC v. Dow Chemical Co.*, No. 07 cv 00336 (D.D.C. 2007).

Date Filed. March 5, 2007.

Country. India.

Date of Conduct. 1996 – 2001.

Amount of the Value. Approximately $2,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Third-party contractors.

Foreign official. An official of the Indian Central Insecticides Board and a variety of other governmental officials, including excise tax officials, sales tax officials, government business officials, and customs officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Complaint and Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $325,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $35,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

31. SEC V. EL PASO CORP. (S.D.N.Y. 2007)

NATURE OF THE BUSINESS

El Paso Corporation ("El Paso"), a U.S. corporation, produces, processes, and markets petroleum and natural gas. The Coastal Corporation ("Coastal") was the predecessor in interest to El Paso CGP Company, which now operates as a wholly owned subsidiary of El Paso.

INFLUENCE TO BE OBTAINED

From approximately June 2001 through June 2002, El Paso allegedly purchased Iraqi oil from third parties, paying premiums to the third parties that, in turn, were paid to Iraq's State Oil Marketing Organization as illegal surcharges for the third parties' oil purchases.

ENFORCEMENT

On February 7, 2007, the SEC published a press release announcing the filing of a settled complaint against El Paso Corporation alleging violations of the FCPA's internal controls and books-and-records provisions in connection with its participation in the Iraqi Oil for Food Program. El Paso neither admitted nor denied the allegations of the complaint, but consented to the entry of an injunction against it, as well as to a civil penalty of $2.25 million and disgorgement in the amount of $5,482,363. The disgorgement was agreed upon pursuant to a non prosecution agreement with the U.S. Attorney's Office for the Southern District of New York, which also requires El Paso to continue cooperating with the ongoing Oil for Food investigation. The U.S. Attorney's Office intends to transfer the disgorged funds to the Development Fund for Iraq.

See DOJ Digest Number D 62.
See Ongoing Investigation Number F 2.

KEY FACTS

Citation. *SEC v. El Paso Corp.*, No. 07 cv 00899 (S.D.N.Y. 2007).

Date Filed. April 15, 2007.

Country. Iraq.

Date of Conduct. 2001 – 2002.

Amount of the Value. Approximately $5.5 million.

Amount of Business Related to the Payment. Approximately $420 million in oil purchases.

Intermediary. Third-party Iraqi oil companies.

Foreign official. Iraq's State Oil Marketing Organization.

FCPA Statutory Provision. Internal Controls; Books-and-Records.

Other Statutory Provision. None.

Disposition. Complaint and Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $7,732,363.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In re El Paso Corp.*

Total Combined Sanction. $7,732,363.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

30. IN THE MATTER OF SCHNITZER STEEL INDUSTRIES, INC. (2006)

NATURE OF THE BUSINESS

Sale of scrap metal by SSI International Far East, Ltd. ("SSI Korea"), a wholly owned South Korean subsidiary of Schnitzer Steel Industries, Inc. ("Schnitzer Steel"), a U.S. corporation.

INFLUENCE TO BE OBTAINED

From 1995 to August 2004, SSI Korea made payments to officers and employees of private customers in South Korea and private and government owned customers in China to induce them to purchase scrap metal. The payments were made to foreign officials primarily in the form of commissions, refunds and gratuities via off book foreign bank accounts.

ENFORCEMENT

Schnitzer Steel consented to an SEC cease and desist order in which it agreed to pay disgorgement and prejudgment interest of $7.7 million and to retain a compliance monitor for three years. In the DOJ proceeding, SSI Korea agreed to plead guilty to violating the anti bribery and accounting provisions of the FCPA and pay a $7.5 million penalty. Schnitzer Steel entered into a three year deferred prosecution agreement and agreed to retain a compliance monitor for three years.

See DOJ Digest Numbers B 51 and B 44.
See SEC Digest Numbers D 43 and D 37.

KEY FACTS

Citation. *In the Matter of Schnitzer Steel Indus., Inc.*, Admin. Proc. File No. 3 12456 (Oct. 16, 2006).

Date Filed. October 16, 2006.

Country. South Korea, China.

Date of Conduct. 1999 – 2004.

Amount of the Value. $204,537 (foreign officials) and $1,683,672 (private parties).

Amount of Business Related to the Payment. Gross revenue of $96,455,350 and profits of $6,279,095 from government entities and gross revenue of $603,593,957 and profits of $55,327,840 from private entities.

Intermediary. None.

Foreign official. Managers of government customers.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $7,725,201

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *United States v. SSI Int'l Far East, Ltd.*; *In re Schnitzer Steel Industries, Inc.*

Total Combined Sanction. $15,225,201.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

29. IN THE MATTER OF STATOIL, ASA (2006)

NATURE OF THE BUSINESS

Provision of oilfield development services by Statoil, Norway's largest oil and gas company. Statoil is a foreign issuer listed on the New York Stock Exchange.

INFLUENCE TO BE OBTAINED

From 2000, Statoil sought to expand its international operations with a focus on Iran. In 2001, high level Statoil officials met with the head of the Iranian Fuel Consumption Optimizing Organization, a subsidiary of the National Iranian Oil Company. The Iranian official, the son of a former President of Iran, was determined to be highly influential in the award of oil and gas business in Iran. In 2002, Statoil entered into a $15.2 million contract with Horton Investments, Ltd., a small consulting firm in Turks & Caicos and owned by a third party in London, to provide payments to the Iranian official, of which $200,000 was paid in June 2002. The Iranian official used his influence to secure a contract for Statoil in October 2002 to develop the South Pars oil and gas field, a contract which would yield "millions of dollars in profit." In December 2002, Statoil paid an additional $5 million to the official.

In 2004, Statoil's internal audit department uncovered and reported the existence of the consulting contract and the $5.2 million payments to the company's CFO, who ordered an investigation. Statoil's security group and internal audit group prepared a report concluding that the company may have violated U.S. and Norwegian bribery laws and recommended that the contract be terminated immediately. Nevertheless, Statoil's CEO and the Chairman of its Board took no corrective action.

Three senior executives at Statoil have resigned: its chairman Leif Terje Loeddesoel, chief executive officer Olav Fjell, and executive vice president Richard Hubbard.

ENFORCEMENT

Statoil has consented to a cease and desist order and to pay $10.5 million in disgorgement and to retain a compliance monitor for three years. In the DOJ proceeding, Statoil entered a three year deferred prosecution agreement and agreed to pay a $10.5 million penalty. Statoil has already paid a NOK 20 million ($3.045 million USD) fine to the Norway National Authority for Investigation and Prosecution of Economic Crime, without admitting or denying any liability, which will be deducted from the U.S. fines. On October 18, 2004, Richard Hubbard accepted a fine of NOK 200,000 ($30,300).

See DOJ Digest Number B 43.

KEY FACTS

Citation. *In the Matter of Statoil ASA*, Admin. Proc. File No. 3 12453 (Oct. 13, 2006).

Date Filed. October 13, 2006.

Country. Iran.

Date of Conduct. 2002 – 2003.

Amount of the Value. $5.2 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Offshore intermediary company consultant.

Foreign official. Head of a subsidiary organization of the national oil company.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Norway.

Total Sanction. $10,500,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *United States v. Statoil ASA.*

Total Combined Sanction. $21,000,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

28. SEC V. JIM BOB BROWN (S.D. TEX. 2010)

NATURE OF THE BUSINESS

Procurement of contracts for oil and gas pipeline construction projects by Willbros International Inc. ("Willbros International"), a wholly owned subsidiary of Willbros Group, Inc. ("Willbros Group"). Willbros is a Panamanian corporation listed on the New York Stock Exchange. Jim Bob Brown, a former employee of Willbros International, was a managing director of Nigerian and South American subsidiary operations of Willbros International from 2000 until his termination in 2005.

INFLUENCE TO BE OBTAINED

The SEC alleged that Brown and others, as employees on behalf of Willbros International, paid consultants to promise and make corrupt payments to foreign officials at the Nigerian and Ecuadorian government owned oil companies to obtain oil and gas pipeline construction business. The payments in Nigeria were part of a larger multi million dollar bribery scheme involving a former senior Willbros Group executive, a U.S. national acting as a purported "consultant," and Nigeria based employees of a major German construction and engineering firm with whom Willbros participated in a consortium. The SEC also alleged that Willbros staff made payments dating back to 1996 to Nigerian tax and court officials to obtain favorable treatment for tax assessments and litigation.

ENFORCEMENT

On September 14, 2006, Brown pleaded guilty in a related criminal proceeding to violating the FCPA by conspiring with others to bribe Nigerian and Ecuadorian officials. Brown settled the civil action without admitting or denying the SEC's allegations. The district court entered an interlocutory judgment on September 19, 2006, enjoining Brown from further violations, but stayed the proceedings with respect to issuing a civil penalty, pending sentencing in Brown's related criminal proceeding. On January 28, 2010, Brown was sentenced in the criminal proceeding to 12 months and 1 day of imprisonment, supervised release of 2 years, a criminal fine of $17,500, and an assessment of $100. On May 10, 2010, the court terminated the action brought by the SEC, converting the interlocutory judgment to a final judgment without imposing any civil penalty.

See DOJ Digest Numbers B 76, B 67, B 54, and B 45.
See SEC Digest Number D 51.
See Parallel Litigation Digest Number H A8.

KEY FACTS

Citation. *SEC v. Brown*, No. 4:06 cv 02919 (S.D. Tex. 2010).

Date Filed. May 10, 2010.

Country. Nigeria; Ecuador.

Date of Conduct. 1996 – 2005.

Amount of the Value. $2.255 million.

Amount of Business Related to the Payment. Revenue of $243,400,000.

Intermediary. Outside consultants.

Foreign official. Officials of Nigerian Petroleum Corporation and its subsidiaries and joint ventures, Nigerian tax officials, Nigerian tax and court officials, officials of PetroEcuador.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls; Aiding and Abetting (Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Complaint and Consent Order.

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. United States.

Related Enforcement Actions. *United States v. Brown*.

Total Sanction. $17,500.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

27. SEC V. DAVID M. PILLOR (N.D. CAL. 2006)

NATURE OF THE BUSINESS

Sales of explosives detection products by InVision Technologies, Inc. ("InVision"), a U.S. corporation. David M. Pillor was the former Senior Vice President for Sales and Marketing and member of the board of directors of InVision.

INFLUENCE TO BE OBTAINED

Payments were made by InVision's sales agents and distributors to foreign officials to secure or retain business for InVision. The DOJ found that there was a "high probability" that senior employees at InVision were aware of the payments, but took no action to determine their legality.

ENFORCEMENT

On August 15, 2006, the SEC settled charges against Pillor for failing to devise and maintain a system of internal controls adequate to detect and prevent InVision's violations of the FCPA and for indirectly causing the falsification of the company's books and records. Without admitting or denying the allegations, Pillor agreed to pay a $65,000 civil penalty and to the entry of a permanent injunction against future violations.

See DOJ Digest Number B 35.
See SEC Digest Number D 20.
See Parallel Litigation Digest Number H A7.

KEY FACTS

Citation. *SEC v. Pillor*, No. 1:06 cv 4906 (N.D. Cal. 2006).

Date Filed. August 15, 2006.

Country. Thailand, China, and the Philippines.

Date of Conduct. 2001 – 2004.

Amount of the Value. $203,000.

Amount of Business Related to the Payment. $41,300,000.

Intermediary. Third-party distributors.

Foreign official. Not Stated.

FCPA Statutory Provision. Aiding and Abetting (Internal Controls; Books-and-Records).

Other Statutory Provision. None.

Disposition. Complaint and Consent Order.

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. United States.

Related Enforcement Actions. *In re InVision Technologies, Inc.*; *SEC v. GE InVision, Inc.*

Total Sanction. $65,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

26. SEC V. JOHN SAMSON, JOHN G. A. MUNRO, IAN N. CAMPBELL, AND JOHN H. WHELAN (D.D.C. 2006)

NATURE OF THE BUSINESS

John Samson is the former West Africa regional sales manager for Vetco Gray Nigeria Ltd., John G. A. Munro is the former senior vice president of operations for Vetco Gray (U.K.) Ltd., Ian N. Campbell is the former vice president of finance for Vetco Gray (U.K.) Ltd., and John H. Whelan is a former vice president of sales for Vetco Gray, Inc. During the relevant time period, Vetco Gray Nigeria, Vetco Gray (U.K.) Ltd., and Vetco Gray, Inc.—all oil services providers—were subsidiaries of ABB, a Swiss corporation and global provider of power and automation technologies whose ADRs are traded on the NYSE. Notably, Whelan is the only U.S. citizen among the defendants in this action. Samson, Munro, and Campbell are citizens of the United Kingdom.

INFLUENCE TO BE OBTAINED

According to the complaint filed by the SEC on July 5, 2006, from 1999 through 2001, the defendants offered, approved, and paid bribes to NAPIMS officials in furtherance of ABB's bid to obtain a $180 million contract to provide equipment for an oil drilling project. In addition, the defendants disguised the payments on ABB's books as legitimate consulting expenses through the creation of false business records.

ENFORCEMENT

Without admitting or denying the allegations in the complaint, Samson, Munro, Campbell, and Whelan consented to the entry of final judgments that (1) permanently enjoin each of them from future violations of the FCPA, (2) order each to pay a civil monetary penalty ($50,000 as to Samson, and $40,000 each as to Munro, Campbell, and Whelan), and (3) orders Samson to pay $64,675 in disgorgement and prejudgment interest.

See DOJ Digest Numbers B 75, B 47, and B 31.
See SEC Digest Number D 17.
See DOJ FCPA Opinion Procedure Release Digest Number E 41.
See Ongoing Investigation Number F 2.
See Parallel Litigation Digest Number H E5.

KEY FACTS

Citation. *SEC v. Samson et al.*, No. 1:06 cv 01217 (D.D.C. 2006).

Date Filed. July 14, 2006.

Country. Nigeria.

Date of Conduct. 1999 – 2001.

Amount of the Value. Approximately $1 million.

Amount of Business Related to the Payment. Approximately $180 million.

Intermediary. None.

Foreign official. Officials of the National Petroleum Investment Management Services ("NAPIMS"), the state owned agency which oversees investment in petroleum.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls; Aiding and Abetting (Books-and-Records; Internal Controls).

Other Statutory Provision. None.

Disposition. Plea Agreement (all defendants).

Defendant Jurisdictional Basis. Agent of Issuer.

Defendant's Citizenship. United States (Whelan); United Kingdom (Campbell; Samson; Munro).

Total Sanction. $170,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Aibel Grp. Ltd.*, No. 4:07 cr 00005 (S.D. Tex. 2008); *United States v. Vetco Gray Controls Inc.*, No. 4:07 cr 00004 (S.D. Tex. 2007); *United States v. Aibel Grp. Ltd.*, No. 4:07 cr 00005 (S.D. Tex. 2007); *SEC v. ABB Ltd.*, No. 1:04 cv 01141 (D.D.C. 2004).

Total Combined Sanction. $170,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

25. IN THE MATTER OF OIL STATES INT'L, INC. (2007)

NATURE OF THE BUSINESS

Hydraulic Well Control, LLC ("Hydraulic Well ") operates specially designed rigs and provides well site services to oil and gas producers in Venezuela and other countries, and is headquartered in Houma, Louisiana. It is a wholly owned subsidiary of Oil States International ("Oil States"), a Delaware corporation whose shares trade on the NYSE, and it contributed approximately 1% of Oil States's consolidated revenues during the relevant period.

INFLUENCE TO BE OBTAINED

Payments nominally made for consulting services were actually made as "kickbacks" to government employees to avoid stoppage or delay of the company's work.

ENFORCEMENT

n April 2006, Oil States and the SEC reached a settlement under which the SEC issued a cease and desist order from future violations of the books and records and internal controls provisions of the FCPA, without the company admitting or denying the findings in the order.

KEY FACTS

Citation. *In the Matter of Oil States Int'l, Inc.*, Admin. Proc. File No. 3 12280 (Apr. 27, 2006).

Date Filed. April 27, 2006.

Country. Venezuela.

Date of Conduct. 2003 – 2004.

Amount of the Value. Approximately $348,350.

Amount of Business Related to the Payment. Unspecified.

Intermediary. Consultant and employees of the subsidiary, HWC.

Foreign official. Employees of Petróleos de Venezuela, S.A. ("PDVSA"), an energy company owned by the government of Venezuela.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. None.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. None.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

24. SEC V. TYCO INT'L LTD. (S.D.N.Y. 2006)

NATURE OF THE BUSINESS

Hydraulic Well Control, LLC ("Hydraulic Well ") operates specially designed rigs and provides well site services to oil and gas producers in Venezuela and other countries, and is headquartered in Houma, Louisiana. It is a wholly owned subsidiary of Oil States International ("Oil States"), a Delaware corporation whose shares trade on the NYSE, and it contributed approximately 1% of Oil States's consolidated revenues during the relevant period.

INFLUENCE TO BE OBTAINED

Payments nominally made for consulting services were actually made as "kickbacks" to government employees to avoid stoppage or delay of the company's work.

ENFORCEMENT

In April 2006, Oil States and the SEC reached a settlement under which the SEC issued a cease and desist order from future violations of the books and records and internal controls provisions of the FCPA, without the company admitting or denying the findings in the order.

KEY FACTS

Citation. *SEC v. Tyco Int'l Ltd.*, No. 06 cv 2942 (S.D.N.Y. 2006).

Date Filed. April 17, 2006.

Country. Brazil, South Korea.

Date of Conduct. 1996 – 2002.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Lobbyists.

Foreign official. Foreign officials in Brazilian municipal water and waste treatment systems and South Korean officials, including Minister of Construction and Finance and a military general.

FCPA Statutory Provision. Anti-Bribery; Internal Controls; Books-and-Records.

Other Statutory Provision. Mail Fraud; Wire Fraud; Proxy Disclosure Violations; Reporting Violations.

Disposition. Complaint and Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Bermuda.

Total Sanction. $50,000,001.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $50,000,001.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

23. IN THE MATTER OF DIAGNOSTIC PRODUCTS CORP. (2005)

NATURE OF THE BUSINESS

Provision of medical products and hospital services by DPC Co. Ltd., formerly Tianjin Depu Biotechnological and Medical Products Inc. ("Tianjin"), a Chinese subsidiary of Diagnostics Products Corporation ("DPC"). DPC, a U.S. corporation, is a worldwide provider of immunodiagnostic systems and reagents.

INFLUENCE TO BE OBTAINED

Payments were made, disguised as commissions, by senior employees of Tianjin in exchange for agreements that hospitals would retain Tianjin's products and services.

ENFORCEMENT

In a company filing dated August 2005, DPC disclosed that it had agreed to pay approximately $4.8 million as part of a settlement with the SEC and DOJ, consisting of $2.0 million in fines and approximately $2.8 million in disgorgement of profits and interest. In addition, Tianjin pled guilty to violations of the FCPA, receiving a cease and desist order, and agreed to take actions to avert future violations.

See DOJ Digest Number B 38.

KEY FACTS

Citation. *In the Matter of Diagnostic Prods. Corp.*, Admin. Proc. File No. 3 11933 (May 20, 2005).

Date Filed. May 20, 2005.

Country. China.

Date of Conduct. 1991 – 2002.

Amount of the Value. $1.6 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Not Stated.

Foreign official. Foreign official's physicians and laboratory workers at government owned hospitals.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $2,788,622.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *United States v. Diagnostic Prods. Corp.*

Total Combined Sanction. $4,788,622.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

22. SEC V. YAW OSEI AMOAKO (D.N.J. 2005)
SEC V. STEVEN J. OTT AND ROGER MICHAEL YOUNG (D.N.J. 2006)

NATURE OF THE BUSINESS

Procurement of telecommunication services contracts by ITXC Corp. ("ITXC"), a U.S. based provider of global telecommunications services. In 2004, ITXC merged with Teleglobe International Holdings, Ltd. ("Teleglobe"), a U.S. based provider of international voice, data, Internet, and mobile roaming services. Yaw Osei Amoako ("Amoako"), Steven J. Ott ("Ott"), and Roger Michael Young ("Young") were former senior employees involved in operations in Africa for ITXC.

INFLUENCE TO BE OBTAINED

According to the criminal and SEC complaints in these actions, Amoako, Ott, and Young helped arrange several payments to officials at government owned telephone companies, Nitel, Rwandatel, and Sonatel. In exchange for the payments, they sought the award of lucrative telephone contracts to provide individual and business telecommunication services in those countries.

ENFORCEMENT

After identifying the potential improper payments, Teleglobe notified the SEC and DOJ and conducted its own internal investigation. After conducting their own investigations, the SEC and DOJ in June 2005 brought separate cases against Amoako for violations of the FCPA. On September 6, 2006, the DOJ reported that Amoako had pled guilty to one count of conspiring to violate the anti bribery provisions of the FCPA. On April 22, 2008, without admitting or denying the allegations of the complaint, Amoako consented to the entry of final judgment with the SEC, by which he is permanently enjoined from violating the anti bribery, internal controls, and books and records provisions of the FCPA. Amoako also agreed to disgorge $150,411 in profits, together with $38,042 in interest. The SEC brought an action against Ott and Young on September 6, 2006 for three counts of violating the anti bribery and books and records provisions of the FCPA, seeking injunctive relief, penalties, and disgorgement. In April 2008, Ott and Young, without admitting or denying the facts in the complaint, settled with the SEC and agreed to an order enjoining them from committing future violations of the FCPA.

See DOJ Digest Numbers B 52 and B 37.
See DOJ FCPA Opinion Procedure Release Digest Number E 38.

KEY FACTS

Citation. *SEC v. Amoako*, No. 3:05 cv 01122 (D.N.J. 2005); *SEC v. Ott, et al.*, No. 3:06 cv 04195 (D.N.J. 2006).

Date Filed. November 17, 2016.

Country. Nigeria, Rwanda, Senegal.

Date of Conduct. 2006 – 2013.

Amount of the Value. $267,468.95.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Not Stated.

Foreign official. Senior officials of government-owned telephone companies.

FCPA Statutory Provision.

- **Amoako**. Anti-Bribery; Books-and-Records; Internal Controls; Aiding and Abetting (Books-and-Records).
- **Ott & Young**. Anti-Bribery; Books-and-Records; Internal Controls; Aiding and Abetting (Books-and-Records; Internal Controls).

Other Statutory Provision. None.

Disposition.

- **Amoako**. Complaint and Consent Order.
- **Ott**. Complaint and Consent Order.
- **Young**. Complaint and Consent Order.

Defendant Jurisdictional Basis. Agent of Issuer (Amoako, Ott, Young).

Defendant's Citizenship. United States (Amoako, Ott, Young).

Total Sanction. $226,495 (Amoako).

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Ott*,; *United States v. Young*; *United States v. Amoako*,; *FCPA Review Op. Proc. Rel. 01-03.*

Total Combined Sanction. $226,495.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

21. SEC V. MONSANTO CO. (D.D.C. 2005)

NATURE OF THE BUSINESS

Cultivation of genetically modified crops in Indonesia by Monsanto Co. ("Monsanto"), a U.S. corporation. Monsanto Co. ("Monsanto") is a large provider of agricultural products.

INFLUENCE TO BE OBTAINED

In November 2002, after a routine internal audit, Monsanto notified the SEC and DOJ of various financial irregularities at its Indonesian affiliate companies. The inquiry revealed that a Monsanto officer authorized the payment of a $50,000 bribe to a local Indonesian government official to induce the official to repeal a government decree. The decree required an environmental impact assessment study prior to cultivation of certain agricultural products, and would have prevented Monsanto from cultivating certain of its genetically modified crops in Indonesia. Interestingly, the bribe itself was unrelated to any specific contract sought by Monsanto, or that Monsanto would be unable to pass an environmental impact study. It appears, rather, that the purpose of the bribe was to avoid the regulatory and administrative burden associated with undertaking the environmental study.

ENFORCEMENT

On January 6, 2005, Monsanto entered into a non prosecution agreement with the DOJ and a settlement agreement with the SEC. As part of the settlement, Monsanto agreed to, among other things, pay a fine of $1.5 million and to appoint independent consultants to review its business practices over a three year period, when the criminal charges against it would be dropped permanently by the DOJ. Several Monsanto employees in Indonesia were fired.

Upon receipt and review of a motion to dismiss filed by the DOJ, on March 5, 2008, the U.S. District Court for the District of Columbia entered an agreed order dismissing the proceeding against Monsanto with prejudice. The action by the court ends the Deferred Prosecution Agreement. The independent consultants subsequently submitted the final report to the government for review.

See DOJ Digest Number B 36.
See SEC Digest Number D 33.

KEY FACTS

Citation. *SEC v. Monsanto Co.*, No. 05 cv 14 (D.D.C. 2005).

Date Filed. January 6, 2005.

Country. Indonesia.

Date of Conduct. 1997 – 2002.

Amount of the Value. $50,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. An Indonesian consultant.

Foreign official. A local Indonesian government official.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Complaint and Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $500,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Monsanto Co.*

Total Combined Sanction. $1,500,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

20. SEC V. GE INVISION, INC. (N.D. CAL. 2005)

NATURE OF THE BUSINESS

Sales of explosives detection products by InVision Technologies, Inc.[105] ("InVision"), a U.S. corporation.

INFLUENCE TO BE OBTAINED

Payments were made by InVision's sales agents and distributors to foreign officials to secure or retain business for InVision. The DOJ found that there was a "high probability" that senior employees at InVision were aware of the payments, but took no action to determine their legality.

ENFORCEMENT

InVision disclosed that it was the subject of DOJ and SEC investigations in August 2004. In December 2004, the DOJ and InVision entered into a non prosecution agreement whereby InVision agreed to certain conditions in exchange for a promise from the government that InVision will not be prosecuted for these violations. If InVision fails to comply with any of the terms of the agreement for a period of two years, the government will be free to prosecute the company for these violations. Among other things, InVision agreed to pay a fine of $800,000, accept responsibility for the misconduct, continue to cooperate with the DOJ, and adopt an FCPA compliance program as well as a set of internal controls designed to prevent future violations. Without admitting or denying the claims brought against it by the SEC, on February 14, 2005, InVision settled those claims and agreed to turn over $589,000 of ill gotten profits, and pay a fine of $500,000. This case represents one of the few FCPA inquiries that involve distributors, rather than traditional FCPA investigations that focus on sales representatives or consultants to the company. Sales representatives and consultants are typically considered intermediaries of the company that is the subject of an investigation and the company is therefore deemed to be fully liable for their actions. In contrast, distributors purchase goods from manufacturers, take possession and title, and then offer the product for re sale in their own name and at their own price. Accordingly, companies often do not view distributors as agents of the company for purposes of regulatory compliance.

See DOJ Digest Number B 35.
See SEC Digest Number D 27.
See Parallel Litigation Digest Number H A7.

KEY FACTS

Citation. *SEC v. GE InVision, Inc.*, No. 3:05 cv 00660 (N.D. Cal. 2005).

Date Filed. February 14, 2005.

Country. Thailand, China, the Philippines.

Date of Conduct. 2001 – 2004.

Amount of the Value. More than $95,000.

Amount of Business Related to the Payment. More than $589,000.

Intermediary. Not Stated.

Foreign official. Not Stated.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Complaint and Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $1,117,703.57.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In re General Electric Co. and InVision Tech., Inc.*

Total Combined Sanction. $1,917,703.57.

[105] InVision Technologies, Inc. was acquired by General Electric Company in Dec. 2004.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

19. SEC V. TITAN CORP. (D.D.C. 2005)

NATURE OF THE BUSINESS

Provision of wireless telecommunications projects in Benin by subsidiaries of Titan Corporation ("Titan"), a U.S. company, which is a leading military and intelligence contractor with $2 billion in annual sales derived primarily from contracts with U.S. military, intelligence and homeland security agencies. Titan's subsidiaries include Titan Wireless, Inc., Titan Africa, Inc., and Titan Africa, S.A.

INFLUENCE TO BE OBTAINED

At the direction of at least one former senior Titan official based in the United States, Titan made payments to the re election campaign of Benin's incumbent president to assist his re election and thereby enable the company to develop a telecommunications project in Benin. The SEC alleged that Titan's internal controls were virtually non existent, and that Titan had falsified documents filed with the United States government and underreported commission payments in its business dealings in France, Japan, Nepal, Bangladesh, and Sri Lanka.

ENFORCEMENT

Titan pleaded guilty on March 1, 2005 to three felony counts of violating the FCPA and agreed to pay a criminal fine of $13 million, along with a civil penalty and disgorgement to the SEC in the amount of approximately $15.5 million. The SEC deemed the $13 million satisfied by Titan's payment of criminal fines in the same amount in related proceedings brought by the DOJ. Titan also agreed to retain an independent consultant to review and further implement its FCPA compliance procedures.

See DOJ Digest Numbers B 42 and B 33.
See Parallel Litigation Digest Number H A3.

KEY FACTS

Citation. *SEC v. Titan Corp.*, No. 05 cv 0411 (D.D.C. 2005).

Date Filed. March 1, 2005.

Country. Benin.

Date of Conduct. 1999 – 2003.

Amount of the Value. Approximately $3.5 million.

Amount of Business Related to the Payment. Approximately $98 million.

Intermediary. The business advisor of the President of Benin.

Foreign official. President of Benin.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Complaint and Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $15,479,195.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Titan Corp.*

Total Combined Sanction. $28,479,195.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

18. IN THE MATTER OF BJ SERVICES CO. (2004)

NATURE OF THE BUSINESS

Provision of oil well maintenance services by BJ Services Co. ("BJ Services"), a Houston based corporation which provides oil field services, products, and equipment to petroleum producers worldwide.

INFLUENCE TO BE OBTAINED

Employees of BJ Services Argentine subsidiary, BJ Services, S.A., paid approximately 65,000 pesos to several Argentine customs officials in 2001 in return for the officials assistance in overlooking customs law violations relating to the importation of a piece of oil well maintenance equipment.

ENFORCEMENT

BJ Services identified the improper payments and violations of the books and records provisions of the FCPA during a routine financial audit and conducted an internal investigation. The company also reported the payments to the SEC. In March 2004, BJ Services settled the case with the SEC with the filing of a cease and desist order relating to the actions of BJ Services, S.A. Citing the company's prompt remedial actions and cooperating with the SEC, in accepting the settlement offer, the SEC did not fine BJ Services.

KEY FACTS

Citation. *In the Matter of BJ Servs. Co.*, Admin. Proc. File No. 3 11427 (Mar. 10, 2004).

Date Filed. March 10, 2004.

Country. Argentina.

Date of Conduct. 1998 – 2002.

Amount of the Value. Several payments totaling 72,000 Argentine pesos.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Not Stated.

Foreign official. Argentine customs officials and an employee of Argentina's Secretary of Industry and Commerce.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. None.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. None.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

17. SEC V. ABB LTD. (D.D.C. 2004)

NATURE OF THE BUSINESS

Provision of power and automation technologies, including oil and gas projects by ABB, Ltd. ("ABB"), a Swiss corporation, which has a number of direct and indirect subsidiaries that do business in the United States and in 100 foreign countries. Among its subsidiaries is ABB Vetco Gray, Inc., a Texas corporation, and ABB Vetco Gray U.K., Ltd., a British corporation (the "Subsidiaries").

INFLUENCE TO BE OBTAINED

To assist ABB's subsidiaries in obtaining and retaining business in Nigeria, Angola, and Kazakhstan. From 1998 through 2003, ABB's U.S. and foreign based subsidiaries doing business in Nigeria, Angola, and Kazakhstan, offered and made illicit payments totaling over $1.1 million to government officials in those countries. In Nigeria, ABB's subsidiary made improper payments (directly and through an intermediary) to officials of the National Petroleum Investment Management Service, the state owned agency which oversees investment in petroleum, to secure oil and gas projects in Nigeria. In Angola, ABB's subsidiary made improper payments in the form of three training trips to Sonangol (state owned oil company) engineers to secure contracts. Finally, in Kazakhstan, an ABB subsidiary made payments to companies owned by a former employee of the subsidiary who was a government official to secure Kazakhstan government business for the ABB subsidiary.

ENFORCEMENT

In July 2004, without admitting or denying the allegations in the SEC's complaint, ABB agreed to pay $5.9 million in disgorgement and prejudgment interest, $10.5 million civil penalty (which was deemed to be satisfied by the SEC as a result of two of ABB's affiliates' payments of criminal fines totaling the same amount in a parallel DOJ proceeding), and to retain an outside FCPA compliance consultant. In the DOJ proceeding, the ABB subsidiaries, ABB Vetco Gray, Inc. and ABB Vetco Gray U.K., Ltd., pled guilty to two felony counts of violating the FCPA and agreed to pay a $10.5 million fine.

See DOJ Digest Numbers B 102, B 92, B 75, B 47, and B 31.
See SEC Digest Numbers D 77 and D 26.
See DOJ FCPA Opinion Procedure Release Digest Number E 41.
See Ongoing Investigation Number F 2.
See Parallel Litigation Digest Number H E5.

KEY FACTS

Citation. *SEC v. ABB Ltd.*, No. 1:04 cv 01141 (D.D.C. 2004).

Date Filed. November 30, 2004.

Country. Nigeria, Angola, and Kazakhstan.

Date of Conduct. 1998 – 2003.

Amount of the Value. Approximately $35 million.

Amount of Business Related to the Payment. At least $5,501,157 in profits.

Intermediary. Unnamed intermediary (Nigeria conduct).

Foreign official. Officials of the National Petroleum Investment Management Service, the state owned agency which oversees investment in petroleum (Nigeria); engineers at state-owned oil company (Angola); government official employed in state oil and gas companies (Kazakhstan).

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Complaint and Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Switzerland.

Total Sanction. $5,915,405.

Compliance Monitor/Reporting Requirements. Independent Compliance Monitor.

Related Enforcement Actions. *United States v. ABB Vetco Gray, Inc.*

Total Combined Sanction. $16,405,415.64.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

16. SEC V. SCHERING PLOUGH CORP. (D.D.C. 2004)

NATURE OF THE BUSINESS

Sale of pharmaceutical products by Schering Plough Corp., a U.S. based global health care company.

INFLUENCE TO BE OBTAINED

According to the complaint filed by the SEC on June 8, 2004, between February 1999 and March 2002, Schering Plough's Polish subsidiary paid approximately $76,000 to a charitable foundation to induce the foundation's president, who was also a Polish government official, to influence the purchase of Schering Plough's pharmaceutical products. None of the payments to the charity were accurately reflected in Schering Plough's books and records. In addition, according to the complaint, Schering Plough's system of internal accounting controls failed to prevent or detect the improper payments.

ENFORCEMENT

Without admitting or denying the allegations in the complaint, on June 16, 2004, Schering Plough consented to pay $500,000 civil penalty to settle the matter.

KEY FACTS

Citation. *SEC v. Schering Plough Corp.*, No. 1:04 cv 00945 (D.D.C. 2004).

Date Filed. June 9, 2004.

Country. Poland.

Date of Conduct. 1999 – 2002.

Amount of the Value. Approximately $76,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign official. Polish government official, who was also the president of the Chudow Castle Foundation.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Complaint and Consent Order; Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $500,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $500,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

15. SEC V. SYNCOR INT'L CORP. (D.D.C. 2002)

NATURE OF THE BUSINESS

Purchase and sale of radiopharmaceuticals as well as customer retention and development by Syncor International Corporation ("Syncor"), a U.S. corporation that provides radiopharmaceutical products and services. Syncor has subsidiaries in 18 foreign countries, including Taiwan, Mexico, Belgium, Luxemburg, and France.

INFLUENCE TO BE OBTAINED

1) Obtaining and retaining business from those hospitals, 2) the purchase and sale of unit dosages of certain radiopharmaceuticals, and 3) referrals of patients to medical imaging centers owned by Syncor.

ENFORCEMENT

Without admitting or denying the allegations in the SEC complaint, Syncor consented to pay a civil penalty of $500,000 and consented to an administrative order drafted by the SEC which requires Syncor to cease and desist from the illegal activity and to hire an independent consultant to audit and recommend corrective changes to the company's FCPA compliance policies and procedures. Notably, this matter was discovered in the course of due diligence in connection with the acquisition of the company.

In a related criminal action, Syncor pleaded guilty to violating the FCPA's anti bribery provision and agreed to pay a $2 million fine.

See DOJ Digest Number B 28.
See SEC Digest Number D 40.
See Parallel Litigation Digest Numbers H A2 and H B1.

KEY FACTS

Citation. *SEC v. Syncor Int'l Corp.*, No. 1:02 cv 2421 (D.D.C. 2002).

Date Filed. December 10, 2002.

Country. Multiple countries.

Date of Conduct. Mid-1980s – 2002.

Amount of the Value. At least $600,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign official. Physicians employed by hospitals owned by the foreign government in which the hospital is located.

FCPA Statutory Provision. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Complaint and Consent; Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $500,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *United States v. Syncor Taiwan, Inc.*

Total Combined Sanction. $2,500,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

14. SEC V. BELLSOUTH CORP. (N.D. GA. 2002)

NATURE OF THE BUSINESS

Acquisition of a majority interest in a Nicaraguan telecommunications company by BellSouth ("BellSouth") which has a wholly owned subsidiary called BellSouth International ("BellSouth International") and two Latin American subsidiaries: Telcel, C.A. ("Telcel"), a Venezuelan corporation, and Telefonia Celular de Nicaragua, S.A. ("Telefonia"), a Nicaraguan corporation.

INFLUENCE TO BE OBTAINED

BellSouth sought to have a law prohibiting foreign companies from obtaining a majority interest in Nicaraguan telecommunications companies repealed. BellSouth paid the wife of the chairman of the Nicaraguan legislative committee $60,000 in consulting and lobbying fees. In December of 1999, the foreign ownership provision was repealed and BellSouth exercised an option which enabled it to acquire 89% ownership of Telefonia. The chairman of the legislative committee played a significant role in the repeal of the foreign ownership provision.

ENFORCEMENT

On January 15, 2002, while neither admitting nor denying the SEC's allegations, BellSouth entered into a cease and desist order relating to BellSouth's Latin American subsidiaries, Telcel, and Telefonia. BellSouth also agreed to pay a civil penalty of $150,000.

KEY FACTS

Citation. *SEC v. BellSouth Corp.*, No. 1:02 cv 00113 (N.D. Ga. 2002).

Date Filed. January 15, 2002.

Country. Venezuela, Nicaragua.

Date of Conduct. 1997 – 2000.

Amount of the Value. $60,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Not Stated.

Foreign official. Payments in the form of consulting and lobbying fees paid to the wife of the chairman of the Nicaraguan legislative committee.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $150,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $150,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

13. SEC V. DOUGLAS A. MURPHY, DAVID G. KAY AND LAWRENCE H. THERIOT (S.D. TEX. 2002)

NATURE OF THE BUSINESS

American Rice, Inc. ("ARI") has a Haitian subsidiary, Rice Corporation of Haiti ("RCH"), engaged in the import of rice to Haiti. ARI is a Texas corporation and a U.S. issuer. Douglas A. Murphy is the former president of American Rice, and David Kay is the former Vice President. Lawrence H. Theriot is a former consultant to American Rice.

INFLUENCE TO BE OBTAINED

False shipping documents reducing the amount of customs duties and sales taxes due to Haitian authorities.

ENFORCEMENT

On July 30, 2002, the SEC filed a civil injunctive action against two former officers of ARI. The complaint asked that Kay and Murphy each pay $187,000 in civil penalties, and that Theriot pay $11,000 and asks that all three defendants be enjoined from committing further violations. The civil litigation was stayed pending the outcome of criminal prosecutions against Kay and Murphy. Both were found guilty of, inter alia, violations of the FCPA. A consent judgment against Theriot, which enjoined him from future violations of the FCPA and imposed a fine of $11,000, was entered on December 30, 2004.

In addition, on January 30, 2003, the SEC issued an order against ARI, Joseph A. Schwartz, Jr., a former controller for Haiti operations, Joel R. Malebrance and Allen W. Sturdivant, former employees of ARI. The order found that Schwartz, Malebrance and Sturdivant had participated in the scheme to bribe Haitian customs officials in violation of the FCPA. In the order, ARI, Schwartz, Malebrance and Sturdivant agreed to cease and desist from committing or causing any violation and any future violation of the Securities Exchange Act of 1934. ARI, Schwartz, Malebrance and Sturdivant consented to the order without admitting or denying its findings.

See DOJ Digest Number B 26.

KEY FACTS

Citation. *SEC v. Murphy*, No. 4:02 cv 02908) (S.D. Tex. 2002).

Date Filed. September 30, 2016.

Country. Haiti.

Date of Conduct. 2007 – 2015.

Amount of the Value. The alleged bribes ranged from $25,000 to $72,000 and totaled more than $528,000.

Amount of Business Related to the Payment. The alleged bribes saved the company more than $1.5 million dollars in Haitian import tax.

Intermediary. None.

Foreign official. Haitian customs and tax officials.

FCPA Statutory Provision.

- **Kay**. Anti-Bribery; Books-and-Records; Internal Controls; Aiding and Abetting (Books-and-Records; Internal Controls).
- **Murphy**. Anti-Bribery; Aiding and Abetting (Anti-Bribery; Books-and-Records; Internal Controls).
- **Theriot**. Aiding and Abetting (Anti-Bribery).

Other Statutory Provision. None.

Disposition.

- **Kay**. Complaint and Consent Order.
- **Murphy**. Complaint and Consent Order.
- **Theriot**. Complaint and Consent Order.

Defendant Jurisdictional Basis. Agent of Issuer (Kay, Murphy, Theriot).

Defendant's Citizenship. United States (Kay, Murphy, Theriot).

Total Sanction. None.

Related Enforcement Actions. None.

Total Combined Sanction. $13,998.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

12. IN THE MATTER OF CHIQUITA BRANDS INTERNATIONAL, INC. (2001) SEC V. CHIQUITA BRANDS INTERNATIONAL, INC. (D.D.C. 2001)

NATURE OF THE BUSINESS

Chiquita Brands International, Inc. ("Chiquita") is a New Jersey corporation with an indirectly wholly owned subsidiary, C.I. Bananos de Exportación, S.A. ("Banadex"), in Colombia engaged in the import/export of bananas and operating a port facility.

INFLUENCE TO BE OBTAINED

Renewing the Banadex port facility's customs license.

ENFORCEMENT

Settled cease and desist order against Chiquita for violating the FCPA books-and-records and internal accounting controls provisions. Consent order entered in federal court requiring Chiquita to pay a $100,000 civil penalty.

The administrative order finds that, in breach of Chiquita's strict policies and procedures and without the knowledge or consent of any Chiquita employee, Banadex's chief administrative officer authorized Banadex's agent, CEA, to pay Colombian customs officials to obtain the port facility license renewal and instructed Banadex's security officer and controller to make the payments from a Banadex account for discretionary expenses. The payments were incorrectly identified in Banadex's books and records.

The order further finds that Chiquita's internal audit staff discovered the payments during an audit review, and after conducting an internal review, Chiquita took corrective action, including terminating the responsible Banadex employees and reinforcing internal controls in its Colombian operations. According to the order, Chiquita audit staff had previously made management aware of a number of instances in which Banadex had not provided required documentation regarding discretionary payments.

KEY FACTS

Citation. *In the Matter of Chiquita Brands Int'l., Inc.*, Admin. Proc. File No. 3 10613 (Oct. 3, 2001); *SEC v. Chiquita Brands Int'l., Inc.*, No. 1:01 cv 02079 (D.D.C. 2001).

Date Filed. October 3, 2001.

Country. Colombia.

Date of Conduct. 1995 – 1997.

Amount of the Value. $30,000.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Comercio Exterior Asesores Limitada ("CEA"), Banadex's customs broker.

Foreign official. Colombian customs officials.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition. Cease-and-Desist Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $100,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $100,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

11. IN THE MATTER OF BAKER HUGHES INC. (2001)
SEC V. KPMG SIDDHARTA SIDDHARTA & HARSONO, AND SONNY HARSONO (S.D. TEX. 2001)
SEC V. ERIC L. MATTSON AND JAMES W. HARRIS (S.D. TEX. 2001)

NATURE OF THE BUSINESS

KPMG Siddharta Siddharta & Harsono is a public accounting firm in Indonesia ("KPMG"), and Sonny Harsono ("Harsono"), is a partner of KPMG, which is an affiliate firm of KPMG International. KPMG was the accountant and agent for Baker Hughes Incorporated ("Baker Hughes"), a Texas oilfield services company. Eric Mattson was Baker Hughes's former chief financial officer and James Harris was Baker Hughes's former controller.

INFLUENCE TO BE OBTAINED

In 1999, Mattson and Harris authorized Harsono and KPMG to pay a bribe to a local government official in Indonesia to significantly reduce the tax assessment against PT Eastman Christensen ("PTEC"), an Indonesian company beneficially owned by Baker Hughes, from $3.2 million to $270,000. The amount of the bribe was then included in an invoice to PTEC, which paid the invoice and improperly entered the transaction on its books and records as payment for professional services rendered.

The SEC's administrative order against Baker Hughes found that Baker Hughes's senior managers authorized payments to Baker Hughes's agents in India and Brazil in 1998 and 1995, respectively, without making an adequate inquiry as to whether the agents might give all or part of the payments to foreign government officials in violation of the FCPA.

ENFORCEMENT

The action against KPMG and Harsono was the first joint civil injunctive action by the SEC and DOJ. On September 11, 2001, the defendants consented to the entry of a final judgment that permanently enjoins both defendants from violating and aiding and abetting violations of the anti bribery, internal controls, and books-and-records provisions of the FCPA.

On September 12, 2001, Baker Hughes consented to a cease and desist order for violations of the internal controls and books-and-records provision of the Exchange Act, but it did not have to pay a financial penalty.

On September 11, 2001, the SEC filed a complaint against Mattson and Harris alleging that they violated the anti-bribery, books-and-records, and internal controls provisions of the FCPA and aided and abetted Baker Hughes's violations of the FCPA's books-and-records and internal controls provisions. Mattson and Harris challenged the SEC, alleging that the payment was not in contravention of the FCPA and claiming that the payment was due to extortion by a corrupt government official who threatened to peg the company with an excessive tax bill if not paid off. On September 9, 2002, the United States District Court for the Southern District of Texas dismissed the anti-bribery claim. Relying on *United States v. Kay* (S.D. Tex. 2001), the court ruled that because the payments to the Indonesian tax official did not help Baker Hughes "obtain or retain business," the payments did not violate the FCPA. After this decision, the parties moved jointly to dismiss the SEC's remaining charges on January 28, 2003. On March 25, 2003, the SEC filed a notice of appeal in the United States Court of Appeals for the 5th Circuit to challenge the district court's dismissal of the anti-bribery charge. That appeal was stayed pending the

KEY FACTS

Citation. *In the Matter of Baker Hughes Inc.*, Admin. Proc. File No. 3 10572 (Sept. 12, 2001); *SEC, et al. v. KPMG, et al.*, No. 01 cv 3105 (S.D. Tex. 2001); *SEC v. Mattson, et al.*, No. 01 cv 3106 (S.D. Tex. 2001).

Date Filed. September 12, 2001; January 28, 2003.

Country. Indonesia.

Date of Conduct: 1998 – 1999.

Amount of the Value. $75,000.

Amount of Business Related to the Payment. $2.93 million.

Intermediary. Subsidiary.

Foreign official. Indonesian tax official.

FCPA Statutory Provision.

- **Baker Hughes**. Books-and-Records; Internal Controls.
- **KPMG**. Aiding and Abetting (Anti-Bribery; Books-and-Records; Internal Controls).
- **Harsono**. Anti-Bribery; Aiding and Abetting (Anti-Bribery; Books-and-Records; Internal Controls).
- **Mattson**. Anti-Bribery; Books-and-Records; Internal Controls; Aiding and Abetting (Books-and-Records; Internal Controls).
- **Harris**. Anti-Bribery; Books-and-Records; Internal Controls; Aiding and Abetting (Books-and-Records; Internal Controls).

Other Statutory Provision. None.

Disposition.

- **Baker Hughes**. Cease-and-Desist Order.
- **KPMG**. Complaint and Consent Order.
- **Harsono**. Complaint and Consent Order.
- **Mattson**. Dismissal with Prejudice.
- **Harris**. Dismissal with Prejudice.

Defendant Jurisdictional Basis.

- **Baker Hughes**. Issuer.
- **KPMG**. Agent of Issuer.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

decision by the 5th Circuit Court of Appeals in the Kay case. Upon the issuance of the Kay decision reinstating the charges against that defendant, the Court of Appeals granted the SEC's July 14, 2004 motion to dismiss its appeal.

See DOJ Digest Number B 48.
See SEC Digest Numbers D 34.
See Parallel Litigation Digest Numbers H F4 and H F9.

- **Harsono**. Agent of Issuer.
- **Mattson**. Agent of Issuer.
- **Harris**. Agent of Issuer.

Defendant's Citizenship.

- **Baker Hughes**. United States.
- **KPMG**. Indonesia.
- **Harsono**. Indonesia.
- **Mattson**. Not Stated.
- **Harris**. Not Stated.

Total Sanction. None.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Baker Hughes Servs. Int'l, Inc.*; *United States v. Baker Hughes Inc.*

Total Combined Sanction. $11 million.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

10. IN THE MATTER OF AMERICAN BANK NOTE HOLOGRAPHICS, INC. (2001) SEC V. AMERICAN BANK NOTE HOLOGRAPHICS, INC. (S.D.N.Y. 2001) SEC V. JOSHUA C. CANTOR (S.D.N.Y 2003)

NATURE OF THE BUSINESS

American Bank Note Holographics ("ABNH"), a Delaware corporation, produces and markets mass produced secure holograms. During the relevant period, American Bank Note's common stock was registered pursuant to Section 12(b) of the Exchange Act.

INFLUENCE TO BE OBTAINED

According to the SEC, ABNH and Cantor engaged in a pattern of fraud, accounting violations, and FCPA violations such that all of its financial statements "reflected a fraudulent course of conduct." Relating to the FCPA charges, the SEC alleged that in 1998, Cantor, in part, caused ABNH to wire $239,000 to a bank account in Switzerland "[i]n an effort to win the contract" to produce holograms for the Saudi Arabian government.

ENFORCEMENT

ABNH consented to a $75,000 civil penalty for violation of the anti bribery provisions of the FCPA. ABNH also consented to an order requiring it to cease and desist from committing or causing any violation, and any future violation, of the FCPA and other accounting controls in the SEC proceeding.

Certain other officers of American Bank Note not directly involved in the FCPA violations settled SEC civil actions against them, consenting to permanent restraining orders prohibiting violations of anti fraud, periodic reporting, recordkeeping, internal controls and lying to auditors provisions of the federal securities laws, and to injunctions suspending them from appearing or practicing before the Commission as accountants.

Two executive officers of an American Bank Note customer, Colorado Plasticard, consented to being permanently restrained and enjoined from violating and aiding and abetting violations of the anti fraud, periodic reporting and lying to auditors provisions of the federal securities laws. The Colorado Plasticard officers each agreed to pay a $20,000 civil penalty.

In April 2003, Cantor, without admitting or denying the allegations in the SEC's complaint, consented to an order permanently enjoining him from violation and aiding and abetting violations of the FCPA, the Securities Act of 1933, the Securities and Exchange Act of 1934 and the SEC Exchange Act Rules. Cantor also consented to a ten-year ban from acting as an officer or director of a public company.

See DOJ Digest Number B 23.

KEY FACTS

Citation. *In the Matter of Am. Bank Note Holographics, Inc.*, Admin. Proc. File No. 3 10532 (July 18, 2001); *SEC v. Am. Bank Note Holographics, Inc.*, No. 01 cv-6453 (S.D.N.Y. 2001); *SEC v. Cantor*, No. 03 cv 2488 (S.D.N.Y. 2003).

Date Filed. July 18, 2001 (*In the Matter of Am. Bank Note Holographics*); July 31, 2001 (SEC v. Am. Bank Note Holographics); April 11, 2003 (Cantor).

Country. Saudi Arabia.

Date of Conduct. 1998.

Amount of the Value. $239,000.

Amount of Business Related to the Payment. Approximately $597,500.

Intermediary. Foreign agent.

Foreign official. Saudi Arabian government officials.

FCPA Statutory Provision.

- **ABNH**. Anti-Bribery; Books-and-Records; Internal Controls.
- **Cantor**. Anti-Briber; Books-and-Records; Internal Controls; Aiding and Abetting (Books-and-Records; Internal Controls).

Other Statutory Provision.

- **ABNH**. Anti-Fraud and Reporting Provisions of the Exchange Act (Section 10(b), Section 13(a)); Securities Fraud (Securities Act Section 17(a)).
- **Cantor**. Anti-Fraud (Exchange Act Section 10(b)); Securities Fraud (Securities Act Section 17(a)); Aiding and Abetting (Reporting Violations (Exchange Act Section 13(a)).

Disposition. Consent Order and Cease-and-Desist Order (ABNH); Consent Order (Cantor).

Defendant Jurisdictional Basis. Issuer (ABNH); Agent of Issuer (Cantor).

Defendant's Citizenship. United States (ABNH); Not Stated (Cantor).

Total Sanction. $75,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *United States v. Cantor*.

Total Combined Sanction. $75,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

9. SEC V. INT'L BUSINESS MACHINES CORP. (D.D.C. 2000)

NATURE OF THE BUSINESS

International Business Machines Corporation ("IBM") is a U.S. corporation. Its indirectly wholly-owned subsidiary, IBM Argentina, entered into a systems integration contract with Banco de La Nación Argentina, a government owned commercial bank. IBM's common stock is registered with the SEC pursuant to Section 12(b) of the Exchange Act and is listed on the NYSE.

INFLUENCE TO BE OBTAINED

According to the SEC, in 1994, the Banco de la Nacion Argentina awarded a systems modernization and integration contract to IBM-Argentina worth approximately $250 million. IBM-Argentina entered into a subcontract with Capacitacion y Computacion Rural, S.A. ("CCR"), an Argentine company, in which IBM-Argentina agreed to pay CCR $37 million for services including provision of an alternative banking software system for BNA.

The SEC alleges that senior management at IBM-Argentina overrode IBM's procurement and contracting procedures by providing the Procurement department with false and misleading documentation pertaining to the contract with CCR. IBM-Argentina paid approximately $22 million to CCR, and then CCR transferred at least $4.5 million of those payments directly to BNA directors.

ENFORCEMENT

The SEC alleged violation by IBM of the FCPA accounting provisions because IBM consolidated its subsidiaries' financial results in its SEC reports. The SEC did not allege that IBM itself had inadequate accounting controls or that people at IBM knew of or authorized the payments or made false entries in IBM's books or records. IBM consented to a cease and desist order as to the violation of the books-and-records provision of the FCPA and paid a civil fine of $300,000. There are related proceedings in Argentina and Switzerland to recover the $4.5 million payment.

KEY FACTS

Citation. *SEC v. IBM Corp.*, No. 00 cv 3040 (D.D.C. 2000).

Date Filed. December 21, 2000.

Country. Argentina.

Date of Conduct. 1994 – 1995.

Amount of the Value. Approximately $4.5 million.

Amount of Business Related to the Payment. $250 million.

Intermediary. Local Subcontractor.

Foreign official. Several directors of Banco de La Nation Argentina.

FCPA Statutory Provision. Books-and-Records.

Other Statutory Provision. None.

Disposition. Cease-and-Desist.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. $300,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $300,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

8. SEC V. TRITON ENERGY CORP., PHILIP W. KEEVER AND RICHARD L. MCADOO (D.D.C. 1997)

NATURE OF THE BUSINESS

Triton Energy Corporation, a Delaware corporation, engages in the exploration and production of crude oil and natural gas, and its common stock is registered with the SEC pursuant to Section 12(b) of the Exchange Act. Triton Energy's wholly owned subsidiary, Triton Indonesia, Inc., operated an oil and gas recovery project in Indonesia.

Philip W. Keever was employed by Triton Indonesia in various positions during the relevant time, including Commercial Manager, Vice President and General Manager, and President and General Manager. Richard L. McAdoo was the Vice President and General Manager of Triton Indonesia.

INFLUENCE TO BE OBTAINED

The SEC alleges that Triton Indonesia, with the authorization of Keever and McAdoo, made numerous payments to Roland Siouffi, a local business agent. Siouffi then directed these payments to Indonesian officials for the purpose of, among other things, (i) obtaining a favorable decision from tax auditors reducing Triton Indonesia's tax liability relating to technical service fees; (ii) obtaining from auditors a favorable final report and cost certification for the 1988 and 1989 annual audits; (iii) obtaining both a decision from the Indonesian government that Triton Indonesia was in a nontaxable position and a refund of a previously paid corporate tax; (iv) obtaining a refund on previous value added tax payments; and (v) obtaining a favorable decision to revise rates paid under a pipeline tariff and procure a refund of the purported overpayment.

According to the SEC, Triton Indonesian employees created false documents to hide the improper payments' true purpose. The payments were recorded as legitimate expenses in Triton Indonesia's books and records.

ENFORCEMENT

The SEC filed a civil injunction action against Triton Energy, Philip Keever, and Robert McAdoo. The SEC sought to enjoin Triton Energy Corp., Keever and McAdoo from future violations and to recover monetary penalties. Triton Energy Corp. consented to an injunction against future violations and to pay a $300,000 penalty. Keever and McAdoo consented to similar injunctions and to pay a $50,000 and $35,000 penalty, respectively. In a related action, four other former Triton Energy Corp. executives consented to a cease and desist order enjoining them from causing any further violations.

KEY FACTS

Citation. *SEC v. Triton Energy Corp. et al.*, No. 1:97 cv 00401 (D.D.C. 1997).

Date Filed. February 27, 1997 (Triton Energy, Keever); June 26, 1997 (McAdoo).

Country. Indonesia.

Date of Conduct. 1989 – 1992.

Amount of the Value. $287,500.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Roland Siouffi, Triton Indonesia's business agent.

Foreign official. Various officials of the Indonesian government, including government auditors and tax collectors.

FCPA Statutory Provision.

- **Triton Energy**. Anti-Bribery; Books-and-Records; Internal Controls.
- **Keever and McAdoo**. Anti-Bribery; Books-and-Records; Internal Controls.

Other Statutory Provision. None.

Disposition.

- **Triton Energy**. Complaint and Consent Order.
- **Keever**. Complaint and Consent Order.
- **McAdoo**. Complaint and Consent Order.

Defendant Jurisdictional Basis. Issuer (Triton Energy); Agent of Issuer (Keever, McAdoo).

Defendant's Citizenship. United States (Triton Energy); Not Stated (Keever, McAdoo).

Total Sanction. $300,000 (Triton Energy); $50,000 (Keever); $35,000 (McAdoo).

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. *In the Matter of Gore, et al.*

Total Combined Sanction. $300,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

7. SEC V. MONTEDISON, S.P.A. (D.D.C. 1996)

NATURE OF THE BUSINESS

Montedison S.p.A. is an Italian-based corporation engaged in agro industry, chemical, energy and engineering industries. During the relevant time period, Montedison maintained a class of shares on the New York Stock Exchange and is registered with the SEC pursuant to Section 12(b) of the Exchange Act.

INFLUENCE TO BE OBTAINED

According to the SEC, from 1988 to 1993, Montedison engaged in a scheme to pay hundreds of millions of dollars in bribes Italian politicians and others. Montedison made the alleged bribes to secure political backing to either change the terms of a contract or overturn the decision of a judge, and it failed to document the payments in the company's records. The fraudulent scheme was uncovered by an Italian investigation, and resulted in Montedison restating its financial statements to account for a loss of approximately $350 million.

As part of the scheme, deposited bearer bonds in an account in Switzerland from which the payments to third parties were then made. To conceal the transactions, Montedison's management created a false accounts receivable account. Montedison then made fictitious loans to a string of wholly owned subsidiaries. In 1992, Montedison determined that the loan was uncollectible and wrote it off.

ENFORCEMENT

Montedison was charged with committing financial fraud by falsifying documents to inflate artificially the company's financial statements. The SEC's complaint also charged Montedison with violating the corporate reporting, books and records, and internal control sections of the Securities Exchange Act of 1934. Following cross motions for summary judgment by the parties in early 1998, final judgment was entered in favor of the SEC and against defendant Montedison in March 2001.

On March 28, 2001, a settlement was entered into under which Montedison was ordered to pay a civil penalty of $3,000,000 for violating the internal controls and books-and-records provisions of the FCPA, as well as anti fraud and financial reporting federal securities laws. Injunctive relief was not imposed.

KEY FACTS

Citation. *SEC v. Montedison*, S.p.A., No. 1:96 cv 02631 (D.D.C. 2001).

Date Filed. March 28, 2001.

Country. Italy.

Date of Conduct. 1988 – 1993.

Amount of the Value. Approximately $272 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. A Rome real estate developer.

Foreign official. Italian politicians.

FCPA Statutory Provision. Books-and-Records; Internal Controls.

Other Statutory Provision. Securities Fraud (Exchange Act Section 10(b)); False Statement to Regulators (Exchange Act Section 13(a)).

Disposition. Complaint and Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. Italy.

Total Sanction. $300,000.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. $300,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

6. SEC V. ASHLAND OIL, INC. ORIN E. ATKINS (D.D.C. 1986)

NATURE OF THE BUSINESS

Ashland Oil, Inc. ("Ashland Oil") is a Kentucky corporation engaged in refining, transporting, and marketing crude oil products. It maintains a class of securities registered with the SEC pursuant to Section 12 of the Exchange Act. Orin E. Atkins was the chairman of the board and chief executive officer of Ashland during the relevant period of time.

INFLUENCE TO BE OBTAINED

According to the SEC, Ashland Oil's wholly owned subsidiaries purchased a defunct mineral mine from an Omani official for a significantly inflated amount. Allegedly, Ashland Oil made the purchase to influence the official to grant it crude oil contracts with the Oman Refining Company, an instrumentality of the government of Oman.

ENFORCEMENT

On July 8, 1986, Ashland Oil and Atkins consented to the entry of a permanent injunction that prohibited Ashland Oil from using corporate funds for unlawful political contributions or other similar unlawful purposes. No monetary sanction was imposed.

KEY FACTS

Citation. *SEC v. Ashland Oil, Inc., et al.*, No. 86 cv 1904 (D.D.C. 1986).

Date Filed. July 8, 1986.

Country. Oman.

Date of Conduct. 1979 – 1982.

Amount of the Value. Purchase of a nearly worthless chromite mine owned by the foreign official for $25 million, plus approximately $4 million in interest.

Amount of Business Related to the Payment. Not Stated.

Intermediary. Subsidiary.

Foreign official. Equerry to the Sultan of Oman and an official of the Omani government.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. None.

Disposition. Complaint and Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. None.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. None.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

5. SEC V. SAM P. WALLACE CO., INC., ROBERT D. BUCKNER, AND ALFONSO A. RODRIGUEZ (D.D.C. 1983)

NATURE OF THE BUSINESS

Sam P. Wallace Co. ("Wallace Co.") is a Texas corporation and an issuer engaged in mechanical, electrical, and civil construction domestically and internationally. Its common stock is registered with the SEC pursuant to Section 12(b) of the Exchange Act. Robert D. Buckner was Wallace Co.'s board chairman, chief executive officer, and director during the relevant time. Alfonso A. Rodriguez was the executive vice president of Wallace Co., as well as the regional manager of two Wallace Co. subsidiaries. Later, Rodriguez became a director of Wallace Co.

INFLUENCE TO BE OBTAINED

According to the SEC, Wallace Co. made $1.391 million in improper payments to foreign officials to obtain and retain contracts with the foreign government.

ENFORCEMENT

Wallace Co., Buckner, and Rodriguez consented to the entry of a permanent injunction prohibiting future violations of the FCPA. In addition, Wallace Co. agreed to the establishment of an independent committee of the board of directors to conduct an internal investigation and report to the SEC.

In a related action, Wallace Co. pled guilty to violations of the books-and-records provision of the FCPA and the Currency and Foreign Transactions Reporting Act, and it was required to pay a criminal penalty of $530,000. Rodriguez also pled guilty to one count of violating the FCPA's anti-bribery provision and was sentenced to two years of probation and required to pay a fine of $10,000.

KEY FACTS

Citation. *SEC v. Sam P. Wallace Co.*, et al., No. 81-cv-1915 (D.D.C. 1983).

Date Filed. February 23, 1983.

Country. Trinidad and Tobago.

Date of Conduct. 1980 – 1981.

Amount of the Value. $1.391 million.

Amount of Business Related to the Payment. Not Stated.

Intermediary. None.

Foreign official. Unnamed foreign government officials.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision. Securities Fraud (Exchange Act Section 10(b)); False Statements to Regulators (Exchange Act Section 13(a)); False Proxy Statement (Exchange Act Section 14(a)).

Disposition. Complaint and Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. None.

Compliance Monitor/Reporting Requirements. Special Committee.

Related Enforcement Actions. *United States v. Rodriguez*; *United States v. Sam P. Wallace Co.*

Total Combined Sanction. $530,000.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

4. SEC V. TESORO PETROLEUM CORP. (D.D.C. 1980)

NATURE OF THE BUSINESS

Tesoro Petroleum Corp. ("Tesoro") is a Delaware corporation engaged in the exploration, development, production, purchase, and sale of oil and gas in over thirty countries, worldwide. During the relevant period of time, its common stock was registered with the SEC pursuant to Section 12(b) of the Exchange Act.

INFLUENCE TO BE OBTAINED

The SEC alleged that from 1968 to 1980, Tesoro made improper payments to various consultants that were disproportionate with the business obtained or the services provided. According to the SEC, Tesoro made these payments in connection with its efforts to obtain multi-million dollar contracts and foreign oil and gas concessions from foreign governments, and it was likely that some of the improper payments were paid to foreign government officials. Tesoro could not verify the final disposition of the funds due to its lack of internal controls or proper record-keeping.

ENFORCEMENT

On November 20, 1980, Tesoro consented to the entry of a permanent injunction prohibiting future violations of the FCPA, without admitting or denying any of the SEC's allegations. In addition, Tesoro agreed to appoint a new director who would be satisfactory to the SEC and undertook to keep accurate books and records.

KEY FACTS

Citation. *SEC v. Tesoro Petroleum Corp.*, No. 80-cv-2961 (D.D.C. 1980).

Date Filed. November 20, 1980.

Country. Not Stated.

Date of Conduct. 1968 – 1980.

Amount of the Value. Not Stated.

Amount of Business Related to the Payment. Multimillion-dollar contracts.

Intermediary. Foreign finder/consultant.

Foreign official. Unnamed foreign government officials.

FCPA Statutory Provision. None.

Other Statutory Provision. False Report to Regulators (Securities Exchange Act Section 13(a)); False Proxy Statement (Securities Exchange Act Section 14(a)).

Disposition. Complaint and Consent Order.

Defendant Jurisdictional Basis. Issuer.

Defendant's Citizenship. United States.

Total Sanction. None.

Compliance Monitor/Reporting Requirements. None.

Related Enforcement Actions. None.

Total Combined Sanction. None.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

3. SEC V. INTERNATIONAL SYSTEMS & CONTROLS CORP., J. THOMAS KENNEALLY, HERMAN M. FRIETSCH, RAYMOND G. HOFKER, ALBERT W. ANGULO, & HARLAN M. STEIN (D.D.C. 1979)

NATURE OF THE BUSINESS

International Systems & Controls Corporation ("International Systems") is a Delaware corporation with its headquarters in Texas that provides services and products for the development of energy, agriculture, and forestry resources and for the processing, storage, and handling of natural resource and agricultural products. During the relevant time, International Systems registered its common stock with the SEC pursuant to Section 12(b) of the Exchange Act. Thomas Kenneally was the former Chairman of the Board and Chief Executive Officer of International Systems. Herman Frietsch was a Senior Vice President of International Systems. Raymond Hofker served as International Systems' General Counsel and as a Vice President. Albert Angulo was the Executive Vice President of International Systems' former subsidiary, Black Sivalls & Bryson, Inc., prior to its sale to another publicly owned corporation. Harlan Stein was the President of International Systems' Engineering Group.

INFLUENCE TO BE OBTAINED

According to the SEC's complaint, from approximately 1970 to 1979, the defendants made more than $23 million in improper payments to senior government officials, including the ruling families, in several Middle Eastern, African, and Southern American countries. At the time of the Complaint, International Systems also had made promises to pay approximately $10 million in additional payments as part of the scheme. International Systems and the defendants sought to secure certain contracts by making the illicit payments.

To facilitate the payments, International Controls made payments through its international subsidiaries, either directly to government officials or through their agents or third-party intermediaries. International Systems also failed to provide any information or supporting documents for numerous payments to government officials. Alternatively, International Controls used a system of inflated invoices and kickbacks to effect the scheme.

According to the SEC, International Systems engaged Special Counsel to conduct an investigation into these improper payments and disclosed the investigation in its SEC filings, but only after the SEC had instigated its own inquiry. The SEC also alleged several other misstatements in International Systems' required filings.

ENFORCEMENT

International Systems and two individual defendants (who were the officers of International Systems) consented to the entry of permanent injunctions prohibiting future violations of the FCPA. Ancillary relief included the amendment of International Systems' filings and appointment of an Audit Committee and a Special Agent.

KEY FACTS

Citation. *SEC v. Int'l Sys. & Controls Corp.*, No. 79-cv-1760 (D.D.C 1979).

Date Filed. July 9, 1979.

Country. Saudi Arabia, Iran, Algeria, Ivory Coast, Nicaragua, Chile.

Date of Conduct. 1970 – 1979.

Amount of the Value. Approximately $23 million.

Amount of Business Related to the Payment. Approximately $750 million.

Intermediary. Subsidiaries; Agents/Consultants.

Foreign official. Senior foreign government officials, including a Saudi government official, Iranian government officials, a senior Algerian military official, the Iranian Ambassador to the U.S. and Minister of Finance, President of Nicaragua, and members of the Chilean Junta.

FCPA Statutory Provision. Books-and-Records; Internal Controls (International Systems).

Other Statutory Provision. Securities Fraud (Exchange Act Section 10(b), Securities Act Section 17(a)); Materially False Filings (Exchange Act Section 13(a)); False Proxy Statements (Exchange Act Section 14(a)); Aiding and Abetting (Securities Fraud; Materially False Filings; False Proxy Statements).

Disposition. Consent Order (International Systems, Kenneally, Frietsch); None (Hofker, Angulo, Stein).

Defendant Jurisdictional Basis. Issuer (International Systems); Agent of Issuer (Kenneally, Frietsch, Hofker, Angulo, Stein).

Defendant's Citizenship. United States (Internationaly Systems); Not Stated (Kenneally, Frietsch, Hofker, Angulo, Stein.

Total Sanction. None.

Compliance Monitor/Reporting Requirements. Special Agent; Audit Committee.

Related Enforcement Actions. None.

Total Combined Sanction. None.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

2. SEC V. KATY INDUSTRIES, INC., WALLACE E. CARROLL, MELVAN M. JACOBS (N.D. Ill. 1978)

NATURE OF THE BUSINESS

Katy Industries, Inc. is a Delaware corporation with its headquarters in Illinois, which operated in the oil production industry. During the relevant time, its common stock and a class of its preferred stock were registered with the SEC pursuant to Section 12(b) of the Exchange Act. Wallace Carroll was the Chairman of the Board and Chief Executive Officer of Katy. Melvan Jacobs was a director of Katy's Executive Committee and acted as counsel to Katy.

INFLUENCE TO BE OBTAINED

According to the SEC, from 1972 to 1978, the defendants engaged in a scheme to provide improper payments to an Indonesian official to obtain a thirty-year oil production-sharing contract with Pertamina, Indonesia's oil and gas company, giving Katy the exclusive right to explore and develop oil and natural gas in Indonesia. The SEC alleges that the defendants engaged a consultant, who was a close personal friend of a high-level Indonesian government official ("Official"). The consultant facilitated the initial contact with the Official, and the parties agreed to an arrangement pursuant to which the defendants would pay the Official's agents a portion of the profits from the thirty-year contract.

ENFORCEMENT

The court entered consent judgments against Katy, Carroll, and Jacobs. These judgments permanently enjoined the defendants from engaging in future violations of the FCPA. Katy was also ordered to amend its filings and establish a Special Review Committee of outside directors to report to the board of directors, who were to act on the request.

KEY FACTS

Citation. *SEC v. Katy Indus.*, Inc., et al., No. 78-cv-03476 (N.D. Ill. 1978).

Date Filed. November 17, 2016.

Country. Indonesia.

Date of Conduct. 1972 – 1978.

Amount of the Value. $316,250.

Amount of Business Related to the Payment. $10 million contract.

Intermediary. Payments were made through an offshore Cayman Island corporation, owned by a consultant of Katy and a representative of the foreign official.

Foreign official. A high-level Indonesian government official.

FCPA Statutory Provision. Anti-Bribery.

Other Statutory Provision.

- **Katy**. Securities Fraud (Securities Act Section 17(a); Exchange Act Section 10(b)); False Filing Statements (Exchange Act Section 13(a)); False Proxy Statements (Exchange Act Section 14(a)).
- **Carroll, Jacobs**. Securities Fraud (Securities Act Section 17(a); Exchange Act Section 10(b)); Aiding and Abetting (False Filing Statements; False Proxy Statements); False Proxy Statements (Exchange Act Section 14(a)).

Disposition. Consent Order.

Defendant Jurisdictional Basis. Issuer (Katy); Agent of Issuer (Carroll, Jacobs).

Defendant's Citizenship. United States (Katy); Not Stated (Carroll, Jacobs).

Total Sanction. None.

Compliance Monitor/Reporting Requirements. Special Committee; Reporting Requirements.

Related Enforcement Actions. None.

Total Combined Sanction. None.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

1. SEC V. PAGE AIRWAYS, INC., JAMES P. WILMOT, GERALD G. WILMOT, DOUGLAS W. JUSTON, ROSS C. CHAPIN, JAMES P. LAWLER, T. RICHARD OLNEY (D.D.C. 1978)

NATURE OF THE BUSINESS

Page Airways, Inc. ("Page"), a New York corporation, sells and services aircraft. During the relevant time, Page's common stock was registered with the SEC and traded in the over-the-counter market.

James Wilmot, Gerald Wilmot, Douglas Juston, Ross Chapin, James Lawler, and T. Richard Olney were all members of Page's Board or were employed as executives by Page.

INFLUENCE TO BE OBTAINED

According to the SEC, from 1971 to 1978, Page and the defendants engaged in a scheme to make improper payments to foreign various government officials to sell Gulfstream II aircraft and other aircraft, products, and services throughout the world.

As part of the scheme, Page and the defendants allegedly paid funds directly to foreign officials or entities or agents they controlled to incentivize them to purchase Page's aircrafts. The SEC's complaint states that Page made the improper payments in the form of money or other things of value, including a Cadillac Eldorado convertible car given to the Chief of State of Uganda. To facilitate the scheme, Page and the defendants made false statements to the Export-Import Bank and in the company's SEC filings and proxy materials.

ENFORCEMENT

In 1978, Page consented to the entry of a permanent injunction prohibiting future violations of the FCPA. The charges against all six of Page's officers and directors were dismissed.

KEY FACTS

Citation. *SEC v. Page Airways*, Inc., et al., No. 78-cv-0645 (D.D.C. 1978).

Date Filed. November 18, 1978.

Country. The Republic of Gabon, Malaysia, Ivory Coast, Morocco, Saudi Arabia, Uganda.

Date of Conduct. 1971 – 1978.

Amount of the Value. Approximately $2.5 million.

Amount of Business Related to the Payment. $60 million of goods and services (a sum amounting to nearly one-third of Page's total sales between 1971 and 1976).

Intermediary. Agents, Foreign Subsidiaries.

Foreign official. Asian and African government officials, including the President of the Republic of Gabon, the Chief Minister of Sabah, Malaysia, and the Ivory Coast Ambassador to the U.S..

FCPA Statutory Provision.

- **Page**. Books-and-Records; Internal Controls.
- **Wilmot, Wilmot, Juston, Chapin, Lawler, Olney**. None.

Other Statutory Provision.

- **Page**. Securities Fraud (Exchange Act Section 10(b)); False Filing Statements (Exchange Act Section 13(a)); False Proxy Statements (Exchange Act Section 14(a)); Aiding and Abetting (Securities Fraud; False Filing Statements; False Proxy Statements).
- **Wilmot, Wilmot, Juston, Chapin**. Securities Fraud (Exchange Act Section 10(b)); False Filing Statements (Exchange Act Section 13(a)); False Proxy Statements (Exchange Act Section 14(a)); Aiding and Abetting (Securities Fraud; False Filing Statements; False Proxy Statements).
- **Lawler, Olney**. Securities Fraud (Exchange Act Section 10(b)); False Filing Statements (Exchange Act Section 13(a)); Aiding and Abetting (Securities Fraud; False Filing Statements).

Disposition.

- **Page**. Consent Order.
- **Wilmot, Wilmot, Juston, Chapin, Lawler, Olney**. Dismissed.

D. SEC ACTIONS RELATING TO FOREIGN BRIBERY

Defendant Jurisdictional Basis.

- **Page**. Issuer.
- **Wilmot, Wilmot, Juston, Chapin, Lawler, Olney**. Agent of Issuer.

Defendant's Citizenship.

- **Page**. United States.
- **Wilmot, Wilmot, Juston, Chapin, Lawler, Olney**. Not Stated.

Total Sanction.

- **Page**. None.
- **Wilmot, Wilmot, Juston, Chapin, Lawler, Olney**. None.

Compliance Monitor/Reporting Requirements. Independent Compliance Monitor.

Related Enforcement Actions: None.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES[106]

[106] Although the SEC does not have an opinion procedure release process, it has declared its decision to follow the guidance announced through the DOJ's FCPA Opinion Release Procedure. SEC Release No. 34-17099 (Aug. 28, 1980) stated that, to encourage issuers to take advantage of the DOJ's FCPA Review Procedure that, as a matter of prosecutorial discretion, the SEC would "not commence an enforcement action alleging violations of Section 30A in any case in which a public company seeks clearance for a proposed transaction under the FCPA Review Procedure and receives a letter from the Department of Justice, prior to May 31, 1981, stating that the Department does not intend to take enforcement action based on the facts and circumstances presented." The release further noted that it would revisit this policy once the DOJ had evaluated the results of the FCPA Review Procedure after its first year of operation. A second SEC Release, No. 34-18255 (Nov. 12, 1981) held that the SEC would continue to adhere to the policy announced in Release No. 34-17099.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

60. FCPA REVIEW OPINION PROCEDURE RELEASE 14-02

NATURE OF THE BUSINESS

An unspecified, multinational company headquartered in the United States.

PROPOSED ARRANGEMENT

A multinational company headquartered in the United States (the "requestor") intends to acquire a foreign consumer products company and its wholly owned subsidiary (collectively, the "Target Company") both of which are incorporated and operate in a foreign country. The Target Company is currently owned by another foreign corporation (the "Seller"), which is a prominent consumer products manufacturer and distributor in the foreign country. In performing its pre acquisition due diligence, the requestor discovered a number of improper payments by the Target Company's employees to officials of the foreign country's government and substantial weaknesses in the Target Company's compliance program.

The Target Company and the Seller confine their operations to the foreign country, are not listed on any U.S. based exchanges, and the payments do not satisfy the jurisdictional nexus requirements of the FCPA. Thus, neither the Target Company nor the Seller are subject to FCPA liability for the improper payments. In light of the requestor's bribery concerns over the Target Company's conduct, the requestor has set forth a plan that includes multiple pre acquisition measures and detailed post acquisition integration steps.

REASON FOR PAYMENT

To acquire foreign consumer products company.

OPINION

The Department of Justice does not presently intend to take any enforcement action with respect to the pre acquisition bribery of the Target Company or the Seller. The DOJ acknowledges that under principles of corporate successor liability, the acquiring company will assume the liabilities of the target company, including any potential pre existing criminal and civil liability from FCPA violations by the target company. However, the DOJ explains that where a target company was not previously subject to the FCPA's jurisdiction at the time of the improper payments, the acquisition of the company does not retroactively create FCPA liability for the acquirer. As a result, because none of the potentially improper pre acquisition payments by the Seller or Target Company would be subject to FCPA liability, the DOJ lacks jurisdiction to prosecute the requestor.

The DOJ does not take a position on the adequacy or reasonableness of the requestor's pre acquisition measures and post acquisition integration steps.

KEY FACTS

Date Published. November 7, 2014

Requestor. Unspecified multinational company.

Business Location. Unspecified.

Amount of Payment. Unspecified.

Intended Recipients. Unspecified.

Topic(s) of Opinion. Due Diligence; Mergers and Acquisitions; Successor Liability.

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

59. FCPA REVIEW OPINION PROCEDURE RELEASE 14-01

NATURE OF THE BUSINESS

United States financial services company, investment bank, and majority shareholder of a foreign financial services company.

PROPOSED ARRANGEMENT

A U.S. financial services company and investment bank (the "requestor") owns a majority interest in a foreign financial services company ("Foreign Company A"). The requestor has contracted to purchase the remaining minority interest in Foreign Company A from a foreign shareholder (the "Foreign Shareholder") who was recently appointed to, and now holds, a senior government position in Foreign Company A's government.

In March 2007, the requester purchased a majority interest in Foreign Company A, which was founded and owned by the Foreign Shareholder, among others. To guarantee Foreign Shareholder's participation, the parties signed an agreement (the "Agreement") prohibiting the Foreign Shareholder from selling his interest for five years, until to January 1, 2012. The Agreement did, however, allow Foreign Shareholder to leave Foreign Company A before the end of the five year period if he were appointed to a position in the Foreign Country's government. In such an event, the Agreement provided a formula to determine the purchase price of Foreign Shareholder's shares to allow the requestor to buy out the Foreign Shareholder's minority interest. The formula provided that the shares would be valued by a multiple of Foreign Company A's average net income for the two years preceding the buyout.

The Foreign Shareholder served as CEO and chairman of Foreign Company A. In December 2011, Foreign Shareholder was appointed as a high level official in Foreign Country's banking agency ("Foreign Agency"). By virtue of this appointment, Foreign Shareholder became a Foreign Official within the meaning of the FCPA. Foreign Company A is not directly regulated by Foreign Agency, but Foreign Agency is a client of requestor.

In early 2012, the requestor and Foreign Shareholder commenced negotiations for the requestor to purchase Foreign Shareholder's shares. The parties agreed not to use the valuation formula contained in the Agreement, because Foreign Company A experienced net losses each year from 2008 2011, thus the formula dictated that the shares were valueless. The requestor believes that any attempt to use the Agreement's valuation formula will lead to litigation or will cause the Foreign Shareholder to sell its shares to a third party. Requestor believes that having an unknown third party own more than one third of the closely held financial services firm will result in risk to Foreign Company A's operations and profitability. Therefore, the requestor and Foreign Shareholder agreed to have an independent accounting firm make a binding determination of the minority interest's value. In May 2013, the accounting firm determined the value of the shares as of December 31, 2012.

The requestor also paid Foreign Shareholder a 2011 bonus, severance, and accrued pension contributions. The bonus was paid in accordance with

KEY FACTS

Date Published. November 7, 2014

Requestor. Unspecified multinational company.

Business Location. Unspecified.

Amount of Payment. Unspecified.

Intended Recipients. Unspecified.

Topic(s) of Opinion. Due Diligence; Mergers and Acquisitions; Successor Liability.

Final Opinion. No intent by DOJ to bring enforcement action.

standard compensation policies and was comparable to the amount received by eight individuals holding similar roles in offices of requestor. The bonus was tied to requestor's performance and equal to bonuses Foreign Shareholder received in 2009 and 2010.

Foreign Shareholder has represented and warranted that, since his appointment at Foreign Agency, he has recused himself from any decision concerning the award of business to the requestor, Foreign Company A, or their affiliates (collectively, the "Recusal Entities") by Foreign Agency or the foreign country's government and has not influenced or sought to influence any supervisory or regulatory matters with respect to the Recusal Entities. Foreign Shareholder will continue to recuse himself until after completion of the buyout of the Shares. After the buyout is completed, Foreign Shareholder has also represented and warranted that before he is involved in any business matter between Foreign Agency and the Recusal Entities, he will first determine if the business matter was under negotiation, proposed or anticipated at the time of, or prior to, the payment for the Shares. If so, Foreign Shareholder will recuse himself and avoid influencing Foreign Agency with respect to such business matter. Foreign Shareholder has distributed an official communication to senior employees of requestor notifying them of his government position and explaining that he is prohibited from discussing or influencing any decision relating to the award of business to the Recusal Entities until after the buyout of his Shares. Foreign Shareholder will also notify senior employees of the Recusal Entities regarding the same.

Foreign Shareholder disclosed his interest in Foreign Company A to Foreign Government officials, and they have informed him that they do not object to the sale of the Shares. Since his appointment, Foreign Shareholder has not received any payments from the Recusal Entities, other than his 2011 bonus, accrued pension contributions and severance. Foreign Shareholder has warranted in writing that any payment to him for the Shares will be made solely for consideration for the shares, and not in his official capacity or in exchange for a future action. Foreign Company A has received written assurance from local counsel in Foreign Country that the purchase of the Shares is lawful in Foreign Country.

REASON FOR PAYMENT

Severance of business relationship.

OPINION

The Department of Justice does not presently intend to take any enforcement action with respect to the proposed buyout, based upon all the facts and circumstances as represented by the requestor, the Foreign Shareholder and the Foreign government. The DOJ stated that the buyout will avoid what would be an ongoing conflict of interest and the alternative valuation formula appears reasonable given the facts presented. Furthermore, the requestor's decision to engage an independent accounting firm ensures that the payment reflects the fair market value of the Shares, rather than an attempt to overpay the Foreign Shareholder. After the purchase of the Shares, Foreign Shareholder will no longer have a financial incentive to assist the requestor in obtaining or retaining business, as the purchase will sever the parties' financial relationship. The

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

DOJ, however, did reiterate that "this Opinion does not foreclose future enforcement action should facts indicative of corrupt intent (such as implied understanding that Foreign Shareholder would direct business to Requestor or inflated earnings projections being used to induce Foreign Shareholder to act on Requestor's behalf) later become known."

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

58. FCPA REVIEW OPINION PROCEDURE RELEASE 13-01

NATURE OF THE BUSINESS

Partner at unspecified U.S. law firm, which represents a foreign country in various international arbitrations.

PROPOSED ARRANGEMENT

The requestor proposes to pay for the medical treatment of the daughter of an official who works in a foreign country's Office of the Attorney General. The requestor will make all payments directly to the facility where the foreign official's daughter will receive treatment. The funds used to pay for the medical treatment will be the requestor's own personal funds, for which the requestor will not seek nor receive reimbursement from his law firm. The decision by the requestor to pay for or not to pay for this medical treatment will have no impact on any current or future decisions of the Office of the Attorney General in deciding on the hiring of international legal counsel. The Attorney General of the foreign country provided an opinion stating that the payment of medical expenses for the foreign official's daughter under these circumstances would not violate the laws of the foreign country. Further, the foreign official represented and warranted in writing that he has not had, does not have, and will not have any influence in the contracting of international lawyers to represent the foreign country; he will not attempt to assist the requestor or the requestor's law firm in the award of future work; and he will not become involved in any decision that the Office of the Attorney General might make in the future in this regard.

REASON FOR PAYMENT

Humanitarian reasons.

OPINION

Department of Justice does not does not presently intend to make any enforcement action with respect to the proposed payment of approximately $13,500 to $20,500, based upon all the facts and circumstances as represented by the requestor, the foreign country's Attorney General, and the foreign official. The DOJ, however, did reiterate that "[a] person may violate the FCPA by making a payment or gift to a foreign official's family member as an indirect way of corruptly influencing that foreign official."

KEY FACTS

Date Published. December 19, 2013

Requestor. Partner at unspecified US law firm.

Business Location. Unspecified.

Amount of Payment. Approximately between $13,500 and $20,500.

Intended Recipients. A foreign official, via payment to the treatment facility for the official's daughter.

Topic(s) of Opinion. Charitable Contributions; Transparency Provisions

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

57. FCPA REVIEW OPINION PROCEDURE RELEASE 12-02

NATURE OF THE BUSINESS

Nineteen non profit adoption agencies.

PROPOSED ARRANGEMENT

The nineteen adoption agencies ("Requestors") seek to host eighteen government officials from an unspecified Foreign Country during visits to the United States. The purpose of the officials' trip is to learn more about the Requestors' work, which includes processing adoptions in the Foreign Country. The trip will consist of approximately two days of meetings, not including travel. The officials will be selected by the Foreign Country, and the Requestors have no role in selecting them. The Requestors will pay for business class airfare on international portions of flights for high ranking officials, coach airfare for international portions of flights for other officials, coach airfare for all officials for domestic flights, two or three nights of hotel stay at a business class hotel, meals during the officials' stay, transportation between agencies, and local transportation. The Requestors will pay all expenses directly to the providers and will not give any money, including per diems, to the government officials.

REASON FOR PAYMENT

The visit is intended to educate the visiting officials about the operations and services of U.S. adoption providers.

OPINION

The Department of Justice does not presently intend to take any enforcement action with respect to the planned program and proposed payments. Because the Requestors are all classified as domestic concerns, since they are based in the United States, they are eligible to seek the FCPA's affirmative defense covering "reasonable and bona fide expenditure[s]." Based upon all of the facts and circumstances, the expenses contemplated are reasonable under the circumstances and directly relate to "the promotion, demonstration, or explanation of [the Requestor's] products or services."

KEY FACTS

Date Published. October 18, 2012

Requestor. Nineteen non-profit adoption agencies.

Business Location. United States.

Amount of Payment. Unspecified, but the amount spent on hotels and meals will not exceed General Services Administration ("GSA") rates.

Intended Recipients. Eighteen government officials from an unspecified Foreign Country.

Topic(s) of Opinion. Reasonable, Bona Fide Expenditures.

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

56. FCPA OPINION PROCEDURE RELEASE 12-01

NATURE OF THE BUSINESS

An unspecified U.S. lobbying firm.

PROPOSED ARRANGEMENT

A U.S. lobbying firm (the "requestor") represents a foreign country (the "foreign country") that is interested in monitoring actions of the U.S. Congress and U.S. Administration. As part of this representation, the requestor has sought the services of a consulting company to address issues of cultural awareness, to serve as the requestor's sponsor in the foreign country as required by its laws, and to introduce the requestor to the foreign country's embassy. A partner of the consulting company is also a member of the foreign country's royal family (the "royal family member"). Pursuant to the terms of the proposed retainer agreement, the foreign country would pay the requestor for services rendered and the requestor would in turn pay the consulting company in the same manner. The royal family member would receive a pro rata share of the payment made to the consulting company.

REASON FOR PAYMENT

The proposed transaction is part of a consulting agreement where the royal family member would receive payments for services rendered to the U.S. lobbying firm.

OPINION

The Department of Justice does not presently intend to take any enforcement action with respect to the consultancy arrangement and proposed payments. The DOJ reiterated that the question of whether a member of the royal family of a foreign country is a "foreign official" is a "fact intensive, case by case determination" that will turn on a number of factors including: "(i) how much control or influence the individual has over the levers of governmental power, execution, administration, finances, and the like; (ii) whether a foreign government characterizes an individual or entity as having governmental power; and (iii) whether and under the circumstances an individual (or entity) may act on behalf of, or bind, a government." In light of these factors the DOJ concluded that the royal family member is not a "foreign" official because he received no benefits or privileges within the foreign government on account of his royal family member status, was acting in on his personal account and not that of the royal family or foreign country, and was otherwise unconnected to the foreign country's government. The DOJ also highlighted the extent to which the U.S. lobbying firm arranged the transaction to avoid any potential FCPA violations including contractual representations of FCPA compliance and a pro rata fee arrangement based upon services rendered.

KEY FACTS

Date Published. September 18, 2012

Requestor. Unspecified US lobbying firm.

Business Location. Unspecified.

Amount of Payment. Approximately $2,000 a month for the life of the consultancy agreement.

Intended Recipients. Member of the royal family of the foreign country.

Topic(s) of Opinion. Contractual Certifications/Controls; Acting As Foreign Official; Third-Party Agents; Transparency Provisions.

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

55. FCPA REVIEW OPINION PROCEDURE RELEASE 11-01

NATURE OF THE BUSINESS

An unspecified U.S. adoption service provider.

PROPOSED ARRANGEMENT

The requestor proposes to pay certain expenses for a trip to the United States by one official from each of two foreign government agencies to learn more about the services provided by the requestor. The two officials will be selected by their agencies, without the involvement of the requestor, and the requestor has no non routine business pending before the foreign government agencies that employ these officials. The sponsored program will last for approximately two days (not including travel time). The requestor intends to pay for economy class air fare, domestic lodging, local transport, and meals. The requester invited another adoption service provider to participate in the visit.

REASON FOR PAYMENT

The visit is intended to educate the visiting officials about the operations and services of U.S. adoption providers.

OPINION

The Department of Justice does not presently intend to take any enforcement action with respect to the planned program and proposed payments. Based upon all of the facts and circumstances, the expenses contemplated are reasonable under the circumstances and directly relate to "the promotion, demonstration, or explanation of [the Requestor's] products or services."

KEY FACTS

Date Published. June 30, 2011

Requestor. Unspecified US adoption service provider.

Business Location. Unspecified.

Amount of Payment. Unspecified.

Intended Recipients. Officials from two foreign governments.

Topic(s) of Opinion. Gifts, Travel, and Entertainment; Reasonable, Bona Fide Expenditures.

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

54. FCPA REVIEW OPINION PROCEDURE RELEASE 10-02

NATURE OF THE BUSINESS

An unspecified non profit, U.S. based microfinance institution ("MFI") provides loans and other basic financial services to the world's lowest income entrepreneurs. It is in the process of converting all of its local operations to commercial entities that are licensed as financial institutions able to attract capital and expand their services.

PROPOSED ARRANGEMENT

One of the requestor's subsidiaries, located in a Eurasian country, is seeking to acquire a banking license. Originally established with grant funding, the Eurasian subsidiary is now self sustaining. A regulating agency, concerned that the transition of the subsidiary from an MFI to a banking entity will result in the original grant capital no longer serving humanitarian assistance goals, has pressed the subsidiary to "localize" its grant capital by giving 33% of the original grant capital to local MFIs in the Eurasian country. The regulating agency has provided a list of MFIs from which it is asking the subsidiary to select one or more MFI to receive the grant capital.

The subsidiary undertook a three stage due diligence process to vet potential recipients, including examination of each MFIs relationship with the government. The subsidiary settled on one MFI as the proposed grantee, although it found that one of the MFI's board members is a sitting government official in the Eurasian country and other board members are former government officials.

REASON FOR PAYMENT

The regulating agency is directing the Eurasian subsidiary to give 33% of its original grant capital to one or more local MFIs to ensure that the grant capital remains in the country and continues to serve the purpose of providing financial opportunities to low income entrepreneurs in that country.

OPINION

The Department of Justice does not presently intend to take any enforcement action with respect to the proposed transaction, being satisfied that the due diligence that the Eurasian subsidiary undertook and the controls it has stated it will put in place make it unlikely that the MFI will transfer things of value to officials of the Eurasian country. Specifically, the subsidiary will ensure that the grant funds are made in staggered payments; carry out ongoing monitoring and auditing of the use of the grant by the MFI; earmark funds for capacity building; prohibit the compensation of board members with the funds; and require the institution of an anti corruption compliance program.

KEY FACTS

Date Published. July 16, 2010

Requestor. Unspecified US microfinance institution.

Business Location. Unspecified Eurasian country.

Amount of Payment. $1.42 million.

Intended Recipients. A local microfinance institution in the Eurasian country.

Topic(s) of Opinion. Audit Rights; Charitable Contributions; Contractual Certifications/Controls; **Due Diligence**; Foreign Government, Required Hiring/Payments.

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

53. FCPA REVIEW OPINION PROCEDURE RELEASE 10-01

NATURE OF THE BUSINESS

An unspecified U.S. company contracted with an unspecified agency of the U.S. government to design, develop, and construct a particular facility in a foreign country pursuant to a contract between the U.S. agency and the foreign country. Under the contractual terms, the company was required to hire an individual as facility director who was selected by the foreign government and who also serves as an official of the foreign country.

PROPOSED ARRANGEMENT

The company has hired an individual as facility director at the direction of the U.S. government agency. The foreign country is in the process of selecting other individuals to fill additional positions.

REASON FOR PAYMENT

In exchange for the salary of $5,000 per month for one year, the facility director will provide services as directed by the foreign country. The same individual also serves as a paid officer of an agency of the foreign country; however, that position does not relate to the facility and the services he will perform as facility director are apart from his government job. In neither position, will the individual have any decision making authority affecting the company requesting an opinion from the DOJ.

OPINION

The Department of Justice does not presently intend to take any enforcement action with respect to the proposed service contract for the facility director because the individual will not be in a position to influence any act or decision affecting the company, including procurement and contracting decisions.

KEY FACTS

Date Published. April 19, 2010

Requestor. Unspecified.

Business Location. Unspecified.

Amount of Payment. $60,000 (employment salary of $5,000 per month for one year).

Intended Recipients. Foreign government official.

Topic(s) of Opinion. Foreign Government, Required Hiring/Payments; Acting As Foreign Official.

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

52. FCPA REVIEW OPINION PROCEDURE RELEASE 09-01

NATURE OF THE BUSINESS

A U.S. Company (the "Company"), which is a global designer and manufacturer of a specific type of medical device, proposes to provide 100 units of its medical device to a foreign government agency.

PROPOSED ARRANGEMENT

The foreign government plans to provide a specific type of medical device, which the Company designs and manufactures, to patients in need around the country at a lower price by purchasing the device and subsidizing the cost of the device when it resells to patients. A senior official of the foreign government agency requested that the Company provide 100 sample units for an objective evaluation of the device. The government's decision on whether to endorse the Company's device will be based on that evaluation. The 100 sample units would be distributed equally among 10 different participating medical centers. The medical centers, in turn, will choose the recipients of the device from a list of candidates selected based on objective criteria, including their financial circumstances. The Company represents that it has no reason to believe that the senior officer who requested the samples would personally benefit from the provision of devices, and that no single brand will be promoted by the foreign government above any other qualified devices.

REASON FOR PAYMENT

To be evaluated and considered for government endorsement in tenders for government purchases of the medical device.

OPINION

The Department of Justice does not presently intend to take any enforcement action with respect to the provision of medical devices and related items and services. The donation falls outside of the scope of the FCPA because it is provided to the foreign government for ultimate use by patient recipients, and in accordance with specific guidelines as opposed to being provided to an individual government official.

KEY FACTS

Date Published. August 3, 2009

Requestor. Unspecified US company.

Business Location. Unspecified.

Amount of Payment. 100 units of the medical device, accessories and services, valued at a total of $ 1.9 million.

Intended Recipients. Medical centers participating in the foreign government's program, who in turn will distribute to end user patients.

Topic(s) of Opinion. Charitable Contributions; Payments to Foreign Government.

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

51. FCPA REVIEW OPINION PROCEDURE RELEASE 08-03

NATURE OF THE BUSINESS

TRACE International, Inc., a domestic concern organized under the laws of the District of Columbia, proposes to pay certain expenses for employees of state owned media outlets in China to attend a press conference it intends to hold in Shanghai, China.

PROPOSED ARRANGEMENT

TRACE proposes to pay stipends and lodging and travel expenses for 20 journalists, most of whom are employed by state owned media outlets to attend a press conference that will promote TRACE's business. Out of town journalists who are traveling to Shanghai will receive a stipend of approximately $62, lodging costs not to exceed $229, and reimbursement of economy class travel with a receipt. Local journalists will receive a stipend of approximately $28. TRACE represents that it will make these payments irrespective of whether the journalist provides any coverage or the nature of the coverage. TRACE also represents that it has no business pending with any government entity in China, that it has obtained an opinion of local counsel that such payments would not violate Chinese law, and that it will accurately record these payments in its books and records.

REASON FOR PAYMENT

To provide stipends and lodging and travel expenses for journalists.

OPINION

The Department of Justice does not presently intend to take any enforcement action with respect to the payment of these expenses to journalists by TRACE. The payments fall within the FCPA's promotional expenses affirmative defense in that they are reasonable and directly relate to the promotion, demonstration, or explanation of TRACE's products or services.

KEY FACTS

Date Published. July 11, 2008

Requestor. TRACE International, Inc.

Business Location. China.

Amount of Payment. Travel and per diem expenses.

Intended Recipients. Journalists employed by state-owned media outlets.

Topic(s) of Opinion. Gifts, Travel, and Entertainment; Reasonable, Bona Fide Expenditures.

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

50. FCPA REVIEW OPINION PROCEDURE RELEASE 08-02

NATURE OF THE BUSINESS

Halliburton Company and its subsidiaries ("Halliburton"), a U.S. issuer, proposes to acquire the entire share capital of a U.K. based public company with overseas operations.

PROPOSED ARRANGEMENT

Halliburton intends to acquire a U.K. based target company listed on the London Stock Exchange. Pursuant to U.K. law, Halliburton does not have adequate time or access to information to conduct pre closing due diligence and might lose its bid to a competitor if it seeks due diligence as a condition for closing. Halliburton proposes a post closing plan that includes post closing due diligence and numerous remediation measures.

Halliburton proposes to (i) meet with government officials to discuss any FCPA issues discovered pre closing; (ii) create a post closing risk based due diligence work plan; (iii) retain outside counsel and forensic accountants to conduct the review, including e mail review and transaction testing; (iv) report to the government about the findings of the due diligence at 90, 120, and 180 days for high, medium, and low risk due diligence topics; (v) remediate any issues identified within a year of closing; (vi) execute new contracts with all agents and terminate some agents; (vii) train all target employees on the FCPA within 90 days; and (viii) maintain the target as a wholly owned subsidiary until the government ceases any investigations of the target.

REASON FOR PAYMENT

To acquire the entire share capital of a U.K. based public target company.

OPINION

The Department of Justice does not presently intend to take any enforcement action with respect to the acquisition itself, nor will it undertake an enforcement action with respect to any pre closing acts of the target for any post closing acts of the target disclosed by Halliburton within 180 days of closing that did not then continue. Although the Department disapproved of a confidentiality clause that restricted pre acquisition disclosure of relevant facts to the authorities, it agreed to take no enforcement action with respect to pre acquisition conduct or, with some caveats, post acquisition conduct provided Halliburton proceeded in accordance with its post closing plan, in light of the fact that U.K. law and the circumstances of the transaction had prevented Halliburton from conducting meaningful pre acquisition due diligence.

N.B. In the end, Halliburton did not acquire the target.

KEY FACTS

Date Published. June 13, 2008

Requestor. Halliburton Company and subsidiaries.

Business Location. United States, United Kingdom, and various other countries.

Amount of Payment. Unspecified.

Intended Recipients. Unspecified.

Topic(s) of Opinion. Due Diligence; Mergers and Acquisition; Successor Liability.

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

49. FCPA REVIEW OPINION PROCEDURE RELEASE 08-01

NATURE OF THE BUSINESS

U.S. Fortune 500 issuer with operations in 35 countries proposes to make a majority investment in a foreign target, currently majority owned by a foreign government.

PROPOSED ARRANGEMENT

The foreign government decided to privatize the foreign target by selling its 56% share. The Requestor agreed with the 44% minority private owner of the foreign target that the private owner would purchase the government's 56% share and form a new company and then sell a 56% majority share of that new company to Requestor.

Requestor considered the minority private owner a public official under the FCPA as a result of its status as General Manager of the foreign target. Requestor undertook due diligence to gain comfort that any payments to the private owner to purchase shares of the new company would not be in violation of the FCPA and that the new company would not acquire its shares from the foreign target improperly under foreign law. Various disclosures were also made to the foreign government regarding the proposed business arrangement and the premium Requestor would pay to the private owner.

REASON FOR PAYMENT

To purchase a majority stake in the government owned company from the foreign company, once it has been privatized.

OPINION

The Department of Justice does not presently intend to take any enforcement action with respect to this proposal. The opinion was based on several factors: (i) the due diligence conducted by Requestor and the maintenance of such files in the U.S.; (ii) the multiple disclosures made by Requestor to the foreign government regarding the premium it would provide to the private owner; (iii) the various representations and warranties Requestor will secure from private owner regarding corruption compliance; and (iv) Requestor having rights of termination in the event of a breach of the agreement with private owner, including the violation of anti corruption laws.

KEY FACTS

Date Published. January 15, 2008

Requestor. Unspecified US company.

Business Location. Unspecified.

Amount of Payment. Unspecified.

Intended Recipients. Foreign company with a minority stake in a majority government-owned company.

Topic(s) of Opinion. Contractual Certifications/Controls; Due Diligence; Acting As Foreign Official; Mergers and Acquisition; Transparency Provisions.

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

48. FCPA REVIEW OPINION PROCEDURE RELEASE 07-03

NATURE OF THE BUSINESS

Unspecified U.S. lawful permanent resident proposes to make a payment required by a family court judge to cover certain litigation related costs.

PROPOSED ARRANGEMENT

The person is a party to disputed judicial proceedings in the Asian country relating to the disposition of an estate. The person submitted an application for the court to appoint an estate administrator and the court requested an advance payment to cover the administrator's expenses. The person withdrew the application pending review of the opinion request.

The person represented that the requested payment was not sought for purposes of influencing the court, the judge, or the administrator and that the payment will be made to the court clerk's office and a receipt will be requested. The person obtained written assurance from an experienced lawyer in the Asian country that the proposed payment is lawful under the written law of the foreign country.

REASON FOR PAYMENT

For expenses incurred in the administration of an estate.

OPINION

The Department of Justice does not presently intend to take any enforcement action with respect to this proposal.

KEY FACTS

Date Published. December 21, 2007

Requestor. Unspecified US lawful permanent resident.

Business Location. Unspecified Asian country.

Amount of Payment. Approximately $9,000.

Intended Recipients. Court clerk's office.

Topic(s) of Opinion. Payments to Foreign Government; Written Laws Affirmative Defense.

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

47. FCPA REVIEW OPINION PROCEDURE RELEASE 07-02

NATURE OF THE BUSINESS

Unspecified U.S. insurance company proposes to cover the domestic expenses for a six day trip within the United States by approximately six junior to mid level foreign governmental officials for an educational program at the U.S. company's headquarters.

PROPOSED ARRANGEMENT

The company intends to pay for domestic economy class airfare, lodging, transportation, meals, and a fixed amount of incidental expenses of the foreign governmental delegation during their visit to the company's headquarters. The company also intends to provide the officials a modest four hour sightseeing tour of the city. The officials, who were selected by their government without the influence of the company, are scheduled to participate in a six week internship program for foreign insurance regulators sponsored by the National Association of Insurance Commissioners ("NAIC"). The company seeks to dovetail its own educational program with this NAIC program, bringing the foreign officials to its headquarters after the conclusion of the NAIC program.

The company represented that it has no non routine business pending before the foreign agency of which these officials are part and that it conducts no business with other agencies of the foreign government except for collaboration on insurance related research, studies, and training. It further represented that it will not pay for the officials' international airfare or participation in the NAIC program, will not host family members, spouses, or guests of the officials and will pay all costs directly to the service provider (except for the modest per diem allowance, which will be paid only upon presentation of a receipt).

REASON FOR PAYMENT

To familiarize the officials with the operations of a U.S. insurance company.

OPINION

The Department of Justice does not presently intend to take any enforcement action with respect to this proposal.

KEY FACTS

Date Published. September 11, 2007

Requestor. Unspecified US insurance company.

Business Location. Unspecified.

Amount of Payment. Unspecified, but including domestic economy class airfare, lodging, transportation, meals, and a fixed per diem amount for incidental expenses.

Intended Recipients. Foreign government officials.

Topic(s) of Opinion. Gifts, Travel, and Entertainment; Reasonable, Bona Fide Expenditures.

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

46. FCPA REVIEW OPINION PROCEDURE RELEASE 07-01

NATURE OF THE BUSINESS

Unspecified U.S. company proposes to cover the domestic expenses for a four day trip to the United States by a six person delegation of an Asian government for an educational and promotional tour of one of the U.S. company's sites of operation.

PROPOSED ARRANGEMENT

The company intends to pay for domestic economy class airfare, lodging, transportation, and meal expenses of the foreign governmental delegation during their visit to a single site of operations. The foreign government will pay its officials' international airfare. The company obtained a written assurance from an established law firm with offices both in the U.S. and the foreign country that this proposal does not violate the applicable law of the foreign country. The company represented that it did not select the government delegates for the visit and that the delegates have no direct authority over decisions regarding government contracts or requisite licenses in the foreign country. The company further represented that it will only host the officials themselves and one private government consultant (i.e., no other private parties or guests, including spouses and children), will pay expenses directly to the providers, with no cash passing through the delegates, and will record such payments appropriately.

REASON FOR PAYMENT

To familiarize the delegates with the nature and extent of the company's operations and capabilities and to help establish the company's business credibility. Although the company does not currently do business in the Asian country in question, it is interested in doing business there in the future.

OPINION

The Department of Justice does not presently intend to take any enforcement action with respect to this proposal.

KEY FACTS

Date Published. July 24, 2007

Requestor. Unspecified US company.

Business Location. Unspecified.

Amount of Payment. Unspecified, but including domestic economy class airfare, lodging, transportation, and meals.

Intended Recipients. Foreign government officials.

Topic(s) of Opinion. Gifts, Travel, and Entertainment; Reasonable, Bona Fide Expenditures.

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

45. FCPA REVIEW OPINION PROCEDURE RELEASE 06-02

NATURE OF THE BUSINESS

Unspecified wholly owned subsidiary of a U.S. issuer proposes that one of its foreign subsidiaries retain a law firm in that country to prepare applications for foreign exchange with a government agency.

PROPOSED ARRANGEMENT

Law firm will prepare foreign exchange applications on behalf of the foreign subsidiary for substantial remuneration. The foreign subsidiary has worked with the principal attorney at the law firm in the past, who comes highly recommended and who has been interviewed by the general counsel of the foreign subsidiary's immediate parent company and outside U.S. counsel.

All employees of the law firm and any third parties retained on the matter will be required to sign forms confirming FCPA compliance and that they have not been, and are not related to anyone who has been, a governmental official in the last three years. The agreement between the law firm and the foreign subsidiary would also contain extensive compliance provisions relating to, inter alia, the FCPA and the U.S. issuer parent's Government Relations Policy, require at least weekly progress reports, and give the foreign subsidiary audit access to relevant records of the law firm.

REASON FOR PAYMENT

To ensure the elimination of any technical errors in the foreign exchange applications that may lead to their rejection by the government agency, which has become increasingly frequent in recent months.

OPINION

The Department of Justice does not presently intend to take any enforcement action with respect to the proposed retention of the law firm.

KEY FACTS

Date Published. December 31, 2006

Requestor. Unspecified subsidiery of US company.

Business Location. Unspecified.

Amount of Payment. Unspecified, but approximately 0.6% of the total value of the foreign exchange sought each month.

Intended Recipients. Local law firm.

Topic(s) of Opinion. Audit Rights; Contractual Certifications/Controls; Due Diligence; Third-Party Agents.

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

44. FCPA OPINION PROCEDURE RELEASE 06-01

NATURE OF THE BUSINESS

Unspecified U.S. company with headquarters in Switzerland proposes to contribute money to a regional Customs department or Ministry of Finance in an African country to fund a pilot program to provide local customs officials with financial awards to help improve local enforcement of anti counterfeiting laws. The unspecified country is described as a major transit point for trade in counterfeit goods including counterfeit goods bearing the trademark of the U.S. company.

PROPOSED ARRANGEMENT

U.S. company will execute a formal memorandum of understanding with the foreign government agency to establish procedures for the selection of award recipients and payment of awards to local customs officials. Contributions by the U.S. company will be made directly to an official government bank account, subject to periodic internal audit by the government authorities. The U.S. company will be notified of any seizure of counterfeit goods and will examine such goods and receive written confirmation of the destruction of the goods. The U.S. company will play no role in selecting award recipients or disbursing awards, but will monitor the program through periodic reviews. The foreign government will be required to maintain records for the program for five years and shall permit inspection of such records.

REASON FOR PAYMENT

To assist foreign officials in funding incentive awards for customs officials to promote seizure of counterfeit products bearing the trademark of the requesting U.S. company.

OPINION

The Department of Justice does not presently intend to take any enforcement action with respect to the proposed $25,000 payment described.

KEY FACTS

Date Published. October 16, 2006

Requestor. Unspecified US company.

Business Location. Unspecified.

Amount of Payment. $25,000

Intended Recipients. Foreign Customs department or Ministry of Finance.

Topic(s) of Opinion. Charitable Contributions; Payments to Foreign Government.

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

43. FCPA REVIEW OPINION PROCEDURE RELEASE 04-04

NATURE OF THE BUSINESS

Unspecified U.S. company proposes to fund a "Study Tour" of five foreign officials who are members of a committee drafting a new law on mutual insurance, an industry in which the U.S. company conducts business. The U.S. company represents that it does not have, nor does it plan to organize, a mutual insurance company in the foreign country.

PROPOSED ARRANGEMENT

All committee members chosen to participate will be selected by the foreign government and none will have any direct decision making power over the licensing process. "Study Tour" would include visits to U.S. company's offices, as well as meetings with state insurance regulators, insurance industry groups, and other insurance companies. U.S. company will pay all costs associated with "Study Tour," but all payments will be made directly to providers of services, not to foreign officials. U.S. company acknowledges that it does intend, at some point, to apply for a non life insurance license and that, under current practice, an applicant for such a license must demonstrate that it has been "supportive of the country's socio economic needs, proactive in the development of the insurance industry, and active in promoting foreign investment." Sponsorship of the "Study Tour" is intended, at least in part, to satisfy this criteria.

REASON FOR PAYMENT

To assist foreign officials in developing a practical understanding of how mutual insurance companies are managed and regulated.

OPINION

The Department of Justice does not presently intend to take any enforcement action with respect to the proposed "Study Tour."

KEY FACTS

Date Published. September 3, 2004

Requestor. Unspecified US company.

Business Location. Unspecified.

Amount of Payment. Approximately $16,875.

Intended Recipients. Foreign officials responsible for lawmaking.

Topic(s) of Opinion. Gifts, Travel, and Entertainment; Obtain or Retain Business (Business Purpose Test).

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

42. FCPA REVIEW OPINION PROCEDURE RELEASE 04-03

NATURE OF THE BUSINESS

Unspecified American law firm proposes to sponsor a 10 day trip to the United States by 12 officials of a ministry of the People's Republic of China for the purpose of permitting the ministry officials the opportunity to meet with U.S. public sector officials to discuss: 1) U.S. regulation of employment issues, labor unions, and workforce safety; and 2) the institutions and procedures through which legal conflicts in the workplace are resolved.

PROPOSED ARRANGEMENT

The law firm would pay for various costs associated with the travel, lodging, meals, and insurance for the officials and one translator. Among other things, the law firm represented that it has no current or anticipated business with the ministry officials, that the visit does not violate Chinese law, that it would have no hand in determining which officials would participate in the visit, that all costs will be paid directly to the providers, and that the participants will not receive any gifts, stipends or other payments.

REASON FOR PAYMENT

To educate legal and human resource professionals from both China and America about labor and employment laws.

OPINION

The Department of Justice does not presently intend to take any enforcement action with respect to the proposed seminar.

KEY FACTS

Date Published. June 14, 2004

Requestor. Unspecified US law firm.

Business Location. Beijing, China.

Amount of Payment. Unspecified.

Intended Recipients. Ministry officials.

Topic(s) of Opinion. Gifts, Travel, and Entertainment; Obtain or Retain Business (Business Purpose Test).

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

41. FCPA REVIEW OPINION PROCEDURE RELEASE 04-02

NATURE OF THE BUSINESS

JPMorgan Partners Global Fund, Candover 2001 Fund, and 3i Investments plc ("Purchasers") sought to acquire certain companies and assets from ABB Ltd. ("ABB"), relating to ABB's upstream oil, gas, and petrochemical businesses.

PROPOSED ARRANGEMENT

Purchasers sought to acquire several subsidiaries of ABB. Upon conducting an FCPA compliance review in advance of the sale, violations of the FCPA by two of the subsidiaries were identified. Both Purchasers and ABB hired outside counsel and conducted a comprehensive internal review consisting of, among other things, the manual review of over 1,600 boxes of documents, and in excess of 165 interviews of current and former employees. In addition, forensic accountants were employed and visited 21 countries to review and analyze hundreds of thousands of transactions with a staff of over 100 assistants. All told, over 115 lawyers worked over 44,700 man hours to conduct this review. At all times, both the SEC and DOJ were apprised of the status of the investigation and were given 22 analytical reports of the subsidiaries with supporting evidence. On July 6, 2004, the subsidiaries plead guilty to violations of the FCPA. ABB also settled a parallel civil matter with the SEC.

In addition to the comprehensive investigation, the Purchasers represented to DOJ that they have taken, and will continue to undertake, a number of precautions to avoid future violations of the FCPA. Among the precautions the Purchasers agreed to take were: (1) continuing to cooperate with the government with respect to the investigations of past conduct; (2) ensuring that any employee found to have engaged in unlawful or questionable conduct in the past will be disciplined; (3) ensuring that the newly acquired entities will have in place a system of internal accounting controls designed to ensure the making and keeping of accurate books and records as well as adopting a rigorous anti corruption compliance code to detect and deter future violations of the FCPA.

REASON FOR PAYMENT

N/A.

OPINION

The Department of Justice does not presently intend to take any enforcement action against the Purchasers or their recently acquired entities for violations of the FCPA committed prior to their acquisition from ABB. However, DOJ specifically noted that while they view the Purchasers' representations to be a significant precaution against future violations, this opinion release "should not be deemed to endorse any specific aspect of the [purchasers'] program." In addition, the opinion does not speak to any conduct either by the Purchasers or the recently acquired entities which occurs post acquisition.

See DOJ Digest Numbers B 75, B 47, and B 31.
See SEC Digest Numbers D 26 and D 17.

KEY FACTS

Date Published. July 12, 2004

Requestor. JPMorgan Partners Global Fund, Candover 2001 Fund, 3i Investments plc.

Business Location. Nigeria, Angola, and Kazakhstan.

Amount of Payment. Unspecified.

Intended Recipients. Purchasers of subsidiaries convicted of FCPA violations.

Topic(s) of Opinion. Due Diligence; Mergers and Acquisition; Successor Liability.

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

See Ongoing Investigation Numbers F 2. See Parallel Litigation Digest Number H E5.	

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

40. FCPA REVIEW OPINION PROCEDURE RELEASE 04-01

NATURE OF THE BUSINESS

Unspecified American law firm proposes to sponsor and present a Comparative Law Seminar on Labor and Employment Law in the People's Republic of China and the United States in conjunction with a ministry of China.

PROPOSED ARRANGEMENT

The law firm would pay for various costs involved with the one and a half day seminar including conference rooms, interpreter services, receptions and meals, etc. Among other things, the law firm represented that it has no current or anticipated business with the seminar attendees nor would it advance funds or provide gifts to the attendees.

REASON FOR PAYMENT

To educate legal and human resource professionals from both China and America about labor and employment laws.

OPINION

The Department of Justice does not presently intend to take any enforcement action with respect to the proposed seminar.

KEY FACTS

Date Published. January 6, 2004

Requestor. Unspecified US law firm.

Business Location. Beijing, China.

Amount of Payment. Unspecified.

Intended Recipients. Seminar attendees and presenters.

Topic(s) of Opinion. Gifts, Travel, and Entertainment; Obtain or Retain Business (Business Purpose Test).

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

39. FCPA OPINION PROCEDURE RELEASE 03-01

NATURE OF THE BUSINESS

Unspecified American company ("U.S. Co.") intends to purchase the stock of another unspecified American company ("Target Co.") and thereafter operate it as a subsidiary (the "Proposed Transaction"). Target Co. has both U.S. and foreign subsidiaries.

PROPOSED ARRANGEMENT

Upon conducting due diligence in advance of acquisition of Target Co.'s shares, U.S. Co. discovered payments to foreign officials. U.S. Co. informed Target Co. and both companies conducted extensive investigations. The results of these investigations were turned over to the Department of Justice and the U.S. Securities and Exchange Commission. Target Co. undertook certain remedial actions, including informing the investing public, issuing instructions to each of its foreign subsidiaries to cease all payments to foreign officials, and suspending the most senior officers and employees implicated in the payments pending the conclusion of its investigation. Both U.S. Co. and Target Co. wished to proceed with the acquisition. U.S. Co. was concerned that the acquisition of Target Co.'s shares would confer criminal and civil liability under the FCPA for Target Co.'s prior acts. Upon closing of the transaction, U.S. Co. proposed to: (1) continue to cooperate with DOJ and the SEC in their respective investigations of the past payments and will similarly cooperate with foreign law enforcement officials; (2) ensure that any employees or officers of Target Co. found to have made or authorized unlawful payments to foreign officials are appropriately disciplined; (3) disclose to DOJ any additional pre acquisition payments to foreign officials made by Target Co. or its subsidiaries that it discovers after the acquisition; (4) extend to Target Co. its existing compliance program and that such compliance program will, if necessary, be modified to insure that it is reasonably designed to detect and deter, through training and reporting, violations of the FCPA and foreign bribery laws; and (5) ensure that Target Co. implements a system of internal controls and makes and keeps accurate books and records.

REASON FOR PAYMENT

See above.

OPINION

The Department of Justice does not presently intend to take any enforcement action with respect to the pre acquisition conduct of Target Co. based on all the facts and circumstances as represented by the U.S. Co.

KEY FACTS

Date Published. January 15, 2003

Requestor. Unspecified US company.

Business Location. Unspecified.

Amount of Payment. Unspecified.

Intended Recipients. Foreign individuals employed by state-owned entities.

Topic(s) of Opinion. Mergers and Acquisition; Successor Liability.

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

38. FCPA REVIEW OPINION PROCEDURE RELEASE 01-03

NATURE OF THE BUSINESS

Unspecified American company ("U.S. Co.") has, with the assistance of a foreign dealer ("Dealer"), submitted bid to unspecified foreign government for sale of equipment to the foreign government.

PROPOSED ARRANGEMENT

U.S. Co. will review its agreement with Dealer following remarks to U.S. Co. employee ("Employee") by Dealer's president and principal owner that Employee understood to mean that Dealer would make or had made payments to government officials so that the bid would be accepted ("Payments"). U.S. Co. represented the following: (i) through counsel, it investigated the comments and found no information to substantiate the implication of the comments; (ii) it has obtained Dealer's representation that no Payments were made or promised to government officials in connection with the equipment sale; (iii) Dealer would certify in proposed Dealer Agreement that no Payments had been or will be made, or if such Payments are made, U.S. Co. may terminate the Dealer Agreement and withhold sums otherwise owed to Dealer under the agreement; (iv) Dealer Agreement provides for annual audit of Dealer's books and records by U.S. Co. to ensure Dealer's compliance with its representations and warranties contained therein and U.S. Co. will fully exercise this right; (v) U.S. Co. will timely notify the Department of Justice if it becomes aware of information substantiating the Payment allegations; and (vi) neither Dealer nor anyone acting on behalf of Dealer has made or promised to make the alleged Payments.

REASON FOR PAYMENT

See above.

OPINION

The Department of Justice does not presently intend to take any enforcement action with respect to the Dealer Agreement, based on all the facts and circumstances as represented by the U.S. Co. and Dealer.

See DOJ Digest Numbers B 52 and B 37.
See SEC Digest Number D 22.

KEY FACTS

Date Published. December 11, 2001

Requestor. Unspecified US company.

Business Location. Unspecified foreign country.

Amount of Payment. Unspecified.

Intended Recipients. Officials of foreign government.

Topic(s) of Opinion. Audit Rights; Third-Party Agents.

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

37. FCPA OPINION PROCEDURE RELEASE 01-02

NATURE OF THE BUSINESS

American company ("U.S. Co.") and foreign company ("Foreign Co.") seek to enter into a consortium to bid on and engage in a business relationship with the government of Foreign Co.'s home country.

PROPOSED ARRANGEMENT

The Foreign Co. and the U.S. Co., through an offshore company in which it has a 50% beneficial ownership interest, plan to enter into an agreement to form a Consortium that will bid on and perhaps engage in a prospective business relationship with the government of the Foreign Co.'s home country. The requestors have asked for a determination of the Department's present enforcement intention under the FCPA, given the circumstance that the chairman and shareholder of the Foreign Co. acts as an advisor to one of his country's senior government officials and is a senior official in public education in that country.

REASON FOR PAYMENT

See above.

OPINION

Consortium is possible where a series of detailed restrictions are taken designed to prevent any FCPA violations, including: (i) Foreign Official will not initiate or attend any meetings with government officials on behalf of the Consortium; (ii) Foreign Official will recuse himself and will not participate in his official capacity in any discussion or consideration of or decision about the award of the business project; (iii) a legal opinion confirms that the formation of the Consortium and the relationship with Foreign Official do not violate the laws of the foreign country; (iv) all Consortium's bid submissions informed relevant foreign government ministries, agencies and officials of Foreign Official's relationship to the Consortium and his recusal on any matters relating to the Consortium that may be brought before any such ministries, agencies and officials; and (v) the Consortium agreement provides that each Consortium member agrees not to violate the FCPA, and any such breach grants the non breaching members the right to terminate the Consortium agreement.

KEY FACTS

Date Published. July 18, 2001

Requestor. Unspecified.

Business Location. Unspecified foreign country.

Amount of Payment. Unspecified.

Intended Recipients. Foreign Co.'s chairman and shareholder ("Foreign Official") acts as an advisor to one of his country's senior government officials and is a senior official in public education in that country.

Topic(s) of Opinion. Contractual Certifications/Controls; Acting As Foreign Official; Walling Off Foreign Official; Transparency Provisions.

Final Opinion. Consortium would be possible after taking a series of detailed restrictions to prevent FCPA violations.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

36. FCPA OPINION PROCEDURE RELEASE 01-01

NATURE OF THE BUSINESS

Unspecified American company ("U.S. Co.") to enter into 50/50 joint venture with a French company ("French Co.").

PROPOSED ARRANGEMENT

U.S. Co. and French Co. will each contribute pre existing contracts and transactions to the joint venture, including contracts contributed by French Co. that were obtained prior to the French Law Against Corrupt Practices. U.S. Co. represented the following: (i) French Co. represented that none of its contributed contracts or transactions violated any applicable anti bribery law; (ii) U.S. Co. may terminate the joint venture agreement or refuse to undertake its obligations if French Co. has breached its representations or violated any anti bribery law; (iii) no funds contributed by U.S. Co. nor funds of the joint venture will be used to pay any compensation to any agent of French Co. in connection with contracts contributed to the joint venture; and (iv) the joint venture will enter into a new agent agreement in accordance with rigorous compliance program.

REASON FOR PAYMENT

See above.

OPINION

Joint venture does not implicate FCPA based on the representations by U.S. Co. and the covenants not to undertake any knowing act in the future in furtherance of a prior act of bribery concerning contracts contributed by French Co. to joint venture. The Department of Justice made the following clarifications: (i) it interpreted French Co.'s no violation representation to include the laws of the jurisdictions of the government officials with the ability to have influenced the decisions of their governments to enter into the contracts contributed by French Co. to the joint venture; thus, U.S. Co. may face FCPA liability if the joint venture takes any action in furtherance of a payment to a foreign official with respect to a previously existing contract, irrespective of whether the agreement to make such payments was lawful under French law at the time the contract was entered into; and (ii) it declined to endorse the "materially adverse effect" standard for U.S. Co.'s ability to terminate the joint venture agreement in the event of a previous act of bribery.

KEY FACTS

Date Published. May 24, 2001

Requestor. Unspecified US company.

Business Location. Unspecified foreign country.

Amount of Payment. Unspecified.

Intended Recipients. Unspecified.

Topic(s) of Opinion. Joint Ventures; Mergers and Acquisitions; Successor Liability; Third-Party Agents.

Final Opinion. Joint venture does not implicate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

35. FCPA OPINION PROCEDURE RELEASE 00-01

NATURE OF THE BUSINESS

American law firm (the "Law Firm") and a foreign partner of the Requestor ("Foreign Government Official"). Note that ordinarily, foreign officials are not covered by the FCPA, see United States v. Castle, 925 F.2d 831 (5th Cir. 1991), and cannot be the recipient of an FCPA opinion. In this matter, however, the foreign official in question is also a director of an American law firm and is therefore a domestic concern in his own right. See 15 U.S.C. § 78dd 2(h)(1).

PROPOSED ARRANGEMENT

Law Firm seeks to maintain insurance benefits for Foreign Government Official and his family while he is in office and on leave from the Law Firm. In addition, Law Firm proposes to pay Foreign Government Official the interest due on his partnership contribution as well as an estimated lump sum "client credit", discounted to present value, that would be due to Foreign Government Official under the Law Firm's standard leave policy. Finally, Law Firm is guaranteeing Foreign Government Official a return to full partnership and its attendant privileges and profits when he leaves public office.

REASON FOR PAYMENT

See above.

OPINION

No enforcement action under the FCPA will be taken against the Law Firm or Foreign Government Official where: (i) the proposed arrangement does not violate local law; (ii) the Law Firm undertakes to (1) not represent clients before the Foreign Government Official's ministry; (2) maintain a list of all clients previously represented by the Foreign Government Official or for which the Foreign Government Official is entitled to client credit; (3) not advise or represent such clients in any matter involving doing business with, including lobbying, the government of Country X, its ministries, agencies and legislative bodies; and (4) inform the Foreign Government Official whenever he should recuse himself in a matter involving the Law Firm or a client of the Law Firm; and (iii) Foreign Government Official undertakes to recuse himself and refrain from directly or indirectly participating or taking any action to affect decisions by the government of Country X relating to (1) the retention of the Law Firm; (2) any government business with any current or former client of the Law Firm or of the Foreign Government Official while a partner of the Law Firm or for which he is entitled a client credit; or (3) any matter in which the Law Firm or a client of the firm has lobbied the government.

KEY FACTS

Date Published. March 29, 2000

Requestor. Unspecified US law firm and foreign partner.

Business Location. Unspecified foreign country ("Country X").

Amount of Payment. The insurance benefits will be paid by Foreign Government Official at the discounted rate available to all of Law Firm's partners currently on leave. Interest on partnership contribution will be paid at a widely available bank rate and identical to rate paid to all Law Firm's partners. The amount of the other value is not specified.

Intended Recipients. Freign Government Official.

Topic(s) of Opinion. Payments to Foreign Government; Acting As Foreign Official; Walling Off Foreign Official.

Final Opinion. No enforcement action under the FCPA will be taken under specific conditions.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

34. FCPA OPINION PROCEDURE RELEASE 98-02

NATURE OF THE BUSINESS

U.S. company with a wholly owned subsidiary engaged in the sale and service of military training programs.

PROPOSED ARRANGEMENT

The company's wholly owned subsidiary is submitting a bid to a foreign government owned entity to sell and service a military training program. In connection with this bid, the company intends to enter into a Settlement Agreement and Release, an International Consultant Agreement, and a Teaming Agreement with a privately held company ("Representative"). The Representative has previously performed marketing and consulting services for the company's subsidiary pursuant to an invalid Representation Agreement.

REASON FOR PAYMENT

See above.

OPINION

The Company's engagement of the Representative does not presently violate the FCPA.

KEY FACTS

Date Published. August 5, 1998

Requestor. Unspecified US company.

Business Location. Unspecified foreign country.

Amount of Payment. (i) Pursuant to a Settlement Agreement and Release, the company will pay a commercially reasonable lump sum payment in settlement for the prior services the Representative rendered under the invalid Representation Agreement; (ii) pursuant to an International Consultant Agreement, the company will pay the Representative a monthly retainer and reimburse extraordinary expenses in exchange for the Representative's product sales and service advice; and (iii) pursuant to a Teaming Agreement, the company will strengthen the Representative's ability to compete for government contracts and to provide goods and services.

Intended Recipients. Privately held, non governmental entity.

Topic(s) of Opinion. Contractual Certifications/Controls; Due Diligence; Third-Party Agents.

Final Opinion. The Company's engagement of the Representative does not presently violate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

33. FCPA REVIEW OPINION PROCEDURE RELEASE 98-01

NATURE OF THE BUSINESS

U.S. based industrial and service company.

PROPOSED ARRANGEMENT

A Nigerian government agency levied a $50,000 fine on the company for the contamination cleanup of a site formerly leased by the company's subsidiary. To clean up the environmental contamination, the company retained a Nigerian contractor experienced in removing environmental contaminants and recommended by Nigerian Federal Environmental Protection Agency ("FEPA") officials. Upon drafting a proposal for the contaminant's removal, the contractor advised the company to take the following actions to ensure Nigerian government approval of the cleanup: (i) pay the $50,000 fine to the Nigerian government through the contractor, and (ii) pay $30,000 in "community compensation and modalities" to Nigerian FEPA and Ports Authority officials through the contractor.

REASON FOR PAYMENT

See above.

OPINION

If the company pays the requested fine and community compensation and modalities to the contractor for the benefit of the Nigerian government agencies, the Department of Justice will further investigate whether criminal prosecution is merited. Conversely, the Department of Justice will reconsider taking enforcement action if the company pays the fine and contractor's fee directly to an appropriate Nigerian government agency, provided that when the environmental cleanup is completed to the satisfaction of the Nigerian government, the government will pay the contractor its fee.

KEY FACTS

Date Published. February 23, 1998

Requestor. Unspecified US company.

Business Location. Nigeria.

Amount of Payment. $30,000.

Intended Recipients. Nigerian FEPA and Ports Authority officials.

Topic(s) of Opinion. Payments to Foreign Government; Foreign Government, Required Hiring/Payments; Third-Party Agents.

Final Opinion. Investigation of potential criminal FCPA violations could be warranted depending on how the fine payment was structured.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

32. FCPA REVIEW OPINION PROCEDURE RELEASE 97-02

NATURE OF THE BUSINESS

U.S. based utility company.

PROPOSED ARRANGEMENT

The requestor has commenced construction of a plant in a country in Asia that lacks adequate primary-level educational facilities in the region where the plant is under construction. An elementary school construction project has been proposed near the location of the requestor's plant, and the requestor plains to donate $100,000 to this proposed school construction project. The donation will be made by the company directly to the government entity responsible for the construction and supply of the proposed elementary school.

REASON FOR PAYMENT

To help fund an elementary school construction project near the location of the company's plant. Before releasing any funds, the company will require a written agreement from the government entity that the funds will be used solely to construct and supply the elementary school. The written agreement will set forth other conditions to be met by the government entity, including (i) guaranteeing the availability of land, teachers and administrative personnel for the school, (ii) guaranteeing timely additional funding of the school project in the event of any financial shortfall, and (iii) guaranteeing provision of all funds necessary for the daily operation of the school.

OPINION

Donation does not implicate the FCPA since it will be made directly to a government entity rather than to a foreign government official.

KEY FACTS

Date Published. November 5, 1997

Requestor. Unspecified US utility company.

Business Location. Unspecified country in Asia.

Amount of Payment. $100,000.

Intended Recipients. Government entity.

Topic(s) of Opinion. Charitable Contributions; Payments to Foreign Government.

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

31. FCPA REVIEW OPINION PROCEDURE RELEASE 97-01

NATURE OF THE BUSINESS

U.S. company whose wholly owned subsidiary is submitting a bid to a foreign government owned entity to sell and service certain high technology equipment.

PROPOSED ARRANGEMENT

In connection with its bid, the U.S. company entered into a Representative Agreement with a privately held company ("Representative") in the same foreign country. The U.S. company subsequently learned that more than fifteen years ago the Representative may have made an improper payment to an official of the foreign government.

REASON FOR PAYMENT

See above.

OPINION

While Company's engagement of the Representative does not presently violate the FCPA, the company should closely monitor the performance of the Representative.

KEY FACTS

Date Published. February 27, 1997

Requestor. Unspecified US company.

Business Location. Unspecified foreign country.

Amount of Payment. Unspecified.

Intended Recipients. Privately-held foreign company.

Topic(s) of Opinion. Contractual Certifications/Controls; Due Diligence; Third-Party Agents.

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

30. FCPA OPINION PROCEDURE RELEASE 96-02

NATURE OF THE BUSINESS

U.S. corporation engaged in the manufacture and sale of equipment used in commercial and military aircraft.

PROPOSED ARRANGEMENT

U.S. corporation seeks to renew, with modifications, an existing marketing representative agreement with a state owned enterprise of the foreign country ("Enterprise"). The Enterprise would serve as the requestor's exclusive sales representative in the foreign country.

REASON FOR PAYMENT

See above.

OPINION

Arrangement does not implicate the FCPA where, among other things; (i) the Enterprise is not in a position to influence the procurement decisions of other government entities; (ii) the arrangement is in compliance with all local laws; and (iii) the Enterprise agrees to certify that it will not in any way violate the FCPA.

KEY FACTS

Date Published. November 25, 1996

Requestor. Unspecified US company.

Business Location. Unspecified foreign country.

Amount of Payment. Unspecified.

Intended Recipients. State owned enterprise of the foreign country.

Topic(s) of Opinion. Contractual Certifications/Control.

Final Opinion. Arrangement does not implicate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

29. FCPA REVIEW OPINION PROCEDURE RELEASE 96-01

NATURE OF THE BUSINESS

Unspecified nonprofit corporation established to protect a particular world region from the dangers posed by environmental accidents ("Nonprofit").

PROPOSED ARRANGEMENT

Nonprofit proposes to sponsor and provide funding for up to 10 government representatives to attend environmental training in the U.S..

REASON FOR PAYMENT

See above.

OPINION

Arrangement does not implicate the FCPA where, among other things, the Nonprofit does not seek to obtain or retain business with the regional governments.

KEY FACTS

Date Published. November 25, 1996

Requestor. Unspecified nonprofit company.

Business Location. Nations in an unspecified region of the world.

Amount of Payment. $10,000 to $15,000 per year.

Intended Recipients. Up to 10 government representatives.

Topic(s) of Opinion. Foreign Government, Payments to; Gifts, Travel, and Entertainment; Obtain or Retain Business (Business Purpose Test).

Final Opinion. Arrangement does not implicate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

28. FCPA OPINION PROCEDURE RELEASE 95-03

NATURE OF THE BUSINESS

Unspecified American company.

PROPOSED ARRANGEMENT

American company seeks to enter into a joint venture with, among other parties, a relative of the leader of the foreign country in which the joint venture will conduct business. In addition, the relative, a prominent businessman who also holds public and party offices, is himself a "foreign government official" for purposes of the FCPA.

REASON FOR PAYMENT

See above.

OPINION

Arrangement is permissible where joint venture partner agrees to a series of detailed restrictions designed to prevent any FCPA violations, including, for example; (i) no payments from the American company may be used for any purpose that would constitute a violation of the laws of the foreign country or of the FCPA; (ii) if the joint venture partner's official duties change so that he makes decisions affecting the joint venture, he will notify the other partners so that appropriate actions may be taken; (iii) the joint venture partner will initiate no meetings with government officials; and (iv) in connection with any meeting with government officials, the joint venture partner will provide a letter to the most senior relevant official stating that the joint venture partner is acting solely in a private capacity.

KEY FACTS

Date Published. September 14, 1995

Requestor. Unspecified U company.

Business Location. Unspecified foreign country.

Amount of Payment. Annual payments of $100,000 to $250,000, plus percentage of profits received as a result of government projects awarded to the joint venture.

Intended Recipients. Joint venture partner who is related to the foreign country's leader and who is a "foreign government official in his own right."

Topic(s) of Opinion. Audit Rights; Contractual Certifications/Controls; Payments to Foreign Government; Acting As Foreign Official; Walling Off Foreign Official; Joint Ventures; Transparency Provisions.

Final Opinion. Arrangement is permissible if certain restrictions are agreed upon to prevent FCPA violations.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

27. FCPA REVIEW OPINION PROCEDURE RELEASE 95-02

NATURE OF THE BUSINESS

Two unspecified American companies that seek to enter into two transactions in a foreign country.

PROPOSED ARRANGEMENT

One of these transactions involves the creation of a new company ("Newco") in the foreign country. A majority of the investors in Newco will be foreign government officials.

REASON FOR PAYMENT

Unspecified.

OPINION

Arrangement does not implicate the FCPA where, among other things; (i) investors will recuse themselves from any government decision affecting the two American companies and Newco; (ii) the investors and the two American companies expressly certify that they will not violate the FCPA; and (iii) the investors and two American companies agree to a variety of express restrictions designed to prevent any FCPA violations (e.g., (a) the two companies have not made and will not make any payments to any foreign official in connection with Newco; (b) the shareholders are all passive investors of Newco and will exercise no management control of Newco while holding government office; (c) the shareholders will take all steps necessary to ensure compliance with the FCPA; (d) Newco's board will meet at least annually to report on its activities and compliance with the FCPA; (e) all Newco payments to shareholders will be made solely by check or bank transfer; and (f) all third parties hired by Newco would be required to sign an FCPA compliance representation as part of the retainer agreement).

KEY FACTS

Date Published. September 14, 1995

Requestor. Two unspecified US companies.

Business Location. Uspecified foreign country.

Amount of Payment. Unspecified.

Intended Recipients. Foreign government officials.

Topic(s) of Opinion. Audit Rights; Contractual Certifications/Controls; Acting As Foreign Official; Walling Off Foreign Official.

Final Opinion. Arrangement between companies does not implicate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

26. FCPA REVIEW OPINION PROCEDURE RELEASE 95-01

NATURE OF THE BUSINESS

Unspecified U.S. based energy company ("Company").

PROPOSED ARRANGEMENT

Company seeks to donate $10 million to help fund a modern medical complex presently under construction near the company's future plant. The donation is to be made through a charitable organization incorporated in the U.S. and through a public liability company located in the foreign country.

REASON FOR PAYMENT

Company looks to ensure that its employees and affiliates will have access to modern medical facilities.

OPINION

Donation does not implicate the FCPA where (i) the company will require certifications from all officers of the charitable organization and foreign liability company that none of the funds will be used in violation of the FCPA; (ii) none of the persons acting on behalf of the charitable organization or foreign liability company are affiliated with the foreign government; and (iii) the company will require audited financial reports detailing the disposition of the donated funds.

KEY FACTS

Date Published. January 11, 1995

Requestor. Unspecified US-based energy company.

Business Location. Unspecified country in South Asia.

Amount of Payment. $10 million.

Intended Recipients. Medical facility that is open to the public.

Topic(s) of Opinion. Charitable Contributions.

Final Opinion. Donation does not implicate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

25. FCPA REVIEW OPINION PROCEDURE RELEASE 94-01

NATURE OF THE BUSINESS

Wholly owned subsidiary of an unspecified American company. The subsidiary manufactures products for use in clinical and hospital laboratories and owns a plant in the foreign country.

PROPOSED ARRANGEMENT

Subsidiary seeks to enter into a contract with the general director ("General Director") of the state owned entity from which it purchased the property on which its land is located. General Director would provide consulting assistance in the subsidiary's efforts to obtain direct electric power service for its plant and improved access to plant facilities. Both require government cooperation.

REASON FOR PAYMENT

See above.

OPINION

Arrangement does not implicate the FCPA where, among other things, (i) General Director was hired because of his knowledge and expertise in the area and not for any influence with government officials, and (ii) General Director makes a series of express representations designed to prevent any FCPA violations (e.g., (a) General Director will not use his official position to assist the subsidiary; (b) General Director will not use his compensation to make payments to other foreign officials; (c) General Director will abide by all local laws in connection with his relationship with the subsidiary; (d) General Director's compensation is not dependent on the subsidiary's success in obtaining the needed government cooperation; and (e) if General Director violates any of these representations, the agreement will be automatically rendered null and void and he will forfeit compensation under the agreement.

KEY FACTS

Date Published. May 13, 1994

Requestor. Unspecified subsidiary of a US company.

Business Location. Unspecified foreign country.

Amount of Payment. $20,000 over twelve months.

Intended Recipients. General Director of a state-owned enterprise.

Topic(s) of Opinion. Acting As Foreign Official; Walling Off Foreign Official.

Final Opinion. Arrangement does not implicate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

24. FCPA REVIEW OPINION PROCEDURE RELEASE 93-02

NATURE OF THE BUSINESS

Unspecified American company ("Company") that sells defense equipment.

PROPOSED ARRANGEMENT

Company seeks to enter into a sales agreement with a government owned business that holds a license giving it a virtual monopoly in the foreign company's defense equipment industry. To do business with the country's military, all foreign suppliers must enter into a written agreement with the government owned business under which the supplier agrees to pay to the government owned business a percentage of the total contract price relating to the sale of defense equipment.

REASON FOR PAYMENT

See above.

OPINION

Arrangement does not implicate the FCPA where the company will pay all commissions directly to the country's treasury or, in the alternative, the commissions will be deducted and withheld by the government customer from the purchase price.

KEY FACTS

Date Published. May 11, 1993

Requestor. Unspecified US company.

Business Location. Unspecified foreign country.

Amount of Payment. Unspecified.

Intended Recipients. Government-owned business.

Topic(s) of Opinion. Payments to Foreign Government; Foreign Government, Required Hiring/Payments.

Final Opinion. Arrangement does not implicate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

23. FCPA REVIEW OPINION PROCEDURE RELEASE 93-01

NATURE OF THE BUSINESS

Unspecified major commercial organization with its principal place of business in Texas ("Organization").

PROPOSED ARRANGEMENT

The Organization has entered into a joint venture partnership agreement with a quasi commercial entity wholly owned and supervised by a foreign government. Among other things, the agreement calls for fees to be paid to the directors of the joint venture partnership, including directors who are also employees of a state owned and controlled entity.

REASON FOR PAYMENT

See above.

OPINION

Arrangement does not implicate the FCPA where (i) foreign directors' fees ultimately will be reimbursed by the foreign partner and (ii) the Organization will undertake to educate the foreign directors about the FCPA.

KEY FACTS

Date Published. April 20, 1993

Requestor. Unspecified.

Business Location. Unspecified former eastern bloc country.

Amount of Payment. Directors' fees of approximately $1,000 per month.

Intended Recipients. Foreign directors of the joint venture partnership.

Topic(s) of Opinion. Payments to Foreign Government; Joint Ventures.

Final Opinion. Arrangement does not implicate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

22. FCPA REVIEW PROCEDURE RELEASE 92-01

NATURE OF THE BUSINESS

Union Texas Pakistan, Inc. ("Union Texas"), a U.S. corporation that plans to enter into a joint venture agreement with the Ministry of Petroleum and Natural Resources of the government of Pakistan.

PROPOSED ARRANGEMENT

Union Texas proposes to provide petroleum industry training to government personnel and to pay the necessary and reasonable expenses for such training.

REASON FOR PAYMENT

Under Pakistani law, the government may require petroleum exploration and production companies to provide training to government personnel, in various technical and management disciplines, to efficiently perform their duties related to the supervision of the Pakistan petroleum industry. Texas Union's agreement with the government obligates the company to a minimum annual expenditure of $200,000 for such training.

OPINION

Arrangement does not implicate the FCPA.

KEY FACTS

Date Published. February 1992

Requestor. Union Texas Pakistan, Inc.

Business Location. Pakistan.

Amount of Payment. At least $200,000 annually.

Intended Recipients. Pakistani government personnel.

Topic(s) of Opinion. Representatives of Foreign Government; Gifts, Travel, and Entertainment; Joint Ventures; Reasonable, Bona Fide Expenditures.

Final Opinion. Arrangement does not implicate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

21. FCPA REVIEW PROCEDURE RELEASE 88-01

NATURE OF THE BUSINESS

Mor Flo Industries, Inc. ("Mor Flo") intends to construct a facility for the production of gas and electric water heaters in Mexico.

PROPOSED ARRANGEMENT

Mor Flo intends to participate in an established Mexican government debt equity swap program under which Mor Flo would acquire certain deeply discounted debt interests of the government of Mexico and then exchange this debt paper with the government at an exchange rate established by the government. Mor Flo must pay a fee to the government and its financial agent to participate in the program.

REASON FOR PAYMENT

See above.

OPINION

Fee payments do not implicate the FCPA where (i) Mor Flo will secure written confirmation from the financial agent that the agent is the authorized representative of the government of Mexico and that none of the fees will be used for any purpose prohibited by the FCPA; and (ii) the arrangement does not violate any local law.

KEY FACTS

Date Published. May 12, 1988

Requestor. Mor-Flo Industries, Inc.

Business Location. Baja California, Mexico.

Amount of Payment. Approximately $362,000.

Intended Recipients. Government of Mexico and its designaed financial agent.

Topic(s) of Opinion. Payments to Foreign Government; Representatives of Foreign Government; Foreign Government, Required Hiring/Payments.

Final Opinion. FCPA is not implicated under certain conditions.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

20. FCPA REVIEW PROCEDURE RELEASE 87-01

NATURE OF THE BUSINESS

Lantana Boatyard, Inc. ("Lantana") seeks to sell military patrol boats to a British company that will in turn resell these boats to the Nigerian government.

PROPOSED ARRANGEMENT

Lantana wishes to pay a 10% commission to an international marketing organization in consideration for the organization's assistance in facilitating the sale of the patrol boats.

REASON FOR PAYMENT

See above.

OPINION

The commission does not implicate the FCPA where the marketing organization will promise that the commission will not be used for any activity or purpose that would violate the FCPA.

KEY FACTS

Date Published. December 17, 1987

Requestor. Lantana Boatyard, Inc.

Business Location. Unspecified.

Amount of Payment. Unpecified.

Intended Recipients. International marketing organization.

Topic(s) of Opinion. Contractual Certifications/Controls; Third-Party Agents; Transparency Provisions.

Final Opinion. FCPA is not implicated under certain conditions.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

19. FCPA REVIEW PROCEDURE RELEASE 86-01

NATURE OF THE BUSINESS

Three unspecified U.S. corporations.

PROPOSED ARRANGEMENT

The three corporations, in three separate and unrelated arrangements, seek to employ individual members of the parliaments of Great Britain and Malaysia to represent the firms in their business operations in the respective nations.

REASON FOR PAYMENT

See above.

OPINION

Although members of Parliament are "foreign officials" under the FCPA, the arrangements do not implicate the FCPA where, among other things, (i) none of the three Parliament members occupies any legislative position of influence other than that possessed by a single member in a legislative body of many members; (ii) the employment relationships will comply with the local laws of each respective country; and (iii) each member agrees to make full disclosure of his employment relationship with a U.S. corporation and agrees not to vote or conduct any legislative activity for the benefit of the corporation.

KEY FACTS

Date Published. July 18, 1986

Requestor. Three unspecified U.S. corporations.

Business Location. Great Britain and Malaysia.

Amount of Payment. $36,000; salary of $40,000 to $60,000 per year; and $48,000 plus 30% of the profits generated by member's representation.

Intended Recipients. Two members of the British Parliament and one member of the Malaysian Parliament.

Topic(s) of Opinion. Acting As Foreign Official; Walling Off Foreign Official; Transparency Provisions.

Final Opinion. Arrangement does not implicate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

18. FCPA OPINION PROCEDURE RELEASE 85-03

NATURE OF THE BUSINESS

Unspecified U.S. business entity seeks to negotiate a settlement of a claim against a foreign country but has been unable to identify the agencies or officials in the foreign country most responsible for and capable of settling the claim. The company proposes to retain the services of a former government official of the unspecified country, who is not an official or a political party or a candidate for political office, to act as its agent to identify the agencies and officials of the foreign country ultimately responsible for negotiating settlement of the claim and to inform that individual or agency of the business' interest in the claim, the business' desire to discuss settlement, and the possibility that such a settlement could encompass related disputes with "others of allied interest."

PROPOSED ARRANGEMENT

The proposed agent will enter into a written agreement with the American business entity specifying, among other things, that the agent: 1) is not presently an official of the foreign country's government or an official of a political party or a candidate for political office in the foreign country; 2) understands the prohibitions of the FCPA and will abide by them; 3) will not pay any of his compensation to any official of the foreign government, nor to any official of a political party, nor to any candidate for political office in the foreign country; 4) will only perform the functions specifically authorized by the U.S. entity; and 5) will be compensated at a rate of $40 per hour, plus expenses, not to exceed $5,000.

REASON FOR PAYMENT

To identify the foreign agencies and officials ultimately responsible for negotiating settlement of U.S. company's claim against foreign country and to inform such agencies and officials of the U.S. company's desire to settle the claim.

OPINION

Department of Justice does not presently intend to take an enforcement action based on the requester's proposed conduct and contractual relationship with the agent.

KEY FACTS

Date Published. January 20, 1987

Requestor. Unspecified US company.

Business Location. Unspecified.

Amount of Payment. $40 per hour, plus expenses, up to a limit of $5,000.

Intended Recipients. Former foreign government official.

Topic(s) of Opinion. Contractual Certifications/Controls; Third-Party Agents.

Final Opinion. No intent by DOJ to bring enforcement action.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

17. FCPA REVIEW PROCEDURE RELEASE 85-02

NATURE OF THE BUSINESS

Unspecified American business entity.

PROPOSED ARRANGEMENT

To identify the foreign government agencies most capable of settling the American business entity's legal claim against the foreign government, the entity proposes to hire as its agent a former official of that foreign government to identify and contact the appropriate foreign government agencies.

REASON FOR PAYMENT

See above.

OPINION

Arrangement does not implicate the FCPA where, among other things, the agent (i) is not presently an official of the foreign government or a candidate for political office; (ii) promises to abide by the FCPA; and (iii) will not pay any portion of his compensation to any "foreign official" within the definition of the FCPA.

KEY FACTS

Date Published. December 1985

Requestor. Unspecified American business entity.

Business Location. Unspecified foreign country.

Amount of Payment. $40 per hour, plus expenses, up to a limit of $5,000.

Intended Recipients. Former official of the foreign government who currently holds no government position.

Topic(s) of Opinion. Third-Party Agents.

Final Opinion. Arrangement does not implicate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

16. FCPA REVIEW PROCEDURE RELEASE 85-01

NATURE OF THE BUSINESS

Atlantic Richfield Co. ("ARCO") has announced plans for the construction of a chemical plant in France.

PROPOSED ARRANGEMENT

ARCO intends to invite officials of the French government ministry responsible for the issuance of permits and licenses for the project to the U.S. to meet with ARCO officials and to inspect an ARCO chemical plant.

REASON FOR PAYMENT

The meetings and plant inspection are to address environmental and management concerns raised by French authorities in connection with the operation of a large scale chemical plant.

OPINION

Arrangement does not implicate the FCPA where (i) ARCO has furnished an opinion that the proposed conduct does not violate French law; (ii) the travel will occur during a period of not more than one week; and (iii) ARCO will pay the reasonable and necessary expenses of the French delegation, including air travel, lodging and meals.

KEY FACTS

Date Published. July 16, 1985

Requestor. Atlantic Richfield Co.

Business Location. France.

Amount of Payment. Unspecified.

Intended Recipients. French government officials.

Topic(s) of Opinion. Gifts, Travel, and Entertainment; Reasonable, Bona Fide Expenditures.

Final Opinion. Arrangement does not implicate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

15. FCPA REVIEW PROCEDURE RELEASE 84-02

NATURE OF THE BUSINESS

An unspecified American firm ("Firm") seeks to transfer the assets of a foreign branch office to a foreign owned company, and then to invest in the foreign company. Foreign regulatory approval would be required for this transaction.

PROPOSED ARRANGEMENT

A remark by an agent of the foreign company indicated the foreign agent's possible intent to offer a small gratuity to low level foreign government employees to facilitate the transaction.

REASON FOR PAYMENT

See above.

OPINION

The FCPA has yet to be implicated because, among other things, (i) no payments were ever made to officials of the foreign government; (ii) employees of the American Firm discouraged payment of any gratuity; (iii) the Firm has pledged not to violate the FCPA; and (iv) the Firm retains the right to sever its relationship with the foreign company if it learns of any FCPA violations.

KEY FACTS

Date Published. August 20, 1984.

Requestor. Unspecified US company.

Business Location. Unspecified.

Amount of Payment. Unspecified.

Intended Recipients. Low-level foreign government employees.

Topic(s) of Opinion. Audit Rights; Mergers and Acquisitions.

Final Opinion. FCPA is yet to be implicated.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

14. FCPA REVIEW PROCEDURE RELEASE 84-01

NATURE OF THE BUSINESS

Unspecified American firm seeks to engage a foreign company as its marketing representative in a foreign country.

PROPOSED ARRANGEMENT

Foreign company's principals are related to the foreign country's head of state, and one of these principals personally manages certain of the head of state's private business affairs and investments.

REASON FOR PAYMENT

See above.

OPINION

Arrangement does not implicate the FCPA where (i) foreign company agrees to a variety of express restrictions designed to prevent any FCPA violations (e.g., (a) foreign company agrees not to pay anything of value to any public official in the foreign country for the purpose of influencing the official's official acts; (b) company agrees that if it does violate the FCPA, its agreement with the American firm will be rendered null and void; (c) foreign company will be solely responsible for all of its costs and expenses incurred in connection with its representation of the American firm; and (d) the foreign company will make, when required, full disclosure to the U.S. government and the foreign government of its identity and amount of commission applicable to a specific contract); and (ii) foreign company was chosen because of its proven track record rather than its ties to the head of state.

KEY FACTS

Date Published. November 7, 1984

Requestor. Unspecified US company.

Business Location. Unspecified foreign country.

Amount of Payment. Unspecified.

Intended Recipients. Foreign company with close ties to head of state.

Topic(s) of Opinion. Contractual Certifications/Controls; Due Diligence; Third-Party Agents; Transparency Provisions.

Final Opinion. Arrangement does not implicate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

13. FCPA REVIEW PROCEDURE RELEASE 83-03

NATURE OF THE BUSINESS

Department of Agriculture of the State of Missouri ("Department") and CAPCO, Inc. ("CAPCO"), a Missouri corporation engaged in the management of properties owned by foreign investors.

PROPOSED ARRANGEMENT

Department and CAPCO intend to offer to pay the reasonable and necessary expenses of a Singapore government official in connection with a series of site inspections, demonstrations and meetings to be held in six Missouri counties during approximately a 10 day period.

REASON FOR PAYMENT

To promote the sale of certain Missouri agricultural products and facilities to an instrumentality of the government of Singapore.

OPINION

Arrangement does not implicate the FCPA.

KEY FACTS

Date Published. July 26, 1983

Requestor. Department of Agriculture of the State of Missouri and CAPCO, Inc.

Business Location. Missouri/Singapore.

Amount of Payment. Unspecified.

Intended Recipients. Singapore government official.

Topic(s) of Opinion. Gifts, Travel, and Entertainment; Reasonable, Bona Fide Expenditures.

Final Opinion. Arrangement does not implicate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

12. FCPA REVIEW PROCEDURE RELEASE 83-02

NATURE OF THE BUSINESS

Unspecified American company that currently participates with two foreign companies in a joint venture in a foreign country. The joint venture has a long term contractual relationship with a foreign entity that is owned and controlled by the government of the foreign country.

PROPOSED ARRANGEMENT

The American joint venture participant intends to invite the general manager of the foreign government entity to extend a planned U.S. vacation for approximately 10 days to take a promotional tour of certain facilities of the American joint venture participant. The American joint venture participant intends to pay for all reasonable and necessary actual expenses of the general manager and his wife during this tour.

REASON FOR PAYMENT

See above.

OPINION

Arrangement does not implicate the FCPA where, among other things, (i) all expenses will be paid by the American joint venture participant directly to the service providers; and (ii) the expenses will be recorded accurately in the company's books and records.

KEY FACTS

Date Published. July 26, 1983

Requestor. Unspecified US company.

Business Location. Unspecified foreign country.

Amount of Payment. No more than $5,000.

Intended Recipients. Foreign government entity general manager and his wife.

Topic(s) of Opinion. Gifts, Travel, and Entertainment; Reasonable, Bona Fide Expenditures.

Final Opinion. Arrangement does not implicate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

11. FCPA REVIEW PROCEDURE RELEASE 83-01

NATURE OF THE BUSINESS

Unspecified California corporation seeks to do business with a Sudanese corporation whose head is appointed by the President of Sudan, but which operates independently of the Sudanese government.

PROPOSED ARRANGEMENT

The California corporation proposes to use the Sudanese corporation as its agent in connection with sales to commercial and government customers in Sudan and other nations in the region. The Sudanese corporation would act as a commercial sales agent and would be paid on a commission basis.

REASON FOR PAYMENT

See above.

OPINION

Arrangement does not implicate the FCPA where, among other things, (i) payment will be made directly to the Sudanese corporation rather than any individual; and (ii) all purchase contracts will contain notice of the agency relationship between the California and Sudanese corporations.

KEY FACTS

Date Published. May 12, 1983

Requestor. Unspecified California corporation.

Business Location. Sudan.

Amount of Payment. Unspecified.

Intended Recipients. Sudanese corporation.

Topic(s) of Opinion. Third-Party Agents; Transparency Provisions.

Final Opinion. Arrangement does not implicate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

10. FCPA REVIEW PROCEDURE RELEASE 82-04

NATURE OF THE BUSINESS

Thompson & Green Machinery Co. ("T&G"), a generator manufacturer and producer.

PROPOSED ARRANGEMENT

T&G intends to compensate a foreign businessman who acted as its agent in connection with a generator sale to a foreign government, even though the businessman's brother is an employee of that government.

REASON FOR PAYMENT

Unspecified.

OPINION

Arrangement does not implicate FCPA where (i) written consultant agreement with foreign businessman precludes the businessman from using any part of his commission to pay a finder's fee to a third party, and also expressly references the FCPA; and (ii) both the businessman and his brother signed separate affidavits in which they pledged adherence to the FCPA's anti bribery provisions.

KEY FACTS

Date Published. November 11, 1982

Requestor. Thompson & Green Machinery Co.

Business Location. Unspecified foreign country.

Amount of Payment. Unspecified.

Intended Recipients. Foreign businessman who acted as T&G's agent in promoting generator sale to foreign government.

Topic(s) of Opinion. Contractual Certifications/Controls; Third-Party Agents.

Final Opinion. Arrangement does not implicate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

9. FCPA REVIEW PROCEDURE RELEASE 82-03

NATURE OF THE BUSINESS

Unspecified Delaware corporation seeks to do business with the government department of Yugoslavia responsible for the procurement of property and services for the Yugoslav military.

PROPOSED ARRANGEMENT

The company proposes to pay the government controlled trade organization a percentage of the total contract price as well as additional payments.

REASON FOR PAYMENT

A senior official of the government controlled trade organization advised the company that it is the law of Yugoslavia that if a firm intends to do business with the military of that country, an agency agreement with the trade organization is necessary. The agency agreement would obligate the company to make the payments detailed above.

OPINION

Agreement does not implicate the FCPA where, among other things, there is no expectation that any individual government official will personally benefit from the proposed agency relationship.

KEY FACTS

Date Published. April 22, 1982

Requestor. Unspecified Delaware corporation.

Business Location. Yugoslavia.

Amount of Payment. Unspecified.

Intended Recipients. Government-controlled trade organization.

Topic(s) of Opinion. Foreign Government, Required Hiring/Payments; Transparency Provisions.

Final Opinion. Agreement does not implicate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

8. FCPA REVIEW PROCEDURE RELEASE 82-02

NATURE OF THE BUSINESS

Ransom F. Shoup & Co. ("Shoup"), a closely held Pennsylvania corporation in the business of selling, repairing and designing voting machines.

PROPOSED ARRANGEMENT

Shoup has a contract with Frederick Ogirri ("Ogirri"), a temporary employee in the U.S. of the Consulate of Nigeria, to pay him a 1% finder's fee for assisting in the formation of a contract between Shoup and the Federal Election Commission of Nigeria to design and sell voting machines.

REASON FOR PAYMENT

See below.

OPINION

Contract does not implicate FCPA where, among other things, (i) Ogirri, a temporary low level clerk who performs purely ministerial duties, has no influence with the Nigerian government; and (ii) the fee is consideration solely for Ogirri's advising Shoup in the marketability of its machines in Nigeria, the customs, protocol and business practices of Nigeria, and introducing Shoup to an identified business agent in Nigeria.

KEY FACTS

Date Published. February 18, 1982

Requestor. Ransom F. Shoup & Co.

Business Location. Nigeria.

Amount of Payment. Unspecified.

Intended Recipients. Ogirri.

Topic(s) of Opinion. Audit Rights; Contractual Certifications/Controls; Acting As Foreign Official; Third-Party Agents; Transparency Provisions.

Final Opinion. Contract does not implicate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

7. FCPA REVIEW PROCEDURE RELEASE 82-01

NATURE OF THE BUSINESS

Department of Agriculture of the State of Missouri.

PROPOSED ARRANGEMENT

Missouri's Department of Agriculture seeks to host 10 representatives of the Mexican government in a series of meetings in conjunction with agricultural business in Missouri. The Department intends to pay the officials' reasonable and necessary expenses, including meals, lodging, entertainment and traveling.

REASON FOR PAYMENT

To promote sales of Missouri agricultural products in Mexico.

OPINION

Arrangement does not implicate the FCPA.

KEY FACTS

Date Published. January 27, 1982

Requestor. Department of Agriculture of the State of Missouri.

Business Location. Mexico/Missouri.

Amount of Payment. Unspecified.

Intended Recipients. Mexican government officials and individuals representing Mexican private sector agricultural businesses.

Topic(s) of Opinion. Gifts, Travel, and Entertainment; Reasonable, Bona Fide Expenditures.

Final Opinion. Arrangement does not implicate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

6. FCPA REVIEW PROCEDURE RELEASE 81-02

NATURE OF THE BUSINESS

Iowa Beef Packers, Inc. ("IBP").

PROPOSED ARRANGEMENT

IBP intends to furnish samples of its packaged beef products to officials of the Soviet Ministry of Foreign Trade ("MVT").

REASON FOR PAYMENT

To promote sales of IBP products to the government of the Soviet Union.

OPINION

Arrangement does not implicate the FCPA where: (i) sample products are intended as items for MVT officials' inspection, testing and sampling; (ii) sample products are not intended for their individual use, but will be provided to them in their capacity as MVT officials; and (iii) the Soviet government has been informed that IBP intends to furnish sample products to MVT officials.

KEY FACTS

Date Published. December 11, 1981

Requestor. Iowa Beef Packers, Inc.

Business Location. Soviet Union.

Amount of Payment. Less than $2,000

Intended Recipients. MVT officials.

Topic(s) of Opinion. Reasonable, Bona Fide Expenditures; Transparency Provisions.

Final Opinion. Arrangement does not implicate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

5. FCPA REVIEW PROCEDURE RELEASE 81-01

NATURE OF THE BUSINESS

Bechtel Group Inc. ("Bechtel"), a privately owned engineering, construction and project management firm, wishes to do business with the SGV Group ("SGV"), a multinational corporation headquartered in the Philippines that provides auditing, management consulting, project management and tax advisory services.

PROPOSED ARRANGEMENT

See above.

REASON FOR PAYMENT

Unspecified.

OPINION

Proposed business relationship does not implicate the FCPA where, among other things, (i) all payments to SGV will be made solely by check or bank transfer and will be made only to SGV or its officers/employees; (ii) both Bechtel and SGV are familiar with the FCPA; (iii) no individual associated with SGV is a foreign official under the definition of the FCPA; (iv) the proposed relationship does not violate local law; and (v) the entertainment, meal and travel expenses of SGV employees will be reimbursed only upon Bechtel's written approval.

KEY FACTS

Date Published. November 25, 1981

Requestor. Bechtel Group Inc.

Business Location. Philippines.

Amount of Payment. Unspecified.

Intended Recipients. Companies involved.

Topic(s) of Opinion. Audit Rights; Contractual Certifications/Controls; Due Diligence; Gifts, Travel, and Entertainment; Third-Party Agents; Transparency Provisions.

Final Opinion. Proposed business relationship does not implicate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

4. FCPA REVIEW PROCEDURE RELEASE 80-04

NATURE OF THE BUSINESS

Lockheed Corp. ("Lockheed") and Olayan Group (a Saudi Arabian diversified trading, services and investment organization) plan to enter into certain agreements with each other for the purpose of engaging in certain prospective business transactions with the government of Saudi Arabia and with the government owned Saudi Arabian Airlines Corp. ("Saudia").

PROPOSED ARRANGEMENT

Suliman S. Olayan ("Olayan"), the Chairman of the Olayan Group, is also an outside director of Saudia.

REASON FOR PAYMENT

None provided.

OPINION

Arrangement does not implicate the FCPA where: (i) it is represented that Olayan will abstain from voting with respect to any matters concerning Lockheed or any of its subsidiaries before the Saudia board and will disclose Olayan Group's relationship with Lockheed to the board; (ii) Olayan will not use his position as a Saudia Director to influence, on behalf of Lockheed, any act or decision of the Saudi government or of Saudia; (iii) Olayan holds no other position with the Saudi government and devotes little time as a Saudia director; (iv) the arrangement does not violate any local laws; and (v) Olayan is not considered to be an officer of Saudia and is not authorized to act on behalf of Saudia, other than to participate in board meetings.

KEY FACTS

Date Published. October 29, 1980

Requestor. Lockheed Corp. and Olayan Group.

Business Location. Saudi Arabia.

Amount of Payment. None provided.

Intended Recipients. Saudia Arabian Airlines Corp.

Topic(s) of Opinion. Acting As Foreign Official; Walling Off Foreign Official; Transparency Provisions.

Final Opinion. Arrangement does not implicate the FCPA.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

3. FCPA REVIEW PROCEDURE RELEASE 80-03

NATURE OF THE BUSINESS

Unspecified domestic concern.

PROPOSED ARRANGEMENT

Contract with attorney domiciled and functioning in West Africa.

REASON FOR PAYMENT

Domestic concern wishes to enter into contract with West African attorney. The contract makes two specific references to the FCPA: (i) the attorney agrees and represents that he is not, and during the course of the agreement will not be, a foreign official; and (ii) the contract expressly prohibits payments to foreign officials.

OPINION

None of these facts or circumstances reasonably cause concern about the application or possible violation of the FCPA. However, if there were reasonable cause for concern, the contract provisions alone would not be sufficient to preclude liability.

KEY FACTS

Date Published. October 29, 1980

Requestor. Unspecified.

Business Location. West Africa.

Amount of Payment. Unspecified.

Intended Recipients. Attorney domiciled and functioning in West Africa.

Topic(s) of Opinion. Third-Party Agents.

Final Opinion. No concern of an FCPA violation.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

2. FCPA REVIEW PROCEDURE RELEASE 80-02

NATURE OF THE BUSINESS

Castle & Cooke, Inc. ("Castle & Cooke") and two subsidiaries.

PROPOSED ARRANGEMENT

Employee of a Castle & Cooke subsidiary would like to run for public office while retaining his private employment.

REASON FOR PAYMENT

Employee of a Castle & Cooke subsidiary in the foreign country has been asked by a political party in that foreign country to run for the legislature.

The employee would like to retain his private employment with Castle & Cooke both during the campaign and, if elected, while serving in public office.

OPINION

The employee's candidacy does not implicate the FCPA where (i) the employee's duties with the subsidiary do not include any type of advocacy work or any type of representation before the government on the corporation's behalf; (ii) the government post is essentially part time and it is common practice for legislators to hold outside employment; (iii) the employee will fully disclose his continuing relationship with the corporation; (iv) the employee will refrain from participation in any matters that would directly affect the corporation; (v) the employee's salary will be based on the amount of time he actually works for the corporation; and (vi) an opinion of local counsel states that, as structured, the proposed conduct does not violate local conflict of interest or other laws.

KEY FACTS

Date Published. October 29, 1980

Requestor. Castle & Cooke, Inc. and two subsidiaries.

Business Location. Upecified foreign country.

Amount of Payment. Public office to be held by Castle & Cooke subsidiary employee.

Intended Recipients. Employee of Castle & Cooke subsidiary.

Topic(s) of Opinion. Walling Off Foreign Official; Transparency Provisions.

Final Opinion. The FCPA is not implicated.

E. DEPARTMENT OF JUSTICE FCPA OPINION PROCEDURE RELEASES

1. FCPA REVIEW PROCEDURE RELEASE 80-01

NATURE OF THE BUSINESS

American law firm ("Law Firm").

PROPOSED ARRANGEMENT

Law Firm seeks to fund the American education and support of the adopted children of an honorary official of the government of the foreign country.

REASON FOR PAYMENT

See above.

OPINION

[Funding does not implicate the FCPA where (i) the official, who is elderly and semi invalid, has only ceremonial duties; (ii) the natural parents are employees of the foreign government but are not in a position to influence official positions that would in any way benefit the Law Firm; and (iii) there has been no suggestion that any preferential treatment would be granted in return for the proposed conduct.

KEY FACTS

Date Published. October 29, 1980

Requestor. US law firm.

Business Location. Unspecified foreign country.

Amount of Payment. $10,000 per annum.

Intended Recipients. Two individuals who are the adopted children of an honorary official of the government of the foreign country.

Topic(s) of Opinion. Charitable Contributions; Gifts, Travel, and Entertainment.

Final Opinion. Funding does not implicate the FCPA.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

F. ONGOING INVESTIGATIONS UNDER THE FCPA

113. AIRBUS SE

Background. Airbus SE , based in Leiden, Netherlands, is a European aerospace corporation that designs, manufactures, and sells civil and military aerospace products.

The Investigation. In response to an article in *Le Monde* which revealed that the U.S. Justice Department had asked for information in a corruption probe, Airbus issued a statement on December 20, 2018 that the company has been cooperating with probes by authorities of various countries, including the DOJ and the UK SFO. This investigation into alleged fraud and bribery is related to Airbus' use of outside consultants in commercial plane sales. Airbus has warned that the investigations could lead to significant penalties, and have promised to stop working with middlemen.

112. CHS INC.

Background. CHS Inc., based in Inver Grove Heights, Minnesota, is a secondary agricultural cooperative that owns and operates various food processing and wholesale, farm supply, financial services, and retail businesses.

The Investigation. In its Form 10-K filed on December 3, 2018, CHS Inc. disclosed that it voluntarily self-reported potential FCPA violations to the DOC and SEC in connection with reimbursments the company made to Mexican customs agents related to inspections of grain crossing the U.S.-Mexican border by railcar. In the filing, CHS Inc. stated that it is fully cooperating with the investigating agencies.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

111. JOHNSON & JOHNSON

Background. Johnson & Johnson is an American multinational medical devices, pharmaceutical, and consumer packaged goods manufacturing company. Johnson & Johnson do Brasil Indústria e Comércio de Produtos para Saúde Ltda ("J&J Brazil") is its Brazilian subsidiary.

The Investigation. In a 10-Q filed on October 31, 2018, Johnson & Johnson disclosed that the Public Prosecution Service in Rio De Janeiro and representatives from Brazilian antitrust authority, the Administrative Council for Economic Defense ("CADE") opened investigations into J&J Brazil regarding possible anti-competitive behavior and possible improper payments in the medical device industry. According to the filing, the DOJ and SEC have also made preliminary inquiries into these investigations, and Johnson & Johnson is cooperating with those requests.

110. ING GROEP N.V.

Background. ING GROEP N.V., based in Amsterdam, is a Dutch multinational banking and financial services corporation.

The Investigation. In a 20-F filed on March 20, 2017, ING Groep disclosed that ING Bank, a subsidiary, was the subject of criminal investigations by Dutch authorities concerning the on-boarding of clients, money laundering, and possible corrupt practices. ING Groep further disclosed in the 20-F that "U.S. authorities" had requested information from the company, and that they were fully cooperating.

On September 5, 2018, ING Groep announced it had entered into a settlement with Dutch authorities under which the company would pay a criminal fine of $900 million. ING further announced receipt of a formal notification from the SEC that the agency had closed its investigation and would not pursue any enforcement action against the company. Due to the use of "U.S. authorities" in the Form 20-F, it is unknown whether a parallel DOJ investigation into this matter is ongoing.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

109. GURALP SYSTEMS LIMITED

Background. Guralp Systems, Limited., based in Reading, UK, is an engineering firm that manufactures seismology testing equipment.

The Investigation. On August 17, 2018, The UK Serious Fraud Office charged Guralp's founder and a top executive with allegedly paying bribes to officials at the Korea Institute of Geoscience and Mineral Resources ("KIGAM"). In 2017, KIGAM's former director Heon-Cheol Chi was sentenced to fourteen months in federal prison for using a Southern California bank account to launder bribes from two unnamed seismological companies. On August 20, 2018, the DOJ issued a declination letter stating that it would not prosecute Guralp for possible FCPA and money-laundering violations, "notwithstanding evidence of violations of the FCPA." The DOJ stated that Guralp made a "voluntary disclosure of the misconduct," and undertook "significant remedial efforts." A parallel investigation by the UK SFO into potential wrongdoing by Guralp is ongoing.

108. PLANTRONICS, INC.

Background. Plantronics, Inc, based in Santa Cruz, California, is an American electronics company producing audio communications equipment.

The Investigation. In a Form 10-Q filed on August 7, 2018, Plantronics, Inc. disclosed that the DOJ and the SEC had initiated investigations into possible FCPA violations by Polycom, Inc., which Plantronics acquired on July 2, 2018. The Form 10-Q further stated that the possible violations occurred prior to Plantronics' acquisition. Plantronics further stated that Polycom was fully cooperating with both agencies.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

107. ASTRAZENECA PLC

Background. AstraZeneca plc, headquartered in Cambridge, U.K., is a multinational pharmaceutical and biopharmaceutical company.

The Investigation. In its form 6-K filed with the SEC in July 2018, AstraZeneca reported that it is under investigation from the DOJ relating to "activities in Iraq, including interactions with the Iraqi government and certain of the same matters alleged in" a private lawsuit filed in October 2017 by U.S. veterans and their surviors. In that lawsuit, plaintiffs alleged that the AstraZeneca and other pharmaceutical and medical device companies violated the U.S. Anti-Terrorism Act and various state laws by selling pharmaceutical and medical supplies to the Iraqi Ministry of Health.

106. LEGG MASON, INC.

Background. Legg Mason, based in Baltimore, Maryland, is an American investment management firm with a focus on asset management.

The Investigation. In a 10-K filed on May 30, 2018, Legg Mason disclosed that the DOJ and SEC were conducting an investigation into possible FCPA-related misconduct involving the company's management of Libyan governmental assets, and that the company was near completing negotiations with the two agencies. Legg Mason accrued $67 million in anticipation of a settlement.

On June 4, 2018, the DOJ announced that it had entered into a non-prosecution agreement with the firm. The NPA required Legg Mason to pay $64.2 million, consisting of a criminal penalty of $32.6 million and disgorgement of $31.6 million. The disgorgement, however, would be "credited against disgorgement paid to other law enforcement authorities within the first year of the [non-prosecution] agreement." On August 27, 2017, the SEC announced a settled cease and desist order to the firm. As part of its resolution with the SEC, the firm agreed to pay $34 million to settle the civil offenses, consisting of $27.6 million in disgorgement and $6.9 million in prejudgment interest. After applying the credit for $31.6 million as set out in the firm's NPA, Legg Mason will pay the SEC $2.4 million as part of the resolution.

See DOJ Digest Number B-203.
See SEC Digest Number D-181.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

105. IHEART MEDIA, INC.

Background. iHeart Media, Inc., based in San Antonio, Texas is is an American mass media corporation.

The Investigation. In its April 3, 2018 notice that it would not file a Form 10-K on time, iHeart Communications, Inc. and Clear Channel Outdoor Holdings, Inc., both subsidiaries of iHeart Media, Inc., disclosed that Chinese police had begun an investigation into certain employees for alleged misappropriation of funds. The company's board retained outside counsel and forensic accountants to conduct an investigation in the matter. On May 3, 2018, the company disclosed in its Form 10-K that it had advised the DOJ and SEC about the investigation. iHeart Media, Inc. further stated that it intends to cooperate fully with any investigation these agencies might perform in the matter. As of December 2018, the company has not disclosed whether the DOJ and SEC have decided to pursue investigations into this matter.

104. ALBEMARLE CORP.

Background. Albemarle Corporation, headquartered in Charlotte, North Carolina, is a global specialty chemical manufacturing company.

The Investigation. In its 10-K filed on February 28, 2018, Albemarle Corporation disclosed that it had received information regarding possible improper payments made by third-party sales representatives in the company's Refining Solutions business. According to the company's disclosure, Albemarle subsequently hired outside counsel and forensic accountants to conduct an investigation into possible violations of the FCPA. Based on initial findings of this investigation, Albemarle reported potential issues to the DOJ and the SEC. In its 10-Q filed on May 10, 2018, Albemarle stated that it intends to cooperate fully with investigations by these agencies and that it has begun to implement remedial measures.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

103. OSI SYSTEMS, INC.

Background. OSI Systems, Inc., based in Hawthorne, California, is an American developer and manufacturer of security and inspection systems, such as airport X-ray machines and metal detectors.

The Investigation. In a Form 8-K filed on February 1, 2018, OSI disclosed that the DOJ and the SEC had initiated an investigation into the company's compliance with the FCPA, "[f]ollowing a report by a short seller." According to OSI, both the SEC and DOJ have subpoenaed documents from the company. In the Form 8-K, OSI stated that they had "taken action" with respect to a senior-level employee in connection with the trading allegations. OSI stated further in its 8-K that it is fully complying with these requests.

102. CIENA CORPORATION

Background. Ciena Corporation is a Maryland-based telecommunications company.

The Investigation. According to its 10-K filed on December 7, 2017, one of Ciena's third-party vendors raised allegations in 2017 about certain questionable payments to one or more individuals employed by a customer in a country in the ASEAN region. According to the filing, Ciena promptly initiated an internal investigation into the matter, with the assistance of outside counsel, which corroborated direct and indirect payments to one such individual and sought to determine whether the payments may have violated applicable laws and regulations, including the FCPA. In September 2017, Ciena voluntarily disclosed the investigation to the SEC and DOJ, and the company continues to cooperate fully with the SEC and DOJ in their review of the investigation. As of a Form 10-Q filed September 5, 2018, there have been no updates provided on the investigation.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

101. HARSCO CORPORATION

Background. Harsco is a diversified industrial company providing industrial services and engineered products serving industries including steel, railways and energy.

The Investigation. According to its November 7, 2017 10-Q, Harsco stated that it recently began an internal investigation involving allegations of potentially illicit payments involving an employee of the company and an agent of a Harsco Rail subsidiary in China. The Form 10-Q states that Harsco has voluntarily self-reported its initial findings to the SEC and DOJ and intends to fully cooperate with those agencies. As of a Form 10-Q dated October 31, 2018, the investigation remains ongoing.

100. MCDERMOTT INTERNATIONAL, INC.

Background. McDermott International, Inc. is a multinational energy company based in Houston, Texas, and incorporated in Panama that co-owns interests in various entities with Keppel Corporation under the name of FloaTEC.

The Investigation. In a 10-Q filed on November 1, 2017, McDermott disclosed an internal investigation into payments allegedly made by an agent of Keppel to Petrobras to obtain awards on various projects, allegedly including a FloaTEC project on which McDermott was a subcontractor. McDermott's investigation has found no evidence of improper payments made by the company or FloaTEC, or that FloaTEC employees were involved in providing improper payments. McDermott reported the matter to the DOJ and has responded to requests for additional information. In December 2017, Keppel entered into a DPA with DOJ in connection with the charges that Keppel had conspired to violate the anti-bribery provisions of the FCPA. In a 10-K filed on April 24, 2018, McDermott stated that the DOJ has not been in contact with the company since January 2017 regarding this matter.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

99. SAP SE

Background. SAP SE is a German-based software company that provides business applications, analytics software, and enterprise cloud computing.

The Investigation. In an October 26, 2017 company statement, SAP stated that it had hired an outside law firm to investigate its South African business. The investigation discovered that, in connection with four contracts with government-owned entities in South Africa entered into between December 2014 and November 2016, SAP made payments to entities related to a politically connected family in South Africa. In December 2016 and June 2017, SAP also entered into two contracts with a government-owned utility with the help of an entity related to the family. SAP voluntarily disclosed the matter to the DOJ and SEC, and disclosed that the DOJ and SEC are currently undertaking an investigation of these matters. The company has stated that it will completely cooperate with the agencies. As of December 2018, there have been no updates made publicly available.

98. STERICYCLE, INC.

Background. Stericycle is a multinational company based in Illinois, that manages and disposes medical waste.

The Investigation. In a Form 10-Q filed on August 9, 2017, Stericycle disclosed that the SEC had issued a subpoena on June 12, 2017 seeking documents and information concerning the company's compliance with the FCPA in its operations in Latin America. According to the filing, the DOJ is also investigating this matter. The company stated that it is cooperating with both agencies, and is conducting an internal investigation and has discovered evidence of misconduct. As of a Form 10-Q filed on November 1, 2018, the investigation remains ongoing.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

97. UBER TECHNOLOGIES, INC.

Background. Uber Technologies, Inc. is a California-based company that develops, markets, and operates a ridesharing mobile platform which allows consumers to request a trip which is routed to crowd-sourced taxi or private drivers.

The Investigation. In news reports published on August 29, 2017, it was reported that the DOJ has taken preliminary steps to investigate whether managers at Uber Technologies, Inc. had violated the FCPA. In December 2017, the DOJ confirmed Uber was being investigated but did not specify whether the investigation was related to alleged FCPA violations. As of December 2018, there have been no further updates provided on the status of the investigation.

96. Teradata Corporation

Background. Teradata Corporation is an Ohio-based company that provides analytic data platforms, analytic applications, and other services to businesses worldwide.

The Investigation. In a Form 10-Q filed on August 4, 2017, the company disclosed the existence of an internal investigation into whether the expenditures of a foreign subsidiary doing business in Turkey violated the FCPA. The company voluntarily notified the SEC and DOJ of the internal investigation in February 2017 and plans to fully cooperate with these agencies. In a 10-K filed on February 23, 2018, Teradata disclosed that the SEC and DOJ closed their investigations and would not pursue enforcement actions.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

95. WESTPORT FUEL SYSTEMS INC.

Background. Westport Fuel Systems Inc. is a Canadian company that develops and manufactures low-emission fuel systems and components.

The Investigation. In a Form SUPPL filed on July 14, 2017, Westport Fuel Systems disclosed that the SEC issued a subpoena on June 15, 2017 for information concerning a joint venture and the company's compliance with the FCPA in its operations in China. In 2018, the SEC issued three additional subpoenas on February 14, June 25, and August 2. The company stated that it was cooperating with the SEC's investigation. As of a 6-K dated November 8, 2018, the investigation remains ongoing.

94. WORLD ACCEPTANCE CORPORATION

Background. World Acceptance Corporation is a consumer finance company based in Greenville, South Carolina. World Acceptance provides short-term small loans, medium-term larger loans, and other products and services to consumers.

The Investigation. In a Form NT 10-K filed on June 14, 2017, World Acceptance Corporation disclosed that it had begun an internal investigation in March 2017 into whether certain company activities in Mexico violated the FCPA. The investigation focused on potential violations arising from a subsidiary's payments to government officials in connection with loans, the maintenance of books and records concerning such payments, and compensation for certain employees. The company voluntarily notified the SEC and DOJ of the internal investigation and stated that it intended to cooperate with both agencies.

In a Form 10-Q filed on August 8, 2017, the company disclosed that the SEC had formally begun to investigate the matter and that the company had communicated with the DOJ and SEC about resolving the matter.

In a Form 10-Q filed on November 8, 2017, the company noted that both the investigation and the company's discussions with the DOJ and the SEC were continuing. As of a Form 10-Q filed on November 8, 2018, the company disclosed that the investigation remains ongoing and the company continues to cooperate with the DOJ and SEC.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

93. JOHN WOOD GROUP PLC (FORMERLY AMEC FOSTER WHEELER PLC)

Background. Amec Foster Wheeler was a British multinational consultancy involved in engineering, project management, operations and construction services, project delivery and specialized power equipment services. Amec Foster Wheeler was acquired by the John Wood Group PLC in October 2017.

The Investigation. In a prospectus dated May 23, 2017, Amec Foster Wheeler disclosed that it had received voluntary requests for information from the SEC and DOJ in April 2017 concerning the company's use of business counterparties in the Middle East, and the historical use of third parties and certain operations generally, primarily in relation to Unaoil. In the company's Half Year Report for 2018, it disclosed that the investigation remains ongoing and it continues to cooperate with the SEC and DOJ.

92. COSAN LTD.

Background. Cosan Ltd. is a Brazilian conglomerate producer of bioethanol, sugar, and energy.

The Investigation. According to a Form 20-F filed on April 26, 2017, a Cosan subsidiary— Rumo—became aware of press reports alleging that improper payments were made in connection with an investment made by Fundo de Garantia do Tempo de Serviçoin (FI-FGTS) in Rumo's indirect subsidiary Brado Logística. The company has retained external legal counsel to conduct an internal investigation and communicate with local regulators. As of December 2018, there have been no updates to the investigation made publicly available.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

91. BRF S.A.

Background. BRF S.A. is a multinational meat and food processing company based in Brazil.

The Investigation. Starting in March 2017, a Brazilian federal court authorizing the search and seizure of company information and documents, along with the detention of certain individuals, in the context of the Weak Flesh Operation which is investigating potential corruption in Brazil's meat processing industry. As of April 24, 2017, three BRF employees were charged by Brazilian federal prosecutors. BRF's Statutory Audit Committee initiated an investigation with respect to these allegations involving outside counsel. According to a Form 6-K dated April 26, 2017, BRF S.A. received requests for information from the SEC and DOJ in relation to this matter, and was cooperating with these inquiries into whether the company's employees bribed government food inspectors. As of December 2018, there have been no updates made publicly available.

90. ARCHROCK, INC.

Background. Archrock is a U.S. natural gas contract operations services business and the leading provider of natural gas compression services to customers in the oil and natural gas industry throughout the U.S. and a leading supplier of aftermarket services to customers that own compression equipment in the U.S.

The Investigation. Archrock is subject to DOJ and SEC investigations regarding a restatement of its financial statements to correct certain accounting errors. In a Form 10-K filed February 23, 2017, Archrock disclosed that Exterran Holdings, Inc., a wholly-owned subsidiary, is cooperating with the SEC in its investigation, including responding to a subpoena for documents related to its restatement and compliance with the FCPA. Archrock also disclosed that it is also cooperating by providing information regarding periods prior to the Spin-off that are not otherwise in Exterran Corporation's possession. Archrock has provided the aforementioned documents to the DOJ in addition to the SEC. In a Form 10-Q filed on August 2, 2018, Archrock disclosed that the DOJ and SEC concluded their investigations and would not pursure further action.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

89. ABB LTD

Background. ABB Ltd. is a Swedish-Swiss company and U.S. issuer, providing power and automation technologies for a variety of high-tech applications.

The Investigation. In a Form 6-K filed February 8, 2017, ABB Ltd. disclosed that it had self-reported past dealings with Unaoil and its subsidiaries—including alleged improper payments made by these entities to third parties— to the DOJ and SEC. As of a 6-K filed October 25, 2018, the company disclosed it is cooperating fully with the DOJ and SFO.

88. USANA HEALTH SCIENCES, INC.

Background. USANA Health Sciences, Inc. is a developer and manufacturer of nutritional and personal care products based in Salt Lake City, Utah. USANA sells its products directly to consumers around the world.

The Investigation. In a February 7, 2017, press release, the company disclosed that it was conducting an internal investigation into whether its subsidiary in China, BabyCare Ltd., violated the FCPA. The company voluntarily notified the SEC and DOJ of its internal investigation and stated that it intends to update the agencies with the results of the investigation. In a Form 10-Q filed on November 7, 2018, the company disclosed that the internal investigation is ongoing.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

87. NOVARTIS AG

Background. Novartis AG is a Swiss pharmaceutical and healthcare company. Alcon is a subsidiary of Novartis.

The Investigation. According to a Form 6-K filed on January 25, 2017, Novartis is investigating the existence of allegations that it provided inappropriate economic benefits to health care providers and others in Greece. In a Form 6-K filed on October 24, 2017, Novartis disclosed that the SEC and DOJ had also sought information about the business practices of Alcon, a division of Novartis, in Asia and Russia. On January 24, 2018, Novartis disclosed that the DOJ and the SEC subpoenaed the company for information related to the investigation in Greece. As of a Form 6-K filed on October 18, 2018, the investigation is ongoing and the company stated that it is cooperating with the SEC and DOJ.

86. HERBALIFE LTD.

Background. Herbalife is a global multi-level marketing corporation that develops, markets and sells nutrition supplements, weight management, sports nutrition, and personal-care products.

The Investigation. According to a Form 8-K filed January 20, 2017, the SEC and DOJ have requested documents on the Company's anti-corruption compliance in China. The Company is also conducting its own review. As of a Form 10-Q filed on October 30, 2018, the company disclosed that it had taken remedial measures such as replacing certain employees in China and enhancing its policies and procedures in China. The company stated that the investigation remains ongoing and it is cooperating with the SEC and DOJ.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

85. SINOVAC BIOTECH LTD.

Background. Sinovac Biotech Ltd. is a China-based biopharmaceutical company that researches, develops, manufactures, and markets vaccines.

The Investigation. In a Form 6-K filed on December 23, 2016, Sinovac declared that, with the assistance of independent counsel, it would conduct an internal investigation of a research report's allegations that Sinovac's CEO made improper payments to an official in the Chinese Food and Drug Administration. In a Form 6-K filed on May 16, 2017, Sinovac disclosed that the SEC was conducting an enforcement inquiry of the matter and had issued a subpoena for documents concerning the internal investigation. Sinovac stated that it was cooperating with the SEC.

In a Form 6-K filed on August 14, 2017, Sinovac stated that its internal investigation would also review issues related to the company's sales practices and policies as a result of recent bribery judgments against various officials of the Chinese Center for Disease Control that referenced company sales personnel.

In a Form 20-F filed on November 22, 2017, Sinovac stated that it had informed the SEC and DOJ of its internal investigation. In a Form 6-K also filed on November 22, 2017, Sinovac stated that the internal investigation had been completed but did not provide further details.

In a press released dated August 20, 2018, Sinovac announced that the SEC had concluded its investigation and would not pursue an enforcement action. In a press release dated September 17, 2018, the company announced that the DOJ closed its related investigation.

84. CEMEX COLOMBIA S.A., CEMEX LATAM HOLDINGS, S.A.

Background. CEMEX Colombia S.A. and CEMEX Latam Holdings, S.A. are subsidiaries of CEMEX S.A.B. de C.V., a Mexican construction material supplier engaged in the production of cement, dry mortar and concrete.

The Investigation. According to a Form 10-K filed December 9, 2016, CEMEX S.A.B. de C.V. disclosed that it received SEC subpoenas seeking information relevant to whether there were any violations of the FCPA stemming from the construction of a cement plant by CEMEX Colombia S.A. in Maceo, Colombia. Internal audits and investigations by CEMEX Colombia and CEMEX Latam determined that payments totaling $20.5 million were made to a non-governmental third party in connection with the acquisition of the factory land, adjacent land, mining rights, and the benefits of the free trade zone of Maceo's project.

On September 23, 2016, the CEMEX Latam and CEMEX Colombia officers responsible for the implementation and execution of the above referenced payments were terminated, and the then-Chief Executive Officer of CEMEX Latam resigned.

Pursuant to a Form 20-F filed April 28, 2017, CEMEX, S.A.B. de C.V. stated that it remains in cooperation with the SEC, and that it remains possible that the DOJ may open an investigation into the matter.

According to media reports, the DOJ issued a grand jury subpoena to CEMEX on March 12, 2018 related to the company's operations in Colombia as well as other jursidictions. CEMEX stated that it is cooperating with the DOJ and SEC investigations.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

83. GOL INTELLIGENT AIRLINES, INC.

Background. Gol Intelligent Airlines, Inc. is a Brazilian airline company.

The Investigation. In 2016, Gol received inquiries from Brazilian tax authorities regarding certain payments to firms that turned out to be owned by politically exposed persons in Brazil. In December 2016, the company entered into a leniency agreement with the Brazilian Federal Public Ministry under which the company agreed to pay R$12.0 million in fines and make improvements to its compliance program. The company undertook an external independent investigation, which concluded in April 2017. The investigation revealed certain irregular payments, but also showed that none of the amounts paid were material (individually or in the aggregate) in terms of cash flow, and that none of Gol's current employees, representatives or Gol's board or management were knowledgeable of any illegal purpose behind any of the identified transactions or of any illicit benefit to the company.

In a May 10, 2017 Form 6-K, the company disclosed that it had voluntarily informed the DOJ and SEC of the external independent investigation. In a Notice to the Market published on April 20, 2018, the company disclosed that it will inform the DOJ and SEC of any developments and continue cooperating with their investigations. As of December 2018, there has been no update made publicly available.

82. TECHNIPFMC PLC

Background. TechnipFMC plc is a U.K.-based company that provides technology and services to oil and gas projects worldwide. TechnipFMC was formed in January 2017 as a result of a merger between FMC Technologies and Technip S.A..

The Investigation. In a Form 425 filed on November 29, 2016, Technip S.A. reported that it had been contacted by the DOJ about potentially improper payments made in connection with offshore platform projects in Brazil performed by a joint venture company in which Technip was a minority participant. Technip stated that it intended to cooperate with the DOJ.

In a Form 10-Q filed on May 4, 2017, TechnipFMC reported that FMC Technologies and Technip S.A. had both received inquiries in March 2016 from the DOJ about whether services provided by Unaoil S.A.M. to clients violated with the FCPA. Technip FMC stated that it intended to cooperate with the DOJ and that it was conducting its own internal investigation.

In a Form 10-Q filed on August 4, 2017, Technip FMC disclosed that the DOJ also had inquired about projects in Ghana and Equatorial Guinea awarded to Technip S.A. subsidiaries in 2008 and 2009. As of a Form 10-Q filed on November 6, 2018, the company stated that it is cooperating with the SEC and DOJ investigations.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

81. PARAGON OFFSHORE LTD (FORMERLY PARAGON OFFSHORE PLC)

Background. Paragon Offshore plc is a multinational provider of offshore drilling rigs based in Houston, Texas. As part of restructuring, certain subsidiaries and assets of Paragon Offshore plc were transferred to a newly formed company, Paragon Offshore Limited, in 2017.

The Investigation. In an 8-K filed on November 16, 2016, Paragon noted that one of its subsidiaries used a commercial agent in Brazil in relation to drilling contracts with Petróleo Brasileiro S.A. ("Petrobras"). The agent had pleaded guilty in Brazil in connection with Petrobras awarding a drilling contract to one of Paragon's competitors. Paragon disclosed that it was conducting an independent review of its relationship with both the agent and Petrobras, and that it had notified the SEC and DOJ of its internal review.

In a 10-Q filed on May 10, 2017, the company stated that it had not yet found any evidence of wrongdoing by its employees or the commercial agent on the company's behalf. In July 2017, Paragon Offshore plc entered into Chapter 11 bankruptcy and restructured as Paragon Offshore Ltd., a private company. In March 2018, Paragon Offshore Ltd. was acquired by Borr Drilling Limited. As of December 2018, there have been no updates made publicly available.

80. PAR TECHNOLOGY CORPORATION

Background. PAR Technology Corporation is a New Hartford, New York, based software company that provides technology to companies in the restaurant and retail industries.

The Investigation. In a 10-Q filed on November 14, 2016, PAR Technology disclosed that it was investigating potential improper import/export and sales documentation activities in its China and Singapore offices. In a 10-K filed on April 17, 2017, the company disclosed that it had hired outside counsel to investigate whether these activities violated the FCPA. The company notified the SEC and DOJ and stated that it intended to cooperate with these agencies.

In the 10-K, the company also disclosed that in early 2016 it had conducted an internal investigation into unauthorized investment activities pursued by the company's former chief financial officer. The company notified the SEC and stated that it intended to cooperate with the agency.

In a 10-Q filed on May 15, 2017, the company disclosed that it received a subpoena from the SEC for documents relating to each investigation. In a 10-Q filed on November 9, 2018, the company stated that the investigation is ongoing and it is fully cooperating with the SEC and DOJ. In a 10-Q filed on November 9, 2018, the company stated that the investigation is ongoing and it is fully cooperating with the SEC and DOJ.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

79. TENARIS, S.A.

Background. Tenaris, S.A. is a Luxembourg-based company that manages and supplies steel pipes and provides other services to the energy industry.

The Investigation. In a Form 6-K filed on November 4, 2016, Tenaris, S.A., disclosed that foreign authorities were investigating the existence of payments made to individuals associated with Petrobras and whether any such payments were intended to benefit a Brazilian subsidiary of Tenaris, S.A. The company has hired outside counsel to conduct an internal investigation of the allegations, and has voluntarily notified the SEC and DOJ. The company stated that it intends to cooperate with any investigations by these agencies. As of a Form 6-K filed November 2, 2018, there have been no updates provided on the investigation.

78. LAUREATE EDUCATION, INC.

Background. Laureate Education, Inc., based in Baltimore,Maryland, is an operator of for-profit universities and colleges in 29 countries around the world.

The Investigation. In a Form S-1 filed on December 15, 2016, Laureate Education disclosed that it was conducting an internal investigation into one of the company's network institutions for potential violations of the FCPA. According to the filing, the company was investigating whether an $18 million donation, or a portion thereof, was improperly paid to government officials in Turkey. Laureate Education disclosed the investigation to the DOJ and SEC in September 2016 and stated that it intends to fully cooperate with the agencies in any investigation that may be conducted. In a letter sent to Laureate Education on November 21, 2018, the DOJ acknowledged the company's voluntary disclosure, full cooperation, and remediation. In a Form 8-K filed on November 29, 2018, Laureate Education stated that the DOJ and SEC closed their inquiries into possible FCPA violations.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

77. RIO TINTO

Background. Rio Tinto is a U.K.-based global mining company.

The Investigation. In a Form 6-K filed on November 8, 2016, Rio Tinto announced that it had become aware of emails from 2011 relating to payments totaling $10.5 million made to a consultant for advisory services on the Simandou project in Guinea. The company launched an internal investigation and notified relevant U.S. and other authorities. It also suspended the executive who had been in charge of the relevant project in 2011. According to media reports, the SFO has launched a formal investigation. As of December 2018, no updates have been made publicly available.

See Ongoing Investigation Number F-38.
See Parallel Litigation Number H-A26 and H-C29.

76. THE STARS GROUP INC./AMAYA

Background. The Stars Group Inc., formerly Amaya Inc., is a Canadian gaming and online gambling company.

The Investigation. In an exhibit to a Form 6-K filed on November 14, 2016, Amaya reported that it had become aware of information regarding potential improper payments made by a now-closed Amaya business entity to foreign government officials either directly or through consultants. The company self-disclosed its investigation to the DOJ and SEC and stated that it continues to cooperate with the enforcement agencies. In a Form 6-K filed on November 7, 2018, The Stars Group stated that the DOJ and SEC are investigating these matters and that the company continues to cooperate with the agencies.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

75. ENSCO PLC

Background. Ensco plc is U.K.-based offshore drilling contractor.

The Investigation. According to Ensco's SEC filings, in 2011, the company acquired Pride International, Inc. Pride had been operating in Brazil since 2011 and entered into a drilling service agreement with Petrobras in 2008. In 2015, Ensco initiated a compliance review of Pride's operations in Brazil after media reports were released regarding ongoing investigations of various kickback and bribery schemes involving Petrobras. During the course of the review, Ensco became aware of an internal audit report by Petrobras alleging irregularities associated with the 2008 drilling service agreement with Pride. Ensco subsequently contacted the DOJ and SEC, informed the agencies of the matter, and reported the results of the company's investigations.

According to Ensco's Form 10-Q filed on October 27, 2016, the company's independent counsel, operating under the direction of Ensco's Audit Committee, had conducted an investigation and found no evidence that Pride or Ensco or any of their current or former employees were aware or involved in any wrongdoing. Ensco also reported that its independent counsel was continuing to provide the DOJ and SEC with updates through the course of its investigation, including detailed briefings regarding its investigation and findings. In a Form 10-Q filed October 30, 2018, the company disclosed that it received letters from the SEC and DOJ stating that their investigations were closed.

74. LENNOX INTERNATIONAL

Background. Lennox International is a global provider of climate control solutions for the heating, air conditioning, and refrigeration markets based in Richardson, Texas.

The Investigation. In a Form 10-Q filed on October 17, 2016, Lennox announced that it had self-reported to the SEC and DOJ an alleged payment of approximately $475 by the company's Russian subsidiary to a Russian customs broker or official for the release of a shipment of goods being held at customs. The company initiated an internal investigation into the matter with the assistance of external legal counsel and external forensic accountants. In a Form 10-Q filed October 24, 2017, the company stated that the investigation raised questions regarding possible irregularities with respect to non-compliance with customs documents and procedures, and that the scope of the investigation had been expanded to include operations in Poland and Ukraine. In a Form 10-Q filed July 23, 2018, Lennox disclosed that the DOJ had closed its investigation and would not pursure further action. The SEC investigation remains ongoing.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

73. HERC HOLDINGS

Background. Herc Holdings is one of the largest equipment rental companies in North America. On June 30, 2016, the company completed a spin-off of its global vehicle rental business into Hertz Global Holdings, Inc., which became an independent company.

The Investigation. Starting in June 2014, Hertz Holdings was advised by the New York Regional Office of the SEC that it was under investigation for events disclosed in certain of the Company's filings with the SEC. In a Form 10-Q filed on November 8, 2016, Herc announced that it had identified activities by a former Brazilian subsidiary that "may raise issues under the Foreign Corrupt Practices Act and other federal and local laws. The company disclosed that it had voluntarily reported these issues to "appropriate government entities." As of a 10-Q filed on November 8, 2018, the company disclosed that it is cooperating with the SEC and engaged in discussions with the enforcement staff to resolve certain matters under investigation.

72. QUAD/GRAPHICS INC.

Background. Quad/Graphics Inc. is an American printing company based in Sussex, Wisconsin.

The Investigation. According to press reports, Quad/Graphics has been investigating conduct by the company's operations in Peru over potential violations of the "foreign bribery laws" and, in April 2016, reported the conduct to the DOJ and SEC. According to a Form 10-Q filed on November 2, 2016, the company has made enhancements to its compliance program in connection with the investigation. In its annual report filed February 2, 2017, the company disclosed that the internal investigation revealed possible misconduct in China. In a Form 10-Q filed on November 1, 2017, the company disclosed that the investigation revealed related transactions in Cuba as well. The company disclosed the discovery of the transactions to the SEC and DOJ. As of a 10-Q filed on October 31, 2018, the company continues to cooperate with the agencies.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

71. KBR, INC.

Background. KBR, Inc. is a Houston, Texas based engineering and construction company.

The Investigation. In KBR's Form 10-Q filed on April 29, 2016, the company disclosed that they are cooperating with the DOJ's investigation into the Monaco based Unaoil. The DOJ's investigation of Unaoil relates to "activities Unaoil may have engaged in related to international projects including several global companies, including KBR."

According to updates in the company's July 29, 2016 quarterly filing, KBR was also cooperating with a separate SEC investigation into Unaoil which included the "the voluntary submission of information and compliance with document requests, including a formal request from the SEC by subpoena." As of a Form 10-Q filed October 30, 2018, there have been no updates provided on the investigation.

See Parallel Litigation Digest Number H-A28.

70. FRANK'S INTERNATIONAL N.V.

Background. Frank's International N.V. is a global provider of highly engineered tubular services to the oil and gas industry. The company is a Netherlands limited liability company.

The Investigation. Frank's International announced in a Form 8-K filed on June 13, 2016 that it is conducting an internal investigation into the operations of some of its subsidiaries in West Africa for possible FCPA violations. The company reported that it informed the DOJ and SEC of **The Investigation.** As of a Form 10-Q filed November 6, 2018, there have been no updates provided on the status of the investigation.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

69. MISONIX, INC.

Background. Misonix is a New York corporation that designs, manufactures, and markets innovative therapeutic ultrasonic products worldwide for spine surgery, skull-based surgery, neurosurgery, wound and burn debridement, cosmetic surgery, laparoscopic surgery, and other surgical applications.

The Investigation. Misonix reported in a Form 8-K filed on September 28, 2016 that it had contacted the SEC and DOJ in September to voluntarily disclose that Misonix "may have had knowledge of certain business practices of the independent Chinese entity that distributes its products in China" that raised concerns over potential FCPA violations. According to the SEC filing, outside counsel was conducting an internal investigation that remains ongoing.

In a subsequent November 10, 2016 filing, Misonix reported that the filing of its quarterly report for the fiscal quarter ending September 30, 2016 would be delayed, possibly until the end of January 2017, pending completion of the investigation. The company's filing of its Annual Report on Form 10-K for the fiscal year ended June 30, 2016 was also delayed by the investigation. As of a Form 10-Q filed on November 8, 2018, the company stated it will continue cooperating with the SEC and DOJ investigations.

See Parallel Investigation Digest Number H-C33.

68. AGERION PHARMACEUTICALS, INC./NOVELION THERAPEUTICS INC.

Background. Novelion Therapeutics Inc. is a Canadian biotechnology company. On November 29, 2016, Novelion acquired Aegerion Pharmaceuticals, Inc., a U.S. biopharmaceutical company dedicated to the development and commercialization of innovative therapies for patients with debilitating rare diseases. Aegerion is now a wholly-owned subsidiary of Novelion.

The Investigation. In a Form 10-Q filed on November 4, 2016, Aegerion reported that in late 2013 the DOJ had issued a subpoena requesting documents relating to the marketing and sale of the pharmaceutical, JUXTAPID. According to the SEC filing, the company believes the DOJ may be seeking information to determine whether there have been violations of certain laws, including the FCPA.

The company also reported having received a subpoena in late 2014 from the SEC relating to the sale activities and disclosures concerning JUXTAPID. In addition, Aegerion disclosed that the SEC is seeking information on possible violations of the FCPA in its operations in Brazil as well as information relating to a Brazilian investigation into possible violations of Brazil's anticorruption laws. This investigation is also ongoing.

In a Form 10-Q filed on November 9, 2017, Novelion disclosed that Aegerion entered into a set of agreements in September 2017 to resolve investigations concerning JUXTAPID pursued by the DOJ and SEC. Aegerion also consented to the entry of a final judgment related to alleged violations of the Securities Act of 1933 and agreed to enter into State Settlement Agreements in order to resolve state law claims. In a Form 10-Q filed on November 13, 2018, the company disclosed that it settled charges pursuant to other statutes that were brought in connection with the DOJ's investigation. In regard to the inquiries into Aegerion's Brazilian operations pursued by the DOJ and SEC, the company disclosed that it continues to respond to inquiries from the SEC and entered into a tolling agreement with the SEC in November 2018. The filing does not mention the DOJ investigation.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

67. ELBIT IMAGING LTD.

Background. Elbit Imaging Ltd. is an Israeli holding company for real estate and hotel businesses.

The Investigation. Elbit Imaging Ltd. reported in its Form 20-F filed on April 21, 2016 that it had discovered a possible FCPA violation involving certain agreements executed by its subsidiary, Plaza Centers N.V., in connection with a project in Romania. According to the filing, Elbit's audit committee appointed a special committee to review the matter.

In a Form 6-K filed May 18, 2017, Elbit disclosed that an audit of Plaza Centers N.V. had identified issues relating to an agency and commission agreement related to the 2012 sale of property in the U.S. owned by Plaza Centers N.V. and Elbit. In a Form 20-F filed November 13, 2017, Elbit disclosed that its board of directors had appointed a joint committee with Plaza Ceners N.V. to investigate and examine the issues raised in the audit. As of the Form 20-F, Elbit disclosed that the joint committee had concluded its examination and submitted reccomendations to the Company's board.

On March 9, 2018, the SEC charged Elbit Imaging with violating the books-and-records and internal controls provisions of the FCPA. Without admitting or denying the allegations, the company settled with the SEC, agreeing to a cease-and-desist order and payment of a civil penalty of $500,000.

66. COGNIZANT TECHNOLOGY SOLUTIONS CORPORATION

Background. Cognizant Technology Solutions Corp. is a New Jersey based multinational information technology and security company listed on both the NASDAQ-100 and S&P 500 exchanges.

The Investigation. According to a Form 8-K filed by Cognizant on September 30, 2016, the company engaged outside counsel to investigate, in conjunction with its own Audit Committee, whether certain payments relating to facilities in India were in violation of the FCPA. Cognizant reported the potential violations to both the DOJ and the SEC.

In the company's most recent 10-Q, filed on November 7, 2016, Cognizant reported that its internal investigation had uncovered approximately $5 million in potentially improper payments, resulting from weaknesses in their internal controls over financial reporting. Cognizant stated that it continues to cooperate fully with investigations by both the DOJ and the SEC.

In a Form 10-K filed March 1, 2017, Cognizant stated that it had identified payments made between 2010 and 2015 that may have been recorded improperly. In a 10-Q filed on October 30, 2018, the company disclosed that their discussions with the DOJ and SEC have led them to reasonably estimate a probable loss, and the company has recorded an accrual of $28 million. The company stated that it does not know when the DOJ and SEC matters will be resolved.

See Parallel Litigation Digest Number H-A24.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

65. STANDARD CHARTERED PLC MAXPOWER GROUP PTE. LTD.

Background. Standard Chartered PLC is a multinational British bank and financial services company and one of the world's biggest banks for financing global trade. Standard Chartered is listed on the London Stock Exchange. Maxpower Group Pte. Ltd. is an Indonesian power company, of which Standard Chartered became the majority shareholder in 2015.

The Investigation. According to reports from September 2016, internal audits by Maxpower revealed more than $750,000 in possible bribes to Indonesian officials in violation of the FCPA. This finding was confirmed by a law firm hired by Maxpower to review the investigation. Specifically, the external legal review allegedly uncovered indicators of inappropriate payments to secure contracts between 2012 and 2015. Acting under a 2012 deferred prosecution agreement with the DOJ resulting from alleged breaches of Iranian sanctions, the bank referred the accusations to the authorities. As of December 2018, there have been no updates made publicly available.

64. IRHYTHM TECHNOLOGIES, INC.

Background. iRhythm Technologies, Inc. is a San Francisco based healthcare technology company known for production of a digital heart monitor.

The Investigation. In a September 2016 S-1 filing with the SEC, iRhythm disclosed that in April 2016 a former U.K. distributor accused the company of certain FCPA violations. After an internal investigation conducted by outside counsel, the company self-reported the matter to the DOJ in August 2016. iRhythm reported that it planned to cooperate fully with any investigation that the DOJ might undertake. As of December 2018, no update on the investigation is publicly available.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

63. CRAWFORD & COMPANY

Background. Crawford & Company is an independent provider of management solutions to risk management, insurance, and self-ensured entities. Headquartered in Atlanta, Georgia, Crawford offers claims services, business process outsourcing, and consulting services for major product lines in over 70 countries worldwide.

The Investigation. In a Form 10-Q filed on November 9, 2015, Crawford disclosed that an internal audit revealed potential violations of the FCPA. Crawford self-reported these findings to the SEC and DOJ and has initiated an internal investigation. As of a Form 10-K filed February 27, 2017, the Company received notice from the SEC that it had concluded its investigation and did not intend to recommend an enforcement action against the company. The company has not disclosed any updates on the status of the DOJ investigation since its 10-K filed on February 27, 2017.

62. ALEXION PHARMACEUTICALS INC.

Background. Alexion Pharmaceuticals Inc. is a global pharmaceutical company that focuses on the innovation, development, and commercialization of medicines and therapies for rare and life-threatening illnesses. Alexion is best known for developing the drug Soliris, a product that helps treat patients with rare blood and kidney disorders and genetic diseases.

The Investigation. According to a Form 10-Q filed on November 2, 2015, Alexion received a subpoena from the SEC in May 2015 in connection with the company's grant-making activities and FCPA compliance efforts in various countries. The SEC also sought information related to Alexion's recalls involving Soliris and related securities disclosures. In October 2015, Alexion received an additional request from the DOJ to produce documents pertaining to FCPA compliance. In a Form 10-Q filed on October 24, 2018, the company disclosed that the investigations have focused on operations in various countries, including Brazil, Colombia, Japan, Russia, and Turkey. The company further stated that it is continuing to cooperate with the DOJ's and SEC's investigations.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

61. MILLICOM INTERNATIONAL CELLULAR S.A.

Background. Millicom International Cellular S.A. is an international media company with headquarters in Luxembourg. Millicom offers services for mobile phones and devices, television, broadband, e-commerce, and technical telecommunications.

The Investigation. In a press release issued on October 21, 2015, Millicom announced that it had reported potential improper payments made by a joint venture in Guatemala to authorities in the United States and Sweden. According to the statement, a special committee of the board of directors of Millicom made the disclosure in connection with an independent investigation being overseen by a U.S. law firm.

In its financial statements for the third quarter of 2016, Millicom disclosed that the Swedish Public Prosecutor had discontinued its preliminary investigation of the matter on jurisdictional grounds. In a press release published on April 23, 2018, the company announced that the DOJ closed its investigation.

60. KINROSS GOLD CORPORATION

Background. Kinross Gold Corporation is a Canadian-based gold mining company with mining projects and portfolios in the United States, Brazil, Chile, Ghana, Mauritania, and Russia. As one of the largest gold mining companies in the world, Kinross employs approximately 9,300 people.

The Investigation. On October 2, 2015, Kinross issued a public statement which provided that it was being investigated by the SEC and DOJ for potential violations of the FCPA. The company stated that it had received subpoenas from the SEC and DOJ in March 2014 and December 2014, respectively, for information relating to alleged improper payments made to government officials in Mauritania and Ghana. Kinross opened its own internal investigation in 2013 after first learning of these allegations, and stated in its 2015 Annual Report that it continues to cooperate with the SEC and DOJ in their ongoing reviews.

In a Form 40-F filed on March 29, 2018, the company disclosed that the DOJ had issued an declination letter in November 2017 stating that the investigation was closed. On March 26, 2018, the SEC announced that Kinross Gold had agreed to settle charges that it had violated the books-and-records and internal controls provisions of the FCPA, and had agreed to pay a penalty of $950,000 and report to the SEC on its anti-corruption compliance for one year.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

59. CERBERUS CAPITAL MANAGEMENT, L.P.

Background. Cerberus Capital Management, L.P. is a private investment firm based in New York City with approximately $25 billion under management. Cerberus invests and manages funds and accounts for investors across the United States, Europe, and Asia.

The Investigation. According to the company's annual report for 2015, the DOJ and the SEC issued subpoenas in 2014 and 2015 to Cerberus in connection with a $1.82 billion purchase of a portfolio from Ireland's state-run bank, the National Asset Management Agency (NAMA), in April 2014. The investigation follows from allegations that Cerberus, with the assistance of its Irish legal counsel, set aside approximately $10.7 million in funds to pay a Northern Ireland politician or party in exchange for securing the NAMA deal. The company engaged external legal counsel to conduct an internal investigation. A separate investigation by U.S. authorities remains ongoing. As of December 2018, there have been no updates made publicly available.

58. FORD MOTOR COMPANY

Background. Ford Motor Company is the second largest American-based automaker. Headquartered in Dearborn, Michigan, Ford engineers, manufactures, and sells automobiles and commercial vehicles in global markets.

The Investigation. According to a report by Reuters from August 2015, the SEC joined an investigation by German prosecutors into allegations of bribery associated with Ford's operations in Russia. Prosecutors in Germany opened investigations in 2013 into Ford and Schenker, a freight business owned by the German rail company Deutsche Bahn. Two Ford employees, eight workers at Schenker, and one Russian contractor are being investigated for using payments to speed the passage of containers through Russian customs. Ford's most recent quarterly report from October 2018 makes no reference to the ongoing investigation by the SEC and German prosecutors.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

57. FLOWSERVE CORPORATION

Background. Flowserve Corporation, a U.S. company headquartered in Irving, Texas, develops and manufactures precision-engineered flow control equipment, such as pumps, valves, seals, and aftermarket installation and repair services to global infrastructure industries.

The Investigation. In a July 30, 2015 Form 10-Q, Flowserve disclosed that it had received a subpoena from the SEC for information related to the recent termination of an overseas employee for violating the company's Code of Business Conduct and possibly the FCPA. In its 2014 Annual Report, the company disclosed an internal investigation of this matter and that it self-reported the potential violation to the SEC and DOJ. In a quarterly report in October 2016, the company stated that it completed its response to the SEC's subpoena and that it continues to cooperate with the U.S. authorities. As of a Form 10-Q dated November 7, 2018, there have been no updates to the investigation.

See DOJ Digest Number B-64.
See SEC Digest Number D-49.

56. TRANSPORT LOGISTICS INTERNATIONAL, INC.

Background. Transport Logistics International Inc. is a U.S.-based business that provides logistical support services for transportation of nuclear materials to U.S. and non-U.S. customers.

The Investigation. On August 31, 2015, the DOJ announced that Daren Condrey pleaded guilty to conspiracy to violate the FCPA and to commit wire fraud.[107] Press reports indicated that Condrey was a principal at Transport Logistics and that Condrey had allegedly bribed a Russian foreign official, Vadim Mikerin, to retain business. In a November 2014 press release, Transport Logistics stated that it was cooperating in the investigation by U.S. authorities. On March 13, 2018, the DOJ announced that Transport Logistics agreed to pay a $2 milllion criminal penalty to resolve the criminal charges.

See DOJ Digest Number B-163.

[107] *United States v. Daren Condrey*, 15-cr-00336 (D. Md. 2015).

F. ONGOING INVESTIGATIONS UNDER THE FCPA

55. NIKE INC.[108]

Background. Nike, Inc. is a global sportswear and equipment business headquartered in Oregon that designs, develops, manufactures, and markets athletic footwear, apparel, equipment, accessories, and services.

The Investigation. In June 2015, an unsealed indictment against nine officials at FIFA and various sports marketing agencies and their executives referenced an unnamed $160 million deal that allegedly involved kickbacks, which news reports then identified as Nike's sponsorship deal with Brazilian soccer. Around the same time, Nike issued a statement that it was cooperating with the DOJ's investigation. In December 2015, Nike issued a second statement that no company officials were aware of kickbacks at FIFA and reiterated that it was cooperating with authorities. Nike's most recent quarterly report from October 2018 makes no reference to an ongoing investigation.

[108] Given the breadth of the DOJ's investigation into FIFA, described below, we have included the possible investigation into Nike Inc. as a separate entry.

54. FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION
TRAFFIC SPORTS INTERNATIONAL, INC.
TRAFFIC SPORTS USA, INC.
TORNEOS Y COMPETENCIAS S.A.
FULL PLAY GROUP S.A.
INTERNATIONAL SOCCER MARKETING, INC.
MEDIA WORLD

Background. Fédération Internationale de Football Association ("FIFA") is the international governing body for football (soccer). Traffic Sports International, Inc. is a Brazilian sports media conglomerate. Traffic Sports USA Inc. is the U.S. division of Traffic Sports International. Torneos y Competencias S.A. is a sports marketing business based in Argentina. Full Play Group S.A. is a sports marketing business based in Argentina. International Soccer Marketing, Inc. is a New Jersey-based sports marketing company. Media World, which buys and sells media rights to soccer leagues, is a subsidiary of Imagina US, a Spanish media group.

The Investigation. On May 27, 2015, the DOJ unsealed a 47-count indictment in Brooklyn, New York charging 14 defendants with racketeering, wire fraud, and money laundering conspiracies in connection with a 24-year corruption scheme in international soccer. Nine defendants are FIFA officials.[109] Four marketing executives were also indicted: Aaron Davidson, president of Traffic Sports USA; Alejandro Burzaco, principal of Torneos y Competencias S.A.; and Hugo and Mariano Jinkis, controlling principals of Full Play Group S.A. The U.S. and South American sports marketing executives are alleged to have paid and agreed to pay over $150 million in bribes and kickbacks to obtain media and marketing rights to international soccer tournaments. On the same day, Swiss authorities arrested seven defendants charged in the indictment at the request of the DOJ.

Several defendants had previously pleaded guilty under seal. On July 15, 2013, Daryll Warner, son of defendant Jack Warner and former FIFA development officer, waived indictment and pleaded guilty to wire fraud and structuring financial transactions.[110] On October 23, 2013, Daryan Warner waived indictment and pleaded guilty to wire fraud conspiracy, money laundering conspiracy, and structuring financial transaction. Daryan Warner forfeited $1.1 million at the time of his plea and agreed to a second forfeiture at the time of sentencing.[111] On November 25, 2013, Charles Blazer, a former FIFA official, waived indictment and pleaded guilty to a total of ten counts of

[109] The FIFA officials are: Jeffrey Webb, Eduardo Li, Julio Rocha, Costas Takkas, Jack Warner, Eugenio Figueredo, Rafael Equivel, José Maria Marin, and Nicolás Leoz. United States v. Jeffrey Webb et al., 15-cr-252 (RJD) (E.D.N.Y. 2015).

[110] *United States v. Daryll Warner*, 13-cr-402 (WFK) (E.D.N.Y. 2013).

[111] *United States v. Daryan Warner*, 13-cr-584 (WFK) (E.D.N.Y. 2013).

F. ONGOING INVESTIGATIONS UNDER THE FCPA

racketeering conspiracy, wire fraud conspiracy, money laundering conspiracy, income tax evasion, and failure to file a Report of Foreign Bank and Financial Accounts. Blazer forfeited over $1.9 million at the time of plea and agreed to pay a second amount at sentencing.[112] On December 12, 2014, José Hawilla, the owner of Traffic Sports, waived indictment and pleaded guilty to racketeering conspiracy, wire fraud conspiracy, money laundering conspiracy, and obstruction of justice.[113] Hawilla agreed to forfeit over $151 million, $25 million of which was paid at the time of plea. On May 14, 2015, Traffic Sports USA Inc. and Traffic Sports International Inc. pleaded guilty to wire fraud conspiracy.[114] On October 20, 2016, Aaron Davidson pleaded guilty to racketeering conspiracy and wire fraud conspiracy for his involvement in bribe payments to high-ranking FIFA, CONCACAF, and other officials.[115] Further, he agreed to forfeit over $500,000.

On December 3, 2015, the DOJ announced that it had secured the indictment of 16 additional defendants, who are current or former FIFA officials, for racketeering, wire fraud, and money laundering conspiracies in connection with corruption of international soccer. The officials indicted include the former or current presidents of Brazil, Costa Rica, Guatemala, Honduras, Nicaragua, and Panama, current FIFA vice presidents and Executive Committee members, and current presidents of constituent FIFA confederations.[116] The DOJ alleges that the scheme was designed to solicit and receive over $200 million in bribes and kickbacks in exchange for lucrative media and marketing rights to international soccer tournaments.

On the same day, the DOJ announced that several defendants had previously pleaded guilty under seal throughout 2015. On May 25, 2015, Zorana Danis, the co-founder and owner of International Soccer Marketing, Inc., waived indictment and pleaded guilty to wire fraud conspiracy and filing false tax returns.[117] Danis agreed to forfeit $2 million. On November 9, 2015, Fabio Tordin, the former CEO of Traffic Sports USA, pleaded guilty to wire fraud conspiracy and tax evasion and agreed to forfeit $600,000.[118] On November 12, 2015, Luis Bedoya, a FIFA official, waived indictment and pleaded guilty to racketeering conspiracy and wire fraud conspiracy.[119] He agreed to forfeit all funds in his Swiss bank account, among other funds. On November 16, 2015, Alejandro Burzaco pleaded guilty to racketeering conspiracy, wire fraud, and money laundering conspiracy and agreed to forfeit more than $21.6 million.[120] On November 17, 2015, Roger Huguet, the CEO of Media World and its parent company, waived indictment and pleaded guilty to wire fraud and money laundering conspiracy and agreed to forfeit $600,000.[121] On November 23, 2015, Jeffrey Webb pleaded guilty to racketeering conspiracy, wire fraud, and money laundering conspiracy and agreed to forfeit $6.7 million.[122] On the same day, Sergio Jadue, a FIFA official, waived indictment and pleaded guilty to racketeering conspiracy and wire fraud conspiracy.[123] He agreed to forfeit funds in his U.S. bank account, among others. On November 25, 2015, José Margulies, an intermediary who facilitated illicit payments between sports marketing executives and soccer officials, pleaded guilty to racketeering, wire fraud, and money laundering conspiracies. He agreed to forfeit more than $9.2 million. On March 28, 2016, Rafael Callejas, the former president of the Honduran Soccer Federation, pleaded guilty to racketeering conspiracy and wire fraud conspiracy. Callejas will forfeit $650,000 for his role in corrupt transactions involving hundreds of thousands of dollars.[124] On April 11, 2016, Alfredo Hawit, a former FIFA vice president and former president of CONCACAF, pleaded guilty to charges of conspiracy to commit racketeering, wire fraud, and obstruction of justice, agreeing to forfeit $950,000. As a high-ranking FIFA official, Hawit awarded lucrative contracts and marketing rights to CONCACAF and World Cup qualifier matches in exchange for bribes.[125] On October 7, 2016, Eduardo Li pleaded guilty to racketeering conspiracy, as well as wire fraud and wire fraud conspiracy, and agreed to forfeit $668,000. As the former president of the Costa Rican Soccer Federation, Li used his position to organize the payment of hundreds of thousands of dollars.[126]

---

[112] *United States v. Charles Blazer*, 13-cr-602 (RJD) (E.D.N.Y. 2013).

[113] *United States v. José Hawilla*, 14-cr-609 (RJD) (E.D.N.Y. 2014).

[114] *United States v. Traffic Sports International*, Inc., 14-cr-609 (RJD) (E.D.N.Y. 2015).

[115] *United States v. Jeffrey Webb et al.*, 15-cr-252 (RJD) (E.D.N.Y. 2015).

[116] The FIFA officials are: Alfred Hawit, Ariel Alvarado, Rafael Callejas, Brayan Jiménez, Rafael Salguero, Héctor Trujillo, Juan Ángel Napout, Manuel Burga, Carlos Chávez, Luís Chiriboga, Marco Polo del Nero, Eduardo Deluca, José Luis Meiszner, Romer Osuna, and Ricard Teixeira.

[117] *United States v. Zorana Danis*, 15-cr-240 (RJD) (E.D.N.Y. 2015).

[118] *United States v. Fabio Tordin*, 15-cr-564 (RJD) (E.D.N.Y. 2015).

[119] *United States v. Luis Bedoya*, 15-cr-569 (RJD) (E.D.N.Y. 2015).

[120] *United States v. Jeffrey Webb et al.*, 15-cr-252 (RJD) (E.D.N.Y. 2015).

[121] *United States v. Roger Huguet*, 15-cr-585 (RJD) (E.D.N.Y. 2015).

[122] *United States v. Jeffrey Webb et al.*, 15-cr-252 (RJD) (E.D.N.Y. 2015).

[123] *United States v. Sergio Jadue*, 15-cr-570 (RJD) (E.D.N.Y. 2015).

[124] *United Staes v. Alfredo Hawit, et al.*, 15-cr-252 (S-1) (PKC).

[125] *United Staes v. Alfredo Hawit, et al.*, 15-cr-252 (S-1) (PKC).

[126] *United Staes v. Alfredo Hawit, et al.*, 15-cr-252 (S-1) (PKC).

F. ONGOING INVESTIGATIONS UNDER THE FCPA

On May 24, 2017, Costa Takkas, a former soccer official from the Cayman Islands, pled guilty to money laundering conspiracy. On October 31, 2017, he was sentenced to fifteen months in prison and ordered to pay $3 million in restitution. In June 2017, Hector Trujillo pled guilty to wire fraud and wire fraud conspiracy. On October 25, 2017, he was sentenced to eight months in prison and ordered to pay $415,000 in restitution. On December 22, 2017, Juan Ángel Napout was convicted of wire fraud and racketeering conspiracy, and José Maria Marin was convicted of wire fraud, money laundering, and racketeering conspiracy. Manuel Burga was acquitted of a racketeering conspiracy charge on December 26, 2017. On August 22, 2018, Marin was sentenced to four years in prison, ordered to forfeit $3.3 million, and fined $1.2 million. On August 29, 2018, Napout was sentenced to nine years in prison and ordered to pay more than $4.3 million in financial penalties.

According to news reports throughout 2015, 2016, 2017, and 2018, Australia, Colombia, Costa Rica, Germany, and Switzerland have opened or continued separate investigations in connection with the alleged corruption scheme at FIFA.

53. CENTRAIS ELÉTRICAS BRASILEIRAS S.A. (ELECTROBRAS)

Background. Centrais Elétricas Brazileiras S.A. ("Eletrobras") is the largest power utility company in Latin America with headquarters in Brazil. The Brazilian federal government is the majority stockholder of the company—though Eletrobras is the principal stockholder of various subsidiaries involved in electric power generation, distribution, and transmission.

The Investigation. In an SEC filing from April 2015, Eletrobras reported that it was unable to finalize its annual Form 20-F report by the deadline of the same day. The delay was a result of recent reports that a variety of companies made improper payments to the CEO of Eletrobras' wholly-owned subsidiary, Eletrobras Thermonuclear S.A.-Eletronuclear, to obtain a project with the Angra 3 power plant in Brazil. These allegations surfaced after testimony given during the Brazilian government's investigation into Petrobras became public. In its 20-F for the fiscal year ended December 31, 2015, Eletrobras disclosed that it had hired outside counsel to investigate the alleged improper payments and was cooperating with requests for information from the investigations of the DOJ, the SEC, and Brazilian authorities, among others. In May 2016, the New York Stock Exchange announced that it would suspend trading of and commence proceedings to delist Electrobras shares as a result of the company's regular failure to file its SEC filings on time.

In January 2017, Eletrobras signed tolling agreements with the SEC and DOJ agreeing to extend the statute of limitations regarding any potential violations. According to a Form 6-K dated August 26, 2017, the Company's investigation remains ongoing. As of December 2018, there are no updates publicly available.

See Parallel Litigation Digest Number H-A21.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

52. NEWMARKET CORPORATION

Background. NewMarket Corporation is the publicly-traded parent company of Afton Chemical Corporation, Ethyl Corporation, and NewMarket Services, with headquarters in Richmond, Virginia. The companies produce, manufacture, and provide operational support for performance fuels and industrial products.

The Investigation. According to a Form 10-K annual report filed on February 17, 2015, NewMarket disclosed that it was being investigated by the DOJ for certain "foreign business activities" which resulted in possible violations of U.S. economic sanctions programs and anti-corruption laws. The company stated that it is cooperating with the investigation and has responded to various requests for information throughout the review. In a Form 10-Q filed on October 27, 2016, NewMarket affirmed its cooperation with the investigation. As of December 2018, there have been no updates provided on the investigation.

51. PETRÓLEO BRASILEIRO S.A.
VANTAGE DRILLING COMPANY
SAIPEM S.P.A.
NOBLE CORPORATION PLC
HINES INTERESTS LIMITED PARTNERSHIP

Background. Petróleo Brasileiro S.A. ("Petrobras") is a semi-public Brazilian multinational energy corporation headquartered in Rio de Janeiro, Brazil. Petrobras maintains a class of securities which trade on the New York Stock Exchange. Vantage Drilling Company is an international offshore drilling contractor headquartered in Houston, Texas. Saipem S.p.A. is an Italian oil and gas industry contractor headquartered in Milan, Italy. Noble Corporation plc is a major contract driller of oil and natural gas wells headquartered in London, England. Hines Interests Limited Partnership is a Houston, Texas based real-estate investment firm with operations around the world.

The Investigation. On November 9, 2014, following allegations of corrupt activity at Petrobras by Brazilian prosecutors, the press reported that the DOJ and SEC opened official FCPA investigations into the Brazilian oil giant. According to the reports, the U.S. authorities were interested in whether Petrobras or its employees, middlemen, or contractors violated the FCPA. In addition to investigations by Brazilian and U.S. authorities, the press has reported that authorities in Switzerland, Peru, Ecuador, and Panama are investigating Petrobras and companies, or individuals, connected to the alleged bribery at Petrobras. Brazilian prosecutors allege that Petrobras and its contractors inflated the cost of capital expenditure projects and acquisitions by hundreds of millions of dollars and paid part of the proceeds to politicians within the ruling political coalition in Brazil, the Workers' Party.

A statement by Petrobras indicates that the company has hired Brazilian and U.S. counsel to examine the facts. In a Form 20-F filed on April 27, 2016, Petrobras disclosed that it was fully cooperating with both the SEC and DOJ as their investigations continue. On September 27, 2018, the DOJ announced that it had entered into a non-prosecution agreement with Petrobras, which was part of a global settlement between the company and U.S. and Brazilian authorities. Petrobras agreed to pay a total criminal fine of $853.2 million, although only a small portion of this penalty will reach the coffers of the U.S. Treasury. Specifically, 10% (approximately $85.3 million) of the criminal penalty was allocated to the DOJ, 10% was allocated to the SEC, and the remaining 80% (approximately $682.6 million) would be paid to the Ministerio Publico Federal in Brazil. The same day, the SEC announced a settled enforcement action against Petrobras. The company agreed to pay approximately $933 million in disgorgement and prejudgment interest. The Commission's order, however, stated that this obligation shall be reduced and deemed satisfied by the amount of any settlement payment agreed to by Petrobras in the securities litigation that was filed against the company in 2014. Because the company agreed earlier in 2018 to settle that case for $3 billion, which was

F. ONGOING INVESTIGATIONS UNDER THE FCPA

approved by the court handling the case, it will not be required to pay any of its SEC settlement amount to the U.S. Treasury.

As of December 2016, press reports have indicated that approximately 150 people have been arrested in connection with the scandal, including Brazilian billionaire Andrew Esteves, Brazilian senator Delcidio Amaral, and former Petrobras executive Nester Cerveró. In June 2015, Marcelo Odebrecht, the head of the construction company Odebrecht (among the largest in construction firms in Latin America), was arrested and charged in Brazil with corruption for his involvement in the Petrobras kickback scheme. In October 2015, Brazilian President and former Petrobras chair Dilma Rousseff was cleared by a parliamentary commission of allegations of wrongdoing related to Petrobras.

According to a November 2015 Form 10-Q filing, Vantage disclosed that in July 2015 it became aware that a Brazilian agent the company used, Hamylton Padilha, had entered into a plea agreement with Brazilian prosecutors in connection with his alleged role in a bribery scheme involving former Petrobras executives. Among Padilha's allegations was that a member of Vantage's board of directors and a significant shareholder, Nobu Su, was involved in the bribery scheme. Vantage indicated that it has contacted the DOJ and SEC and has begun to conduct an internal investigation into Padilha's allegations, but to date has found no evidence of wrongdoing. In addition, Vantage stated that it has filed a lawsuit against Su for alleged breaches of fiduciary duties, fraudulent inducement, negligent misrepresentation, and unjust enrichment. In a Form 10-Q filed November 7, 2017, Vantage disclosed that the DOJ investigation had closed without any action. On November 19, 2018, the SEC announced that Vantage agreed to settle charges for violating the internal controls provision of the FCPA. Without admitting or denying the SEC's findings, the company agreed to pay $5 million in disgorgement.

In August 2015, Saipem S.p.A. confirmed that Italian prosecutors were conducting an investigation into Saipem over allegations of corruption between Petrobras and Saipem's French and Brazilian subsidiaries. According to press reports, Petrobras' former engineering director Renato Duque accepted approximately $1 million in bribes and $174,000 in artwork from Saipem in exchange for the procurement of a contract for a gas pipeline project associated with a pair of Brazilian offshore oil fields. As of December 2018, no updates on the investigation had been made publicly available.

On November 4, 2015, in a Form 10-Q filed with the SEC, Noble Corporation plc, stated that it had used a "commercial agent" in connection with its drilling contracts with Petrobras who recently pled guilty in Brazil to charges associated with the award of a drilling contract to a competitor. The company disclosed that it has not yet been contacted by authorities, and does not believe the company or any of its employees engaged in improper business practices. In a Form 10-Q filed on November 2, 2018, Noble indicated that it had substantially completed its internal review of its relationship with the commercial agent and Petrobras, and it affirmed its cooperation with the U.S. authorities. The company stated that the government authorities have not alleged that the agent or the company acted improperly within its contracts with Petrobras.

On November 10, 2015, Hines Interests Limited Partnership disclosed that it was conducting an internal investigation in connection with alleged payments in Brazil involving Petrobras officials. According to media reports, the company began to review its practices after a Brazilian newspaper reported in July 2015 that Hines allegedly made improper payments to a broker in Rio de Janeiro to lease offices at Petrobras. The investigation prompted the company to self-report their findings to the SEC and DOJ, though neither agency has commented on whether it will be opening a separate investigation into the matter. As of a Form 6-K filed May 15, 2017 Petrobras stated that the SEC investigation remained ongoing. As of December 2018, no updates on the investigation have been made publicly available.

See DOJ Digest Number B-206.
See SEC Digest Number D-187 and D-185.
See Parallel Litigation Digest Numbers H-A19, H-C-32, and H-C31.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

50. SANOFI S.A.

Background. Sanofi S.A. is a French multinational pharmaceutical company focusing on research, development, manufacturing, and marketing of pharmaceutical drugs.

The Investigation. According to an October 2014 press report from the *Wall Street Journal*, Sanofi disclosed that it was investigating whether, from 2007 to 2015, certain payments made by company employees to healthcare professionals in the Middle East and Africa violated the FCPA. Among the allegations are that Sanofi employees made improper payments to doctors based on whether the doctors prescribed or planned to prescribe Sanofi drugs. According to the *Wall Street Journal*, Sanofi has self-reported the allegations to the DOJ and SEC.

In a Form 20-F filed on March 3, 2016, Sanofi stated that it is currently in discussions with the DOJ and SEC and is cooperating with both agencies as they seek further information. In a Form 20-F filed on March 7, 2018, the company disclosed that the DOJ completed its investigation and declined to pursue any action. On September 4, 2018, the SEC announced that Sanofi had agreed to settle charges that it violated the books-and-records and internal controls provisions of the FCPA. Without admitting or denying wrongdoing, the company agreed to pay $17.5 million in disgorgement, $2.7 million in prejudgment interest, and a civil penalty of $5 million. The company also agreed to a two-year period of self-reporting on the effectiveness of its enhanced internal controls and anti-bribery and anti-corruption compliance program.

See SEC Digest Number D-182.

49. DERWICK ASSOCIATES DE VENEZUELA SA PRO ENERGY SERVICES LLC

Background. Derwick Associates de Venezuela SA is a Venezuelan energy company specializing in the construction of turnkey power plant projects. ProEnergy Services LLC is a U.S. company focusing on third-party solutions for the power generation and oil and gas industries.

The Investigation. According to press reports, in August 2014, the DOJ and Manhattan District Attorney's office began investigating Derwick after the company was awarded hundreds of millions of dollars to build power plants in Venezuela within a relatively short period of time. The press reports also indicated that ProEnergy was under investigation for the sale of dozens of turbines to Derwick and for ProEnergy's ongoing connection with Derwick's operations. As of December 2018, no updates to the investigation have been publicly announced.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

48. FEDEX CORPORATION

Background. FedEx Corp. is a global courier delivery services company based in the United States with a broad portfolio of transportation, e-commerce, and business services.

The Investigation. On June 17, 2014, FedEx issued a statement to the *Wall Street Journal* disclosing that it had informed the SEC and DOJ of allegations that employees of its operations in Kenya had bribed Kenyan government officials. FedEx further stated that it was investigating the allegations, but had "not found anything to substantiate the allegations." The company has hired U.S. outside counsel and an external audit team to help with the investigation. As of December 2018, no updates to the investigation have been publicly announced.

47. DELPHI AUTOMOTIVE PLC

Background. Delphi Automotive PLC is a U.K.-based global supplier of technologies for the automotive and commercial vehicle markets.

The Investigation. On April 24, 2014, Delphi disclosed in a Form 10-Q filing that it had reported potential FCPA violations to the SEC and DOJ. The company stated that in the first quarter of 2014, it identified alleged improper payments made by employees of a manufacturing facility in China. The company disclosed that it engaged outside counsel to assist in the review of the matters, and to evaluate existing controls and compliance policies and procedures. According to a Form 10-Q filed on October 29, 2015, Delphi is continuing tocooperate with the SEC and DOJ investigations. As of December 2018, no updates in the investigation have been made publicly available.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

46. UNITED TECHNOLOGIES CORPORATION

Background. United Technologies Corporation is a U.S. aircraft manufacturer headquartered in Hartford, Connecticut.

The Investigation. In a March 31, 2014 Form 10-Q, United Technologies voluntarily disclosed the findings of an internal investigation to the DOJ, SEC, and U.K. Serious Fraud Office relating to the activities of a non-employee sales representative in China. On April 7, 2014, the SEC notified the company of a formal investigation and issued a subpoena for the production of documents.

On April 24, 2015, in a Form 10-Q, the company disclosed that the SEC issued a second subpoena for information related to internal allegations of violations of anti-bribery laws from the company's aerospace and commercial businesses, including but not limited to business in China. The company disclosed that the DOJ also requested information for its investigation. In a Form 10-K filed on February 11, 2016, United Technologies affirmed its continued cooperation with the ongoing DOJ and SEC investigations. In a Form 10-Q filed on April 27, 2018, the company disclosed that the DOJ decided to close its investigation on March 7, 2018, but the SEC investigation remained ongoing. On September 12, 2018, the SEC announced that United Technologies had agreed to settle charges that it violated the anti-bribery, books-and-records, and internal controls provisions of the FCPA. Without admitting or denying the SEC's findings, the company agreed to pay disgorgement of $9,067,142, prejudgment interest of $919,392 and a penalty of $4 million.

See SEC Digest Number D-184.

45. AFFINIA GROUP INC.

Background. Affinia Group Inc., a subsidiary of Affinia Group Intermediate Holdings Inc., is a company that specializes in designing, manufacturing, and distribution of motor vehicle parts and industrial-grade products. Affinia is based in Gastonia, North Carolina, but has operations in North America, South America, Europe, and Asia.

The Investigation. In a Form 10-K filed on March 21, 2014, Affinia first disclosed that it had commenced an internal investigation into the business practices of its subsidiaries in Poland and the Ukraine. The review, which is being conducted with the assistance of the company's Audit Committee and outside counsel, concerns alleged improper payments made to government officials in exchange for contracts, approvals, and permits. Affinia voluntarily disclosed the investigation to the DOJ and SEC.

According to a Form 10-Q filed on November 12, 2015, the DOJ notified Affinia that it had closed its inquiry into the matter and declined to bring enforcement action against the company. The company did not comment on the status of the SEC's inquiry. As of December 2018, no updates on the SEC's investigation were made publicly available.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

44. TELIASONERA AB
VIMPELCOM LTD.
MOBILE TELESYSTEMS OJSC

Background. TeliaSonera AB is the dominant telephone company and mobile network operator in Sweden and Finland. VimpelCom Ltd. is a Russian telecommunications company incorporated in Bermuda and headquartered in Amsterdam with a class of securities listed on the NASDAQ exchange. Mobile TeleSystems OJSC ("MTS"), is a Russian mobile telecommunications provider with operations in Russia as well as various central European and central Asian countries.

The Investigation. On March 17, 2014, the TeliaSonera announced that the DOJ and SEC opened investigations into the company's operations in Uzbekistan. In 2007, Teliasonera acquired an Uzbek wireless data license and spectrum frequency. The transaction was executed in connection with a Gibraltar-based holding company that is alleged to maintain ties to high level officials in the Uzbek government. In 2012, a Swedish television program reported that the transaction was tainted by acts of alleged bribery and money laundering.

Similarly, on March 19, 2014, MTS announced that the SEC and DOJ were conducting a joint investigation into the company's operations in Uzbekistan.

At approximately the same time as TeliaSonera's and MTS' announcement in 2014, VimpelCom issued a press release stating that the SEC and Dutch prosecutors had begun an investigation into VimpelCom's operations in Uzbekistan. According to VimpelCom's 2014 annual report, the company maintained some dealings with the same Gibraltar-based holding company as TeliaSonera, and press reports have linked the investigations into TeliaSonera with the investigations into VimpelCom.

According to news reports, in April 2015, the DOJ asked Swedish authorities to freeze more than $30 million in TeliaSonera assets linked to the alleged bribery scheme. In July 2015, the DOJ obtained court approval to seize $300 million in funds owned by VimpelCom and MTS held by the Bank of New York Mellon in Ireland, Belgium, and Luxembourg and by Clearstream Banking SA that are allegedly linked to the scheme. Later, in August 2015, the press reported that the DOJ requested several European countries to freeze approximately $1 billion in assets tied to the alleged bribes.

On February 18, 2016, the DOJ and SEC announced that the agencies, alongside the Dutch prosecutor's office, had reached a settlement with VimpelCom. According to the enforcement agencies, VimpelCom, and its Uzbek subsidiary, Unitel, had entered into a deferred prosecution agreement and plea agreement, respectively, with the DOJ. According to the deferred prosecution agreement, VimpelCom agreed to pay a $230.1 million criminal penalty. Separately, VimpelCom agreed to a consent order with the SEC wherein the company would pay a total sanction of $167.5 million. VimpelCom also agreed to pay a total sanction of $397.5 million to Dutch prosecutors.

TeliaSonera's most recent financial statements have reported that U.S., Dutch, and Swedish authorities are investigating the possibility of assessing a corporate fine against the company, and on September 15, 2016, press reports stated that the U.S. and Dutch authorities proposed a $1.4 billion settlement to TeliaSonera. On September 21, 2017, Telia announced that a global settlement was reached with the DOJ, SEC, and the Dutch Public Prosecution Service relating to previously disclosed investigations regarding historical transactions in Uzbekistan. In addition, Telia's subsidiary in Uzbekistan, Coscom LLC, entered a guilty plea with the DOJ.

Telia agreed to a total global settlement of $965,603,972, which included payments to the DOJ, the SEC, the Netherlands, and potential payments to Sweden.

In a Form 20-F filed on April 21 2017, MTS indicated that it continues to cooperate with the U.S. agencies' requests. As of December 2018, no updates on the SEC and DOJ investigations were made publicly available.

See DOJ Digest Number B-166 and B-189.
See SEC Digest Number D-146 and D-173.
See Parallel Litigation Digest Numbers H-A22 and H-H3.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

43. BLACKSTONE GROUP LP
CITIGROUP INC.
GOLDMAN SACHS GROUP INC.
CREDIT SUISSE GROUP AG
JP MORGAN CHASE & CO.
OCH-ZIFF CAPITAL MANAGEMENT GROUP LLC
SOCIÉTÉ GÉNÉRALE S.A.

Background. Blackstone Group LP is a U.S. corporation that specializes in private equity, investment banking, alternative asset management, and financial services. Citigroup Inc. is a multinational banking institution headquartered in the United States. Goldman Sachs Group, Inc. is a New York-based global investment banking, securities, and investment management firm. JP Morgan Chase & Co. is a U.S. financial institution that specializes in investment banking, providing financial services to consumers and small businesses, commercial banking, and asset management. Och-Ziff Capital Management Group LLC is a U.S. hedge fund and global alternative asset management firm. Société Générale is a French multinational banking and financial services company.

The Investigation. In January 2011, the *Wall Street Journal* reported that the SEC had begun investigating whether banks and private equity-firms violated the FCPA in the course of their dealings with sovereign wealth funds. Among the financial firms named in the *Wall Street Journal* report were Blackstone Group LP and Citigroup Inc. On February 3, 2014, the *Wall Street Journal* reported that the DOJ had joined the SEC's investigation and broadened the scope of the investigation naming Goldman Sachs Group, Inc., Credit Suisse Group AG, JPMorgan Chase & Co., Société Générale SA, and Och-Ziff Capital Management Group LLC as additional targets.

In March 2014, Och-Ziff disclosed in a Form 10-K that, beginning in 2011, the SEC and DOJ began investigations into whether Och-Ziff violated the FCPA in 2007 when a sovereign wealth fund invested in some of Och-Ziff's funds. According to press reports, the sovereign wealth fund referenced in Och-Ziff's Form 10-K was the $65 billion Libyan Investment Authority. On September 29, 2016, the SEC announced that it resolved an FCPA enforcement action against Och-Ziff through an administrative proceeding for charges of violating the FCPA through its conduct with sovereign wealth funds. Without admitting or denying the charges, Och-Ziff Capital Management Group LLC and Och-Ziff Management LP agreed to pay disgorgement of $173,186,178 plus prejudgment interest of $25,858,989 to settle the claims. Daniel S. Och, the CEO of Och-Ziff, and Joel M. Frank, its CFO, also agreed to settle the charges against them. The DOJ announced the same day that it had entered into a deferred prosecution agreement with Och-Ziff Capital Management for three years. Under the agreement, Och-Ziff agreed to pay a criminal penalty of $213,055,689 and to implement rigorous internal controls and retain a compliance monitor for three years. Och-Ziff's subsidiary, OZ Africa, entered into a plea agreement with the DOJ on the same day.

On June 4, 2018, the DOJ announced that Société Générale and its wholly owned subsidiary, SGA Société Générale, agreed to pay a combined total penalty of more than $860 million to resolve charges with enforcement authorities in the US and France, including $585 million relating to a multi-year scheme to pay bribes to officials in Libya. Societe Generale reached a settlement with the Parquet National Financier ("PNF") relating to the Libya corruption scheme. The US will credit $292,776,444 that the company will pay to the PNF under its agreement, equal to fifty percent of the total criminal penalty otherwise payable to the US. The company entered into a DPA with one count of conspiracy to violate the anti-bribery provisions of the FCPA and one count of transmitting false commodities reports, and its subsidiary pleaded guilty to one count of conspiracy to violate the anti-bribery provisions. Société Générale also agreed to continue to cooperate with the DOJ's investigation and adopt and maintain enhanced compliance procedures.

On November 1, 2018, the DOJ unsealed charges against two former managing directors for southeast Asia at Goldman Sachs alleging conspiracy to violate the anti-bribery and internal controls provisions of the FCPA and conspiracy to commit money laundering in relation to the 1MDB scandal. That same day, the DOJ announced that one of the managing directors had been arrested in Malaysia, and the other had pleaded guilty to both charges. On December 17, 2018, Malaysian prosecutors filed criminal charges against Goldman Sachs for violating securities laws by allegedly embezzling funds in connection with the scandal.

As of December 2018, no updates on the SEC and DOJ investigations into Blackstone, Citigroup, Goldman Sachs, Credit Suisse, and JP Morgan were made publicly available.

See DOJ Digest Numbers B-205, B-202, B-173.
See SEC Digest Number D-160.
See Parallel Litigation Digest Number H-F26.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

42. NATIONAL GEOGRAPHIC SOCIETY

Background. National Geographic Society is a U.S. nonprofit organization that specializes in the promotion of environmental and historical conservation, and the study of world culture and history.

The Investigation. In October 2013, press reports announced that the DOJ had opened a criminal investigation into the National Geographic Society. In 2001, National Geographic hired an Egyptian archeologist for access to Egyptian artifacts; the archeologist's main employer was the Egyptian government. The allegations concern whether National Geographic's payments to the Egyptian archeologist were bribes in exchange for access to the country's famous antiquities. National Geographic Society has declined to comment. As of December 2018, no further updates about the investigation have been made public.

41. SWEETT GROUP PLC

Background. Sweet Group plc is a British firm that provides professional services for the construction and management of building and infrastructure products in Europe, the Middle East, Africa, Asia, India, and the Asia Pacific region.

The Investigation. In June 2013, press reports alleged that a former Sweett Group employee offered to award design work on a hospital construction contract in Morocco for a NewYork-based architecture firm if the architects agreed to bribe a UAE official. In April 2, 2014, the company announced that it was participating in ongoing discussions with the DOJ regarding the bribery allegations, but no proceedings had been initiated. On July 14, 2014, the SFO announced that it had opened an investigation in relation to the company's activities in the UAE and elsewhere.

On December 2, 2015, the SFO announced in a press release that Sweett Group had admitted an offense under section 7 of the Bribery Act 2010 in connection with its conduct in the Middle East. As of December 2018, no further developments related to the DOJ's investigation have been made public.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

40. BROOKFIELD ASSET MANAGEMENT INC.

Background. Brookfield Asset Management Inc. is a global investment company based in Canada that focuses on property, infrastructure, and renewable power.

The Investigation. According to press reports in March 2013, the SEC began investigating allegations that Brookfield's Brazilian unit paid bribes to win construction permits in 2012. The allegations were reportedly brought by a former executive in the São Paulo unit of Brookfield, who claims that she contacted the SEC as part of the U.S. whistleblower program. The DOJ opened a parallel investigation in 2013, and the company stated that it cooperated fully with both governmental agencies as they sought information. In a Form 40-F filed on March 31, 2014, Brookfield disclosed that it had hired outside counsel to conduct an independent investigation of the matter and that the investigation had not revealed wrongdoing.

In February 2013, a São Paulo State Prosecutor filed civil and criminal charges against Brookfield Gestão de Empreedimentos S.A., Brookfield's Brazilian real estate subsidiary. The charges relate to allegations of bribery to attain construction permits for the expansion of the shopping malls in São Paulo.

In a Form 6-K filed on November 13, 2015, Brookfield disclosed that it had received notice from the SEC in June 2015 that the agency had concluded its investigation and did not intend to recommend any enforcement action. The report provides no updates about the DOJ investigation, and no public updates have been made as of December 2018.

39. TESCO CORPORATION

Background. Tesco Corporation is a U.S. oil field services company specializing in the design, manufacture, and service of technology-based solutions for the upstream energy industry.

The Investigation. According to a March 2013 Form 10-K, Tesco reported that the company had received a request to preserve and retain documents from the SEC relating to the company's compliance with the FCPA and commercial agents in an undisclosed country. The Form 10-K provided that the SEC stated that its request "should not be construed as an indication by the Commission, or its staff, that any violations have occurred; nor should it be considered an adverse reflection upon any person, entity, or security." The company's 2015, 2016, and 2017 Form 10-Ks make no reference to a pending FCPA investigation by the SEC. As of December 2018, no updates on the investigation have been made publicly available.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

38. BSG RESOURCES LTD.

Background. BSG Resources Ltd. ("BSGR") is a natural resources company based in Guernsey, U.K.

The Investigation. In April 2013, a French national, Frederic Cilins, was charged with obstructing a grand jury investigation concerning alleged bribes paid for certain mining rights in the Republic of Guinea. Press reports indicate that Cilins was acting as an intermediary for BSGR when he allegedly offered money to the fourth wife of Guinea's late President Lansana Conte to lie to U.S. investigators about bribes that BSGR allegedly paid to secure mining rights in Guinea. Cilins was convicted in July 2014 and sentenced to two years in prison.

Also according to press reports, Swiss police raided an office of a company associated with BSGR's controlling shareholder, Beny Steinmetz, while French police set up a simultaneous raid on the home of a BSGR director. The Guinean government, the U.K. Serious Fraud Office, and the Financial Investigation Unit in Guernsey have also opened investigations into the matter.

According to press reports on July 10, 2015, Swiss investigators interviewed several witnesses and former government officials in Guinea with ties to Guinea's mining industry. BSGR has denied any knowledge of wrongdoing, and as of December 2018, no updates on the matter have been made publicly available.

See DOJ Digest Number B-140.
See Parallel Litigation Digest Numbers H-C29 and H-E7.

37. TELEFONAKTIEBOLAGET LM ERICSSON

Background. Telefonaktiebolaget LM Ericsson is a multinational telecommunications company based in Sweden.

The Investigation. According to press reports in May 2013, the SEC is investigating Ericsson's business practices in Romania, where a former employee alleged that the company used a slush fund to pay off officials to win contracts.

In a press release issued on June 17, 2016, Ericsson stated that it continues to cooperate with U.S. authorities regarding its anti-corruption program. In Ericsson's 2017 annual report, the company stated that it is cooperating with the SEC and DOJ regarding compliance with the FCPA. The company did not provide further details about the investigation. As of December 2018, there have been no further updates on the SEC and DOJ investigations.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

36. GOLD FIELDS LTD.

Background. Gold Fields Ltd. is a South Africa-based gold mining firm with eight operating mines in Australia, Ghana, Peru, and South Africa.

The Investigation. According to a September 10, 2013 company press release, the company was informed by the SEC that an investigation was being conducted into "the Black Economic Empowerment transaction associated with the granting of the mining license for its South Deep operation." According to press reports, the mining rights to the South Deep gold mine were secured using improper payments to South African officials.

On June 22, 2015, the company disclosed that the SEC had concluded its investigation into potential FCPA violations related to the Black Economic Empowerment transaction. The company's press release did not indicate whether a parallel investigation by the DOJ was ongoing, and a Form 20-F filed on April 13, 2016 stated that Gold Fields continued to expect potential FCPA enforcement actions related to this matter. As of December 2018, there have been no public updates provided on the investigation.

35. JPMORGAN CHASE & CO.
CITIGROUP INC.
CREDIT SUISSE GROUP AG
DEUTSCHE BANK AG
GOLDMAN SACHS GROUP, INC.
MORGAN STANLEY
UBS AG
HSBC
BARCLAYS
THE BANK OF NEW YORK MELLON CORPORATION

Background. JPMorgan Chase & Co., Citigroup Inc., Goldman Sachs Group, Inc., and Morgan Stanley are U.S.-based multinational banking and financial services companies. Credit Suisse Group AG and UBS AG are multinational banking and financial services companies based in Switzerland. Deutsche Bank AG is a multinational banking and financial services company based in Germany. The Bank of New York Mellon Corporation ("BNYM") is a multinational financial institution headquartered in the United States.

The Investigation. According to news reports published in August 2013 and March 2014, the SEC opened a bribery investigation into whether multinational financial institutions such as JPMorgan, Citigroup, Goldman Sachs, Credit Suisse, Deutsche Bank, Morgan Stanley, and UBS hired the children of Chinese officials to help the bank win business in China. According to press reports in June 2014, the DOJ and SEC had begun investigating Deutsche Bank.

On February 6, 2015, the press reported that JPMorgan had hired the son of a Chinese commerce minister, and that the hiring was among others being examined in the investigation. On November 30, 2015, the press reported that JPMorgan had prepared a submission to the SEC in April 2015 regarding the bank's hiring of the children of Chinese officials. On November 17, 2016, the SEC settled an enforcement action against JPMorgan for alleged violations of the FCPA in connection with its hiring practices in China. As alleged by the SEC, JPMorgan provided jobs and internships to relatives and friends of government officials in exchange for business and other advantages. To settle the claims, JPMorgan agreed to disgorge $105,507,668 plus $25,083,737 in interest.

On August 18, 2015, the SEC announced that it settled an FCPA enforcement action against BNYM for violating the FCPA in connection with the bank's decision to hire a group of relatives of a pair of unnamed officials from a Middle East sovereign wealth fund. The SEC alleged that as a result of BNYM's conduct, the bank violated the FCPA's anti-bribery and internal controls provisions and was required to pay a total sanction of $14.8 million.

Additional investigations were disclosed in 2016. In February 2016, HSBC disclosed, in a footnote on its financial statements, that the SEC is investigating its recruitment practices of princelings in Asia. While HSBC asserted that the outcome was

F. ONGOING INVESTIGATIONS UNDER THE FCPA

unknown, it noted that any possible impact "could be significant." Barclays followed soon thereafter, announcing in a Form 6-K filed on March 30, 2017 that the DOJ and SEC were investigating its hiring practices in Asia and other locations. Barclays stated that it is cooperating with these agencies. As of December 2018, no updates on the HSBC and Barclays investigations have been made publicly available.

On July 5, 2018, the DOJ announced that Credit Suisse entered into a non-prosecution agreement and agreed to pay a $47 million criminal penalty for its role in an alleged scheme to corruptly win banking business by awarding employment to friends and family of Chinese officials. As part of the agreement, Credit Suisse agreed to continue cooperating with the DOJ in any ongoing investigations and prosecutions related to the conduct, enhance its compliance programs, and report to the DOJ on the implementation of the enhanced programs. In related proceedings, Credit Suisse settled with the SEC and agreed to pay $24,989,843 in disgorgement and $4,833,961 in prejudgment interest.

In a Form 6-K filed October 24, 2018, Deutsche Bank disclosed that the DOJ and SEC were investigating the bank's hiring practices in relation to candidates referred by clients, potential clients, and government officials. Deutsche Bank stated that it is continuing to cooperate with the investigations.

Filings from Citigroup and Goldman Sachs in 2017 noted the existence of investigations and the banks' cooperation with authorities but have not provided additional details. As of December 2018, no updates have been made publicly available.

As of December 2018, no updates on investigations into UBS AG have been made publicly available.

See DOJ Digest Number B-175, B-201.
See SEC Digest Number D-138, D-180.

34. JUNIPER NETWORKS, INC.

Background. Juniper Networks, Inc., a U.S. manufacturer of networking equipment, designs and sells high-performance Internet Protocol network products and services.

The Investigation. According to a Form 10-Q filed on August 8, 2013, the SEC and the DOJ are currently conducting investigations into possible violations of the FCPA by the company. In a Form 10-Q filed on May 8, 2017, the company noted that the investigations concern activities in multiple countries. In a Form 10-Q filed on November 7, 2017, Juniper Networks disclosed that it is continuing to cooperate with the SEC and DOJ regarding these matters. In a Form 10-Q filed on May 8, 2018, Juniper Networks disclosed that the DOJ notified the company that it closed the investigation and would not take any action against the company. The company stated that an adverse outcome in the SEC investigation was reasonably possible. In a Form 10-Q filed on August 8, 2018, the company stated that it was continuing to cooperate with the SEC but believed the SEC would seek to bring an enforcement action against the company. In a Form 10-Q filed on November 7, 2018, the company disclosed that it established a $12 million legal reserve related to the SEC's ongoing investigation but did not know when the matter would be resolved.

See Parallel Litigation Digest Number H-A15.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

33. KIMCO REALTY CORPORATION

Background. Kimco Realty Corporation is a real estate investment trust headquartered in New York that owns and operates North America's largest portfolio of neighborhood and community shopping centers. The company specializes in the acquisition, development, and management of shopping centers.

The Investigation. On January 28, 2013, the company received a subpoena from the SEC in connection with the Commission's investigation into Wal-Mart Stores, Inc. According to a Form 10-Q filed on November 1, 2013, the DOJ began conducting a parallel investigation. In a Form 10-Q filed on October 27, 2017, the company disclosed that it is continuing to cooperate with both investigations. As of December 2018, no updates have been made publicly available.

32. KKR & CO. L.P.

Background. KKR & Co. L.P. ("KKR") is a global investment firm which sponsors and manages private equity funds.

The Investigation. According to a Form 10-Q filed on November 1, 2013, KKR received a subpoena from the SEC in January 2011 requesting documents and information pertaining to certain sovereign wealth funds. The SEC requested additional documents and information on December 6, 2012 and February 15, 2013.

On June 29, 2015, the SEC issued a cease-and-desist order against KKR for violations of the Investment Advisers Act of 1940. As part of the order, KKR agreed to pay a total sanction of $18.7 million.

As of December 2017, there have been no updates pertaining to the SEC's investigation into KKR's business with the sovereign wealth funds mentioned in its November 2013 SEC filing. As of December 2018, there are no updates on the investigation publicly available.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

31. MICROSOFT CORPORATION

Background. Microsoft Corporation is a U.S. company that develops, manufactures, licenses, supports, and sells computer software and consumer electronics around the world.

The Investigation. In March 2013, the media reported that the SEC and DOJ were investigating allegations of kickbacks made by a former Microsoft representative in China, as well as the company's relationship with certain resellers and consultants in Romania, Italy, Pakistan, and Russia. In a filing on July 28, 2016, Microsoft confirmed that it was cooperating with US authorities in connection to reports concerning FCPA compliance in various countries. On August 23, 2018, the Wall Street Journal reported that Microsoft was being investigated by the DOJ and SEC over potential bribery and corruption related to software sales made to intermediaries in Hungary at steep discounts. According to the report, the intermediaries then sold the software to government agencies in Hungary in 2013 and 2014 at close to full price. In a statement made to the Wall Street Journal, the company's deputy general counsel stated that the company is cooperating with the DOJ and SEC.

30. PANASONIC CORPORATION

Background. Panasonic Corporation is a Japanese multinational electronics corporation headquartered in Osaka, Japan. Panasonic Avionics Corp. ("PAC") is a Panasonic unit based in California that manufactures in-flight entertainment systems for airlines.

The Investigation. According to news reports in March 2013, the U.S. government authorities issued a retention notice to PAC to preserve documents "concerning any benefits or gifts provided, or the payment of anything of value, by Panasonic or PAC to any airline employee or government officials," as well as documents regarding any alleged acts of bribery or corruption by Panasonic or PAC employees. In a February 2, 2017, company statement, Panasonic disclosed that the DOJ and SEC are investigating Panasonic Avionics Corporation for potential violations of the FCPA. Panasonic stated that it is cooperating with the DOJ and SEC and that it has been discussing with the agencies a means to resolve the matter.

On April 30, 2018, the DOJ announced that Panasonic Avionics Corporation, a U.S. subsidiary of Panasonic Corporation, entered into a DPA and agreed to pay a $137.4 million criminal penalty to resolve charges related to a scheme to retain consultants for improper purposes and conceal payments to third-party sales agents. On the same day, the SEC filed a cease and desist order against Panasonic Corporation in which the company agreed to pay $143 million in disgorgement, including prejudgment interest.

See DOJ Digest Number B-200.
See SEC Digest Number D-178.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

29. PARK-OHIO HOLDINGS CORP.

Background. Park-Ohio Holdings Corp. is a publicly held, diversified manufacturing services and products holding company that creates efficiencies in Total Supply Management, develops quality cast and machined aluminum components, and manufactures highly engineered products.

The Investigation. According to a Form 10-Q filed on November 12, 2013, the company received a subpoena from the SEC in connection with its investigation of a third party. The third party is also being investigated by the DOJ. In response to the subpoena, the company disclosed that in November 2007, the third party had participated in a payment on behalf of the company to a foreign tax official that implicates the FCPA.

A special committee has been formed by the Board of Directors to review the company's transactions with the third party and to make any recommendations to the Board of Directors in consequence thereto. According to a Form 10-Q filed on November 6, 2018, the company stated that it would continue to cooperate with the SEC's and DOJ's investigations.

28. STEEL PARTNERS HOLDINGS L.P.

Background. Steel Partners Holdings L.P. is a global diversified holding company that engages in multiple businesses, including diversified industrial products, energy, defense, supply chain management and logistics, banking, food products and services, oilfield services, and sports.

The Investigation. Following an internal investigation conducted to determine whether certain employees of three of the company's indirect wholly-owned subsidiaries incorporated and operating exclusively in China—SL Xianghe Power Electronics Corporation, SL Shanghai Power Electronics Corporation, and SL Shanghai International Trading Corporation—may have improperly provided gifts and entertainment to government officials, the company voluntarily disclosed the investigation to the SEC and DOJ.

According to a Form 10-K filed on April 4, 2013, the company retained outside counsel and forensic accountants to assist in the investigation, as well as hired outside consultants to provide assistance in the implementation of a mandatory FCPA compliance program for all of its employees. The company stated that the program was installed as of December 2012. According to a Form 10-K filed on March 25, 2014, the DOJ notified the company that it had closed its inquiry into this matter without filing criminal charges. The company has not received an update from the SEC regarding the status of the Commission's inquiry. No further updates have been provided as of December 2018.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

27. WYNN RESORTS, LTD. UNIVERSAL ENTERTAINMENT CORPORATION ARUZE USA, INC.

Background. Wynn Resorts, Ltd., is a publicly traded corporation that develops and operates high-end hotels and casinos. Universal Entertainment Corporation is a Japanese manufacturer of pachinko, slot machines, and arcade games. Aruze USA, Inc., is a subsidiary of Universal Entertainment and was a shareholder of Wynn Resorts. Kazuo Okada is the majority shareholder of Universal Entertainment.

The Investigation. According to a Form 10-Q filed on November 12, 2013, on February 18, 2012, Wynn Resorts' Gaming Compliance Committee concluded an investigation into the allegation that Kazuo Okada, a Wynn Resorts board member, had provided valuable items to certain foreign gaming officials responsible for regulating gaming in a jurisdiction in which entities controlled by Okada were developing a gaming resort. The Board of Directors subsequently asked Okada to resign from his position as director of Wynn Resorts and recommended that he also be removed as a member of the Board of Directors of Wynn Macau, Limited. Subsequently, Okada was removed from the Board of Directors of Wynn Las Vegas Capital Corp. (February 18, 2012), from the Board of Directors of Wynn Macau, Limited (February 24, 2012), and from the Board of Directors of Wynn Resorts (February 22, 2013). In July 2013, the company reported that the SEC had closed its investigation and declined to bring an enforcement action against the company for the company's $135 million donation to the University of Macau.

In a Form 10-K filed on March 2, 2015, the company disclosed that the DOJ had been conducting a criminal investigation into the company's previous donation to the University of Macau. In a Form 10-Q filed on May 4, 2017, the company disclosed that in a motion filed by the United States Attorney's Office and DOJ in a lawsuit brought by Okada and associated parties, the government noted that it was conducting a criminal investigation of Okada, Universal Entertainment, and Aruze USA, Inc., in relation to conduct that may have violated the FCPA.

In a Form 10-Q filed on November 8, 2017, the company stated that it had not received a target letter or subpoena in connection with the investigation. The company also stated that it intends to fully cooperate with the government in response to any inquiry related to the matter. In a Form 10-Q filed on November 7, 2018, the company refers to "ongoing investigations of Aruze by the U.S. Attorney's Office, U.S. Department of Justice and the Nevada Gaming Control Board."

See Parallel Litigation Digest Number H-C28.

26. ABM INDUSTRIES INCORPORATED

Background. ABM Industries Incorporated is an American company that provides building maintenance, facilities management, and outsourcing to facilities, primarily in the United States.

The Investigation. According to a Form 10-Q filed on September 6, 2012, ABM began an internal investigation in October 2011 regarding activities relating to their wholly-owned subsidiary, Linc Network, LLC. Following the investigation, the company voluntarily disclosed its findings to the SEC and DOJ.

According to a Form 10-K filed on December 21, 2016, the DOJ notified the company on November 14, 2016, that it had closed its investigation without taking any action against the company. An investigation by the SEC was not mentioned in ABM's 2018 filings.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

25. BARCLAYS PLC

Background. Barclays PLC, based in London, is a multinational banking and financial services company. Barclays has branches and operations in over fifty countries and is the fourth-largest bank worldwide.

The Investigation. According to a Form 6-K filed October 31, 2012, Barclays was informed by the SEC and DOJ that they are conducting investigations regarding corporate disclosures it made to the Financial Conduct Authority and Serious Fraud Office in July and August 2012. The two organizations are looking into Barclays' relationships with third parties who helped to gain the company certain business. The Federal Reserve has also requested to be informed of the matters. In a 6-K filed on August 3, 2018, Barclays noted the DOJ and SEC investigations were ongoing but did not provide any updates.

In the Form 6-K filed on March 30, 2017, Barclays reported that the DOJ and SEC are also investigating its hiring practices in Asia and other locations. Barclays stated that it is cooperating with these agencies.

In a Form 6-K filed on June 20, 2017, Barclays disclosed that the DOJ and SEC are additionally investigating two advisory services agreements entered into with Qatar Holding LLC in 2008 that were not properly disclosed. The UK's Serious Fraud Office charged Barclays in relation to these agreements. As of a Form 6-K dated July 28, 2017, there have been no updates provided on the investigation. In a Form 6-K filed on August 3, 2018, Barclays disclosed that a British criminal court dismissed the SFO's fraud charges against the bank in May 2018. In a Form 6-K filed on October 26, 2018, the bank disclosed that the High Court of Justice in England and Wales denied the SFO's application to reinstate the charges against Barclays. Barclays further stated that the DOJ and SEC are conducting investigations related to the advisory services agreements.

24. BEAM SUNTORY INC. (FORMERLY BEAM INC.)

Background. Beam Suntory Inc. is a company that makes and sells premium distilled spirits products in major markets worldwide. The company's products include bourbon whiskey, Scotch whisky, Canadian whisky, vodka, tequila, cognac, rum, cordials, and ready-to-drink pre-mixed cocktails. Beam Suntory was formed when Japanese beverage manufacturer Suntory Holdings Limited acquired Beam Inc. in 2014. Beam Suntory is currently a subsidiary of Suntory Holdings.

The Investigation. According to a Form 10-Q filed November 8, 2012, Beam conducted an investigation into its Indian business after receiving information through its internal compliance procedures.

The company disclosed its findings to the SEC and DOJ. In a Form 10-Q filed November 7, 2013, the company stated that it intended to cooperate fully with any DOJ or SEC inquiry. In 2014, Beam indicated that it intended to delist from the New York Stock Exchange. On July 2, 2018, the SEC announced that the company agreed to pay disgorgement of $5,264,340, prejudgment interest of $917,498, and a civil penalty of $2 million to setlle the charges arising from improper payments allegedly made by its Indian subsidiary.

See SEC Digest Number D-179.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

23. CENTRAL EUROPEAN DISTRIBUTION CORP. ROUST CORPORATION (FORMERLY ROUST TRADING LTD.)

Background. Central European Distribution Corp. ("CEDC") is a distilled spirits company, which produces and distributes alcoholic beverages primarily in Central and Eastern European markets. Roust Trading Ltd. (now Roust Corporation) distributes alcohol in Russia and is based in Warwick, Bermuda.

The Investigation. In an October 5, 2012 Form 10-K/A filing, CEDC disclosed that a potential breach of the books-and-records provisions of the FCPA was discovered through management's review of the company's internal control over financial reporting. The breach concerned improperly documented payments or gifts made in a foreign jurisdiction in which the company operates. Additionally, management identified other flaws in internal controls over financial reporting.

According to a 10-Q filed June 18, 2012, the SEC and DOJ asked the company to disclose information related to these matters on a voluntary basis.

In 2013, Roust Trading acquired CEDC after CEDC filed for bankruptcy and became Roust Corporation. In its annual report disclosed to the public on March 27, 2015, Roust stated that the company was asked to provide information on a voluntary basis to the SEC and DOJ. As of November 13, 2015, the company stated it was continuing to cooperate with the U.S. agencies. As of December 2018, there were no publicly disclosed developments in this investigation.

22. COBALT INTERNATIONAL ENERGY, INC.

Background. Cobalt International Energy is a U.S. based company that is focused on oil exploration and production in the Gulf of Mexico and West Africa, specializing in sub-salt and pre-salt exploration.

The Investigation. According to a Form 10-K filed February 21, 2012, Cobalt became aware of media reports in the fall of 2010 regarding bribery allegations pertaining to Nazaki Oil and Gaz S.A. ("Nazaki"), an Angolan company selected by the Angolan government to be a local partner, together with Cobalt, Sonangol, and another Angolan company, for exploration and development of several blocks. The allegations state that Nazaki was owned by senior Angolan government officials, although Nazaki has repeatedly denied such allegations in writing.

In March 2011, Cobalt was informed by the SEC that the Commission was conducting an informal inquiry. Following this notification, Cobalt voluntarily contacted the DOJ regarding the SEC's inquiry. The SEC issued a formal order of investigation in November 2011. On August 4, 2014, the company received a "Wells Notice" from the SEC stating that the Commission had made a preliminary determination to recommend that the SEC institute an enforcement action against the company, alleging violations of certain federal securities laws.

According to a Form 10-Q filed August 4, 2015, Cobalt received a letter from the SEC that formally concluded the agency's investigation. According to a Form 10-K filed on March 14, 2017, the company stated that it received a letter from the DOJ that closed the agency's investigation.

In the Form 10-K filed on March 14, 2017, Cobalt disclosed that the SEC had begun an informal inquiry regarding Cobalt and the Sonangol Research and Technology Center in Angola and that Cobalt had received an voluntary request for information concerning the matter. In a Form 10-Q filed on November 2, 2017, Cobalt stated that it is cooperating with the SEC and has provided requested information. In a Form 10-K filed on March 2, 2018, Cobalt disclosed that the SEC formally concluded its investigation on January 29, 2018 and did not intend to pursue enformcent action against the company.

See Parallel Litigation Digest Number H-A18.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

21. DREAMWORKS ANIMATION SKG, INC.
TWENTIETH CENTURY FOX FILM CORPORATION (SUBSIDIARY OF NEWS CORPORATION)
21ST CENTURY FOX, INC. (SUBSIDIARY OF NEWS CORPORATION)
THE WALT DISNEY COMPANY
SONY PICTURES ENTERTAINMENT INC. (A SUBSIDIARY OF SONY CORPORATION)
UNIVERSAL STUDIOS INC.
PARAMOUNT PICTURES CORPORATION (A SUBSIDIARY OF VIACOM)
WARNER BROTHERS ENTERTAINMENT INC. (A DIVISION OF TIME WARNER INC.)

Background. The Chinese film market is seen as one of the largest potential markets for Hollywood film producers and distributors, but it has also historically been tightly controlled by the state-owned China Film Group. DreamWorks Animation, Twentieth Century Fox Film Corporation, 21st Century Fox, Inc., The Walt Disney Company, Sony Pictures Entertainment Inc., Universal Studios Inc., Paramount Pictures Entertainment Inc., and Warner Brothers Entertainment Inc. are all U.S.-based global film production and distribution companies that are active in China. Dynamic Marketing Group ("DMG") is a Beijing based-firm that assists companies in distributing films in China.

The Investigation. According to a report by Reuters on April 24, 2012, the SEC has sent letters of inquiry to various movie studios asking for information about potential inappropriate payments and how the companies dealt with certain government officials in China.

In a Form 8-K SEC filing, 21st Century Fox disclosed that the DOJ completed its investigation without bringing charges.

In January 2015, the Wall Street Journal reported that Sony received a subpoena from the SEC in June 2013 for information on potential bribery related to the release of a film in China in 2010. The SEC referenced a "special influence" used by DMG to get the film released. The report further stated that Sony launched an internal investigation into its distribution efforts after receiving the subpoena.

As of December 2018, no updates on the investigations of Dreamworks, Disney, Sony, Universal Studios, Paramount Pictures, and Warner Brothers had been made publicly available.

See Parallel Litigation Digest Number H-F20.

20. THE DUN & BRADSTREET CORPORATION

Background. The Dun & Bradstreet Corporation, a company based in the United States, licenses business and corporation information that is used for credit decisions and business dealings. D&B maintains records on over 205 million companies around the world.

The Investigation. In a Form 10-Q filed November 1, 2012, D&B disclosed that due to the potential violation of Chinese consumer data privacy laws and the FCPA, it has suspended its business dealings with Shanghai Roadway D&B Marketing Services Co. Ltd. The company has since decided to cease operations with Roadway. D&B is conducting an internal investigation regarding these allegations.

After having learned of the allegations, D&B voluntarily contacted the DOJ and the SEC, informing them of the ongoing investigation by the company's Audit Committee. According to a Form 10-Q filed on November 2, 2017, the company has completed its investigation and is now working with the agencies on a resolution of the matter. In a Form 10-Q filed on November 6, 2018, D&B disclosed that its discussions with the DOJ and SEC concluded in April 2018. The DOJ issued a written declination of prosecution and decided not to take any further action on the matter. On April 23, 2018, the SEC announced that D&B agreed to pay disgorgement of $6,077,820, prejudgment interest of $1,143,664, and a civil penalty of $2 million.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

19. EXPRO INTERNATIONAL GROUP (OWNED BY GOLDMAN SACHS GROUP, INC.)

Background. Expro International Group is an oil-management company owned by a Goldman Sachs-backed private equity consortium called Umbrellastream. Expro, which is headquartered in Reading, England, conducted business in Kazakhstan.

The Investigation. Expro received allegations from an anonymous tipster in May 2012 that Expro's former operations coordinators in Western Kazakhstan oversaw and approved bribes to customs officials from 2006 until summer 2009. The alleged bribes were paid to clear Expro's equipment through customs to avoid costly delays.

The company has stated that it has notified the authorities in the United Kingdom and the United States and is conducting an internal investigation. As of December 2018, there are no additional updates pertaining to the status of this investigation.

18. FRESENIUS MEDICAL CARE AG & CO. KGAA

Background. Fresenius Medical Care AG & Co. KGaA is a global health care group with products and services for dialysis, hospitals, and medical care of patients at home.

The Investigation. In a Form 6-K filed October 31, 2012, Fresenius disclosed that it had received information regarding potential violations of the FCPA and other anti-bribery laws. In response, the company established an Audit and Corporate Governance Committee of the company's Supervisory Board to conduct an investigation alongside outside counsel. The company voluntarily disclosed the information it received to the DOJ and SEC.

According to a Form 6-K filed on October 26, 2015, the company indicated that it is working with independent counsel to review its anti-corruption compliance program. Fresenius also stated that, as a result of these investigations, certain conduct has been identified that could result in sanctions under the FCPA. In a Form 6-K filed on November 2, 2017, the company reported that the investigations by the SEC and DOJ remain ongoing and that it is still cooperating with the agencies. The company also reported that its internal investigation has substantially concluded and that it is discussing a resolution with the agencies. In a Form 6-K filed on August 1, 2018, the company disclosed that discussions with the SEC and DOJ are ongoing. The company further disclosed that it has set aside €200,000, a figure estimated from a range of potential outcomes based on settlement negotiations.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

17. MTS SYSTEMS CORPORATION

Background. MTS Systems Corporation is a U.S.-based company specializing in the supply of high-performance test systems and position sensors. The company is split into two divisions: the Test segment, which offers solutions related to hardware, software, and service, and the Sensors segment, which provides products to be used by industrial machinery and mobile equipment manufacturers to facilitate in the operation of their products.

The Investigation. In a Form 10-K filed November 28, 2012, the company disclosed that there have been investigations into certain expenses incurred in connection with operations in the Asia Pacific region. The company discovered potential violations of its internal procedures and policies, applicable law, and the FCPA. MTS Systems reported that it made efforts to modify its internal controls and remove the individuals implicated in the violations. Additionally, the company disclosed the investigation and its results to the SEC and DOJ on January 16, 2013, as well as to the U.S. Air Force. According to a Form 10-Q filed on August 7, 2017, the SEC and DOJ notified MTS Systems in August 2017 that they had closed their investigations without taking any action against the company.

Starting in 2014, the company also investigated business practices in China that involved similar concerns. Additionally, in November 2016, the company began an internal investigation into whether employees in China violated the company's code of conduct by working with competing businesses. The company notified the SEC and DOJ of both internal investigations. As of December 2018, no further information about the investigation has been made publicly available.

16. NCR CORPORATION

Background. Atlanta-based NCR Corporation makes automated teller machines and self-service kiosks for the retail, hospitality, travel, gaming, and entertainment industries.

The Investigation. According to an August 2012 report by the *Wall Street Journal*, an anonymous whistleblower alleged that NCR employees in China, the Middle East, and Africa were engaging in sales practices that could violate the FCPA. In a Form 8-K filed on December 3, 2013, the company disclosed that it retained outside counsel and began an internal investigation into the matter, which was subsequently completed in 2013. In response to a demand letter received from an individual shareholder on August 31, 2012, the company formed a Special Committee to investigate certain whistleblower allegations. The Special Committee also engaged outside counsel for the investigation.

The company has made a presentation to the SEC and DOJ regarding known facts of the allegations, and responded to SEC subpoenas and requests from the DOJ for documents and information pertaining to these matters. On July 28, 2015, NCR disclosed that it received a declination from the SEC on June 22, 2015 and was not being subjected to an enforcement action.

A Form 10-K filed onFebruary 26, 2018 contained the last mention of the DOJ investigation, noting that NCR's last production to the DOJ occurred in 2014. As of Decemeber 2018, no further information about the investigation's status has been made publicly available.

See Parallel Litigation Digest Number H-F25.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

15. OWENS-ILLINOIS, INC.

Background. Owens-Illinois, Inc. is a U.S.-based manufacturer of packaging products, specializing in container glass products.

The Investigation. In a Form 10-Q filed October 25, 2012, the company disclosed its investigation into certain overseas operations which may have violated the FCPA, the company's own internal policies, and various local laws. In October 2012, the company disclosed the investigations to the DOJ and SEC.

On July 18, 2013, the company received a letter from the DOJ stating that it did not intend to pursue any enforcement action and had closed its investigation. In a Form 10-Q filed on October 31, 2018, the company disclosed that the SEC investigation initiated on July 5, 2016 concluded on May 11, 2018.

14. SL INDUSTRIES INC.

Background. SL Industries Inc. is a U.S.-based company that markets, designs, and manufactures power electronics and other power equipment that is used in a variety of fields, including medicine, the military, and technology.

The Investigation. According to a Form 10-Q dated November 6, 2012, SL Industries discovered possible violations of the FCPA during an investigation into its business in China. SL Industries' SEC filings revealed that the company was concerned that several employees from the company's subsidiaries were providing improper gifts and entertainment to government officials. Upon completing its investigation, the company informed the DOJ and SEC of its findings. In response to the China investigation, the company has contacted forensic accountants and outside consultants to implement more effective FCPA compliance programs for its employees.

On September 26, 2013, the DOJ informed the company that it had concluded its inquiry without recommending any criminal charges. The company's 10-Q filing on May 3, 2016 makes no mention of a parallel investigation by the SEC. On June 1, 2016, SL Industries was acquired by Handy & Harman Ltd., whose most recent SEC filing makes no note of the SEC investigation into SL Industries. As of December 2018, no updates on the investigation have been made publicly available.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

13. W.W. GRAINGER, INC.

Background. W.W. Grainger, Inc., a company based in the U.S. with operations in Canada, Europe, Asia, and Latin America, is a distributor of maintenance, repair, and operating supplies. It focuses its business largely in motors, lighting, material handling, and other products related to industrial supply.

The Investigation. According to a Form 10-Q filed November 1, 2012, the company has been conducting an internal investigation into alleged improper activity, including the falsification of expense reimbursement forms submitted by a subsidiary, Grainger China LLC. It discovered that employees at Grainger China had been providing prepaid gift cards to certain customers. W.W. Grainger subsequently retained outside counsel to investigate potential violations of the FCPA. In January of 2012, the company voluntarily disclosed the internal investigation and agreed to fully cooperate with the DOJ and SEC.

In July 2012, the company reported that its internal investigation had not found evidence of "significant use of gift cards for improper purposes." In November 2012, the company reported that the DOJ closed its inquiry into the matter. There have been no updates provided on the status of the SEC's investigation as of December 2018.

12. WAL-MART STORES, INC.

Background. Wal-Mart Stores, Inc. is a U.S.-based multinational retailer corporation that runs chains of large discount department stores and warehouse stores.

The Investigation. In a Form 10-Q filed December 4, 2012, the company disclosed an investigation by its Audit Committee into alleged violations of the FCPA by its foreign subsidiaries, including Wal-Mart de México, S.A.B. de C.V. ("Walmex"). Initially this investigation was reported to the DOJ and SEC in November 2011. Since the commencement of the investigation, the Audit Committee has become aware of additional potential violations and begun internal investigations into a number of foreign markets where the company operates, including, but not limited to, Brazil, China, and India. The company has also disclosed these investigations to the DOJ and SEC. The Wal-Mart and Walmex scandals have been the subject of two substantial investigative articles in the *New York Times*.

According to a Form 10-Q filed on December 2, 2015, Wal-Mart has been informed by the SEC and DOJ that it is the subject of their respective investigations into potential violations of the FCPA. The filing also indicates that foreign enforcement agencies have opened investigations into potential bribery allegations at the company's foreign subsidiaries. In a Form 10-Q filed on November 30, 2018, the company stated that it has been cooperating with the DOJ and SEC, and discussions to resolve these matters have been ongoing. The company further disclosed that it reasonably estimated a probable loss and recorded an aggregate accrual of $283 million with respect to these matters.

See Parallel Litigation Digest Numbers H-A14 and H-F22.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

11. DELTA TUCKER HOLDINGS, INC. DYNCORP INTERNATIONAL LLC

Background. Delta Tucker Holdings, Inc. is a U.S. company that assists the U.S. Military, non-military U.S. governmental agencies, and foreign governments in mission-critical professional and support services, specifically law enforcement training, construction management, and development, among other services. DynCorp International LLC, a U.S. corporation and wholly-owned subsidiary of Delta Tucker, is a government service provider. DynCorp operates major programs in law enforcement training, security services, base operations, aviation, contingency operations, and logistics support.

The Investigation. According to a Form 10-Q filed on November 13, 2012, the company retained outside counsel following possible compliance issues regarding payments made on DynCorp's behalf by two subcontractors to expedite the issuance of visas and licenses from a foreign government's agencies. This matter was voluntarily brought to the attention of the DOJ and the SEC. The company reported that it cooperated with the government agencies and undertook efforts to review its internal policies and procedures.

In a Form 10-K filed on March 27, 2013, Delta Tucker disclosed that the DOJ had closed their inquiry into the matter based upon a number of factors, including, but not limited to, the voluntary disclosure by the company, the thorough investigation undertaken by the company, and the steps taken to enhance the company's anti-corruption compliance program. As of December 2017, the status of any pending SEC investigation is unknown.

In 2005, the company was served with a Grand Jury Subpoena by the DOJ with regard to work performed by Al Ghabban, a former subcontractor. In response to the Subpoena, the company provided the requested documents to the DOJ, and the matter was subsequently closed in the same year without any action taken. However, in April 2009, the company received a follow-up telephone call from the DOJ's Civil Litigation Division. Since that time, the company has had several discussions with the government regarding the civil matter. While the company is fully cooperating with the government's review, Delta Tucker Holdings believes that the likelihood of an unfavorable judgment resulting from this matter is reasonably possible. As of December 2018, the status of further investigation into Al Ghabban is unknown.

The company was advised by the DOJ Civil Litigation Division that it was conducting an investigation regarding the CivPol and Department of State Advisor Support Mission ("DASM") contracts in Iraq and Corporate Bank, a former subcontractor. The issues include allowable hours worked under a specific task order and invoices to the Department of State for certain hotel leasing, labor rates, and overhead within the 2003 to 2008 timeframe. The DOJ Civil Division has requested information from the company. According to a Form 10-K filed on March 29, 2017, the Civil Division filed a civil lawsuit against the company on July 19, 2016, for violating underlying contract terms and the False Claims Act. As of a Form 10-Q filed November 13, 2017, the lawsuit is ongoing.

10. DIALOGIC INC.

Background. Dialogic Inc., a Canadian-based corporation formerly known as Veraz Networks, Inc., is a leading developer, manufacturer, and designer of telecommunications products, including media servers, media boards, media gateways, and signaling products.

The Investigation. In a Form 10-Q filed on August 15, 2011, Dialogic disclosed having received a letter from the SEC on March 28, 2011 informing the company of an informal inquiry related to allegations of improper revenue recognition and potential FCPA violations. In connection with the request, the SEC called for the company to preserve records for review. The investigation was in connection with the former Veraz Networks Inc. prior to its merger with Dialogic in 2010. The Board of Directors appointed a committee and counsel to investigate the allegations and to make recommendations as to what further actions would be appropriate. The company stated that it would update and improve its FCPA compliance procedures at the suggestion of counsel and voluntarily produced relevant information to the DOJ as it related to the SEC inquiry.

In a Form 10-Q dated November 14, 2014, the company stated that the SEC had concluded its investigation, and based on the available information as of July 2, 2014, it did not intend to recommend an enforcement action against the company. The status of any pending investigation by the DOJ is unknown as of December 2018.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

9. MOTOROLA SOLUTIONS INC.

Background. Motorola Solutions Inc. is a U.S. company that makes two-way radios and systems for police, fire, and other public-safety organizations.

The Investigation. According to press reports in September 2011, the DOJ and SEC are investigating whether Motorola paid bribes in seven European countries.

As of December 2018, no additional information related to the ongoing FCPA investigations into Motorola has been reported.

8. SENSATA TECHNOLOGIES HOLDING N.V.

Background. Sensata Technologies Holding N.V., a U.S. corporation, develops and manufactures sensors including pressure sensors in automotive systems and thermal circuit breakers in aircraft.

The Investigation. In a Form 10-Q filed with the SEC on October 24, 2011, Sensata disclosed that an internal investigation revealed possible FCPA violations involving operating subsidiaries doing business in China. Sensata believes the findings to be immaterial and has ceased the business relationship in question. The company has voluntarily disclosed its findings to the SEC and DOJ. In a Form 10-Q filed on October 26, 2012, the company revealed that the DOJ had closed its inquiry into the matter. On February 2, 2016 in its Form 10-K, the company stated that it had not received an update from the SEC regarding the status of its inquiry. As of December 2018 there have been no updates on the status of the investigation.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

7. TATA COMMUNICATIONS LTD.

Background. Tata Communications Ltd., an Indian corporation, is a global communications company.

The Investigation. In a Form 20-F filed on October 14, 2011, Tata disclosed that an internal investigation conducted by outside counsel found evidence that a reseller for one of the company's subsidiaries may have made improper payments to government officials in Southeast Asia. As a result, Tata terminated its relationship with the reseller and a sales consultant. In April 2010, Tata voluntarily informed the DOJ and SEC of its findings. In 2014, Tata delisted its American Depository Shares from the New York Stock Exchange. As of December 2018, there are no publicly available updates on the status of this investigation.

6. SOJITZ GROUP

Background. Sojitz Group is a Japanese trading company.

The Investigation. In December 2009, Aluminium Bahrain B.S.C. ("Alba"), a company majority-owned by the government of Bahrain, filed a complaint alleging that Sojitz and its U.S. subsidiary, Sojitz Corporation of America, perpetrated fraud on Alba by bribing Alba officials to obtain illegitimate discounts on purchases of aluminum. The DOJ filed a motion to intervene in May 2010, stating that it was investigating Sojitz for potential violations of the FCPA. As of December 2018, no new information regarding the DOJ's investigation into Sojitz's potential violations of the FCPA have been reported.

See Parallel Litigation Digest Number H-E6.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

5. MERCK & CO., INC.

Background. Merck & Co., Inc., a U.S. corporation, is a pharmaceutical company that specializes in medicines, vaccines, and consumer health products.

The Investigation. In an August 6, 2010 public filing, Merck reported that it had received letters from the DOJ and SEC seeking information about activities in numerous countries. According to the filing, the company believed that this request for materials is related to a broader review of the pharmaceutical industry, and stated that it planned to fully cooperate with the DOJ and SEC in their investigations.

In a Form 10-K filed on February 27, 2014, the company received notice that the DOJ had closed its inquiry into the matter. A Form 10-K filed on February 26, 2016 makes no reference to the status of the SEC's investigation, and no updates have been made publicly available as of December 2018.

4. STR HOLDINGS, INC.

Background. STR Holdings, Inc., a U.S. corporation, specializes in solar panel encapsulation.

The Investigation. In a Form 10-Q filed November 17, 2009, STR disclosed that in late 2008, during routine monitoring of STR's internal controls, the company's internal audit staff came across possible FCPA violations. The audit staff found that from approximately 2006 to 2008, the company was responsible for making questionable payments and expenses associated with entertainment for government officials in India. Upon discovering the payments, STR's Audit Committee directed outside counsel to conduct an investigation into this matter. During the investigation, the company uncovered approximately $74,000 in additional questionable expenses since 2003 in two other jurisdictions.

After the completion of the investigation, STR reported that it made personnel changes in India and improved its FCPA-related policies and procedures. STR disclosed its investigative findings to the DOJ and SEC in 2009. The SEC informed STR that it is not subject to the SEC's jurisdiction during the relevant time period, and that the SEC did not intend to investigate this matter. According to news reports in April 2015, the DOJ's investigation is ongoing, but as of December 2018, no updates on the investigation have been made publicly available.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

3. TOTAL S.A.
NORSK HYDRO ASA

Background. Total S.A., a French company and U.S. issuer, explores for, develops, and produces crude oil and natural gas. Total also refines and markets oil and trades and transports both crude oil and finished products. Norsk Hydro ASA, a Norwegian company, is a producer of oil and gas and is the third largest supplier of aluminum in the world.

The Investigation. According to press reports, the SEC asked Total S.A. and Norsk Hydro ASA to disclose any commissions that may have been paid to government officials during the course of business in Iran. These inquiries were part of a general inquiry by the SEC into activities of oil companies in Iran between December 2004 and February 2005. Under the Iran and Libya Sanctions Act of 1996, the SEC monitors activities of companies engaged in business in Iran to ensure that anti-corruption regulations have not been violated. As of an SEC filing dated April 2006, Total S.A. disclosed that the SEC issued a non-public formal order directing a private investigation into certain oil companies (including, among others, Total S.A.) in connection with their pursuit of business in Iran. Press reports in April 2007 stated that the U.S. investigation into Total also extended into its operations in Iraq under the U.N. Oil-for-Food Program and that the authorities intended to interview the chief executive of Total.

In May 2013, Total settled the allegations by entering into a three-year deferred prosecution agreement with the DOJ and receiving a cease-and-desist order from the SEC. As of December 2018, no additional information related to the Norsk Hydro investigation has been made public.

See DOJ Digest Number B-143.
See SEC Digest Number D-120.

2. WYETH
DAIMLERCHRYSLER AG
BECKMAN COULTER, INC.
INNOSPEC INC.
AGCO CORP.
GLAXOSMITHKLINE PLC
ST. JUDE MEDICAL, INC.
WEATHERFORD INT'L LTD.
ABB LTD.
NOVO NORDISK A/S
INGERSOLL-RAND CO. LTD.
TOTAL S.A.
FIAT S.P.A.
JOHNSON & JOHNSON
TYCO INT'L LTD.
VALERO ENERGY CORP.

Background. Wyeth, a U.S. corporation, is a producer of pharmaceuticals and consumer and animal health care products. DaimlerChrysler AG, a German corporation and U.S. issuer, is a manufacturer of automobiles. Novo Nordisk A/S, a Danish corporation and U.S. issuer, is a global healthcare and pharmaceuticals company. Innospec Inc., a U.K. corporation and U.S. issuer, is a supplier of consumer and industrial chemicals. ABB, Ltd., a Swiss corporation and U.S. issuer, is an energy and automation technologies company with operations in 100 countries. Total S.A., a French company and U.S. issuer, explores for, develops, and produces crude oil and natural gas and also refines and markets oil and trades and transports both crude oil and finished products. AGCO Corporation, a U.S. corporation, manufactures and distributes agricultural equipment and related replacement parts worldwide. GlaxoSmithKline plc, a U.K. corporation and U.S. issuer, together with its subsidiaries, engages in the creation, discovery, development, manufacture, and marketing of pharmaceutical and consumer health-related products. Ingersoll-Rand Co. Ltd., a Bermuda corporation and U.S. issuer, designs, manufactures, sells, and services a range of industrial and commercial products in the United States and internationally. Johnson & Johnson, a U.S. corporation, engages in the research and development, manufacture, and sale of a variety of healthcare products worldwide. St. Jude Medical, Inc., a U.S. corporation, designs, manufactures, and distributes cardiovascular medical devices and implantable neurostimulation devices worldwide. Tyco International Ltd. a Bermuda corporation and U.S. issuer, is a manufacturer of engineered products and services and products in fire and security, electronics, healthcare and plastics. Weatherford International, Ltd., a Bermuda corporation and U.S. issuer, provides equipment and services used for the drilling, evaluation, completion, production, and intervention of oil and natural gas wells worldwide. Valero Energy Corporation, a U.S. corporation, operates as a crude oil refining and marketing company in the United States and internationally.

The Investigation. In late 2004, Wyeth, Tyco, Valero and El Paso all received subpoenas from the SEC seeking documents relating to the United Nations' now-defunct Oil-for-Food Program in Iraq. The SEC's inquiry is parallel to, but independent of, other investigations being conducted by, among others, the U.N., a federal grand jury in Manhattan, several Congressional committees, a government inquiry in Australia into the Australian Wheat Board, and other reported investigations in India and South Africa. It is believed that the SEC is investigating whether

F. ONGOING INVESTIGATIONS UNDER THE FCPA

companies paid illegal kickbacks or bribes to politicians or businessmen to get Iraqi business or dealt with companies that may have committed such violations.

According to a 10-Q filed November 10, 2011, Wyeth disclosed that they have voluntarily provided information regarding improper payments to the SEC and DOJ between subsidiaries. In August 2012, Wyeth entered into a settlement agreement with the SEC regarding improper payments allegedly made in China, Indonesia, Pakistan, and Saudi Arabia.

After the production of responsive documents to the SEC on January 10, 2005, November 8, 2005, and again on January 31, 2005, the SEC notified Tyco that, as of June 7, 2006, it was dismissing Tyco from the SEC's investigation of the U.N. Oil-for-Food Program. According to a 10-Q filing dated February 5, 2008, however, Tyco has recently discovered additional product sales that may be responsive to the SEC's order and have notified the SEC staff that the company intends to investigate the transactions. According to a 10-Q filed July 28, 2011, the company began mediation discussions with the SEC and DOJ following the conclusion of a baseline review revealing certain violations of the FCPA. In September 2012, Tyco and its subsidiaries settled allegations regarding improper payments in several countries. Tyco International entered into a deferred prosecution agreement and a settlement agreement with the SEC, and one of Tyco's subsidiaries, Tyco Valves and Controls Middle East, Inc. pleaded guilty.

As of December 2018, no information on the investigation into Valero has been made publicly available.

On February 7, 2007, without admitting or denying the allegations, El Paso settled with the SEC. El Paso agreed to pay $5,482,363 in disgorgement of profits and a civil penalty of $2,250,000.

In July 2005, the SEC supplemented the formal order of investigation to add DaimlerChrysler to the list of named companies. DaimlerChrysler also reported receiving an order from the SEC to provide a written statement and to produce certain documents regarding transactions with the U.N. Oil-for-Food Program and that it is cooperating with this request. The company also reports that the DOJ has requested information in this regard. According to a February 2008 SEC filing, a German prosecutor also commenced an investigation into Daimler's involvement in the U.N. Oil-for-Food Program. In March 2010, Daimler and its Chinese subsidiary entered into a deferred prosecution agreement with the DOJ, and Daimler's Russian subsidiary and finance subsidiary each entered a guilty plea. In April 2010, Daimler also settled a related action with the SEC.

In February 2006, AGCO received a subpoena from the SEC in connection with its investigation of the U.N. Oil-for-Food Program and was contacted by the DOJ in connection with the same matter thereafter, although no subpoena or other formal process has since been initiated by the DOJ. Similar inquiries have been initiated by the Danish and French governments regarding two of AGCO's subsidiaries. The inquiries arose from sales of approximately $58 million in farm equipment to the Iraq ministry of agriculture between 2000 and 2002. In September 2009, AGCO entered into a three-year deferred prosecution agreement with the DOJ. AGCO also settled related civil charges with the SEC and other OFF-related charges brought by the Danish State Prosecutor for Serious Economic Crimes related to contracts executed by AGCO's Danish subsidiary.

On February 7, 2006, Innospec disclosed in an 8-K that the SEC informed the company that it had commenced an investigation regarding the U.N. Oil-for-Food Program activities of the company and its Swiss indirect subsidiary, Alcor Chemie Vertriebs GmbH. A former agent of Innospec, Ousama M. Naaman, was indicted in August 2008 for FCPA violations. In a 10-Q filing dated August 5, 2009, the company, as well as its officers and directors, reasserted its commitment to cooperate with all authorities. According to a 10-Q dated November 1, 2012, Innospec noted that it had settled matters relating to investigations by U.S. and U.K. regulatory agencies under the U.N. Oil-for-Food Program, the FCPA, the U.S. Cuban Assets Control Regulations and United Kingdom anti-bribery laws.

In a 6-F filing dated February 21, 2006, Novo Nordisk disclosed that it had also received a subpoena from the SEC to produce documents related to the U.N. Oil-for-Food Program and that it intended to fully cooperate with the investigation. In April 2006, Novo Nordisk disclosed that the Danish Public Prosecutor had instituted proceedings against the company for related matters. Novo Nordisk consented to entry of judgment against it in May 2009. In May 2009, Novo Nordisk entered into a deferred prosecution agreement with the DOJ for certain actions by the company in the Iraq Oil-for-Food Program.

GlaxoSmithKline, Johnson & Johnson, St. Jude Medical, and Weatherford also received subpoenas from the SEC in February 2006 requiring the production of certain documents relating to the U.N. Oil-for-Food Program. At the time, all of the companies stated that they were cooperating with the various investigations. In 2007, the U.K. Serious Fraud Office notified GlaxoSmithKline that it was under invesgiation for the same allegations. In September 2010, the SFO notified GlaxoSmithKline that it had completed its investigation and did not intend to take further action. GlaxoSmithKline's Annual Report filed March 4, 2011 states that the DOJ and SEC investigation is ongoing, however, as of December 2018, no updates have been made publicly available. St. Jude last mentioned the investigation in a Form 10-Q filed on May 12, 2009. As of December 2018, no updates have been made publicly available. In January 2011, Johnson & Johnson and its subsidiaries settled the allegations by entering into a three-year deferred prosecution agreement with the DOJ and a settlement agreement with the SEC. In November 2013, Weatherford entered into a three-year deferred prosecution with the DOJ and a settlement agreement with the SEC. In a related settlement, Weatherfield subsidiary Weatherfield Services, Ltd. pleaded guilty to one count of violating the FCPA.

F. ONGOING INVESTIGATIONS UNDER THE FCPA

In addition, ABB also stated in its January 2006 filing that, as part of the United Nations Independent Inquiry Committee investigation of the U.N. Oil-for-Food Program, certain ABB subsidiaries are alleged to have made illicit payments to the Iraqi government under contracts for humanitarian goods. In 2010, ABB entered into a deferred prosecution agreement with the DOJ and settled civil matters with the SEC.

In December 2006, Beckman Coulter, Inc., a U.S. corporation, reported that one of its subsidiaries, Immunotech, S.A.S., had made an illicit payment to the Iraqi government and that it had reported the matter to the DOJ and SEC. According to a February 2007 SEC filing, Beckman had conducted a preliminary investigation into the allegations and had reported the matter to representatives of the DOJ and SEC. The company stated that it continues to cooperate in the matter. Beckman Coulter last mentioned the investigation in a Form 10-Q filed on May 8, 2007. As of December 2018, no updates have been made publicly available.

According to press reports in April 2007, Total is under investigation for improper payments involving Iraq and the U.N. Oil-for-Food Program, in addition to allegations regarding bribes in Iran. In May 2013, Total entered into a three-year deferred prosecution agreement with the DOJ and settled civil matters with the SEC regarding the bribes in Iran; however, the Oil-for-Food allegations were not included in the settlement. In July 2013, a French court acquitted Total and its chief executive of corruption-related charges linked to the Oil-for-Food Program.

According to a 2008 SEC filing, Ingersoll-Rand began investigating potential FCPA violations involving the U.N. Oil-for-Food Program with respect to Trane, Inc., promptly after its acquisition of Trane on June 5, 2008. The company has reported this matter and the ensuing investigation to the DOJ and SEC. The company consented to the entry of a civil injunction in the SEC action and entered into a three-year deferred prosecution agreement with the DOJ, which expired October 31, 2010. On February 16, 2011, the DOJ filed a motion to dismiss the Oil-for-Food charges against the company. On March 11, 2011, the U.S. District Court dismissed the charges.

According to press reports, several other companies based in the U.S. and abroad have also been named in related investigations or have received subpoenas directly from the SEC requesting documents and information.

On December 22, 2008, the DOJ announced that Fiat entered into a three-year deferred prosecution agreement with the DOJ and agreed to a $7 million penalty for allegedly paying kickbacks to officials of the former Iraqi government through three of its subsidiaries. In the same month, Fiat settled with the SEC and agreed to pay $5.2 million in disgorgement of profits, a $3.6 million penalty, and $1.9 million in prejudgment interest.

Related Cases. In a federal indictment in April 2005, Bay Oil U.S.A. Inc. and several individuals, including the president of Houston-based Bay Oil, David B. Chalmers, were charged with conspiracy to commit wire fraud and to engage in prohibited financial transactions with Iraq.[127] In total, it is reported that eleven people have been charged in relation to the federal investigation of the U.N. Oil-for-Food Program. These include Chalmers, the Russian diplomat Vladimir Kuznetsove, a former U.N. procurement officer Alexander Yakovlev, and Texas oilman Oscar S. Wyatt. In an October 2005 superseding indictment, Wyatt, founder of Coastal Corporation, was charged with conspiracy, wire fraud, and violations of U.S. economic sanctions against Iraq. These activities were allegedly committed in connection with David B. Chalmers of Bay Oil.[128] On October 1, 2007, Wyatt pleaded guilty to one count of wire fraud and was sentenced to one year in prison and ordered to pay $11 million in restitution. Also named in Wyatt's indictment were two Swiss business associates, Cathy Miguel and Mohameed Saidji, the Nafta Petroleum Company, the Mednafta Trading Company Ltd., and Serenco, S.A. As of January 2006, Tongsun Park, a South Korean businessman, was added to this indictment. As yet, none of the companies or individuals have been charged under the FCPA.

In another case connected to the Oil-for-Food investigation, Midway Trading, a Virginia-based company, pleaded guilty in N.Y. State Court to scheming to pay more than $400,000 in kickbacks to Iraq for oil purchases made under the U.N. Oil-for-Food Program. In the October 2005 plea deal, Midway Trading agreed to pay $250,000.[129] This scheme also involved one of its trading partners, Gulf Oil; however, details of any indictments against this company are not known. This case is of particular note because it took place in a state, rather than federal, jurisdiction.

Additionally, press statements report that Manhattan's District Attorney, Robert Morgenthau, has opened a criminal investigation into Benon Sevan, the former U.N. head of the Oil-for-Food Program. Benon Sevan resigned in August 2005 as chief of the U.N. Oil-for-Food Program amidst accusations of taking approximately $150,000 in kickbacks. According to media reports published in 2007 and 2008, Benon Sevan fled to Cyprus in 2005.

See DOJ Digest Numbers B-146, B-143, B-90, B-87, B-81, B-75, B-74, B-65, B-64, B-62, B-60, B-57, B-56, B-53, B-47, and B-31.
See SEC Digest Numbers D-123, D-76, D-75, D-66, D-59, D-55, D-50, D-49, D-45, D-44, D-41, D-35, D-31, D-26, and D-17.
See Parallel Litigation Digest Numbers H-C20, H-F12 and H-F24.

---

[127] *U.S. v. David B. Chalmers, Jr., John Irving, Ludmil Dionissie,* BayOil (U.S.A), Inc., and BayOil Supply & Trading Ltd. (S1 05 cr. 59 (DC) (April 2005).

[128] *U.S. v. David B. Chalmers, Jr., John Irving, Ludmil Dionissie*, BayOil (U.S.A), Inc., and BayOil Supply & Trading Ltd. (S2 05 cr. 59 (DC) (October 2005).

[129] State of NY v. Midway Trading, Inc. (October 19, 2005).

F. ONGOING INVESTIGATIONS UNDER THE FCPA

1. EXXON MOBIL CORPORATION
MARATHON OIL CORPORATION
HESS CORPORATION (FORMERLY AMERADA HESS CORPORATION)
CHEVRON CORPORATION (FORMERLY CHEVRONTEXACO CORPORATION)
DEVON ENERGY CORPORATION

Background. Exxon Mobil Corporation, Marathon Oil Corporation, Hess Corporation, Chevron Corporation, and Devon Energy Corporation, all U.S. corporations, are the subject of an inquiry by the SEC for alleged unlawful payments to government and senior officials of Equatorial Guinea.

The Investigation. In July 2004, the SEC began a preliminary investigation into potential bribes paid to government officials to secure petroleum sources outside the Middle East. According to published reports, even before the SEC inquiry began, other federal regulators and investigators were examining whether $700 million in Equatorial Guinean bank accounts at Riggs Bank in Washington (a subsidiary of Riggs National Corporation) were tied to possible corruption. Each of the oil companies states that it is cooperating with the SEC in its investigation.

A Senate subcommittee held a hearing on the Riggs issues and disclosed in a subsequent report that Riggs' records showed large payments by U.S. oil companies into accounts controlled by Equatorial Guinean officials and their relatives, sometimes in increments exceeding $1 million. Other payments made by oil companies pertained to land leases and purchases for government officials, expenses for the Equatorial Guinean Embassy in Washington, and educational expenses for the children of Equatorial Guinean officials studying abroad.

Marathon disclosed the SEC inquiry in a 2004 regulatory filing and noted that there "was no finding in the subcommittee's report that Marathon violated" the FCPA. As of August 1, 2005, Marathon reported receiving an SEC subpoena pursuant to a formal investigation of this issue. In February 2009, the SEC notified Marathon that it had completed its investigation and did not intend to recommend any enforcement action in this matter. Amerada Hess also reported in July 2005 that the SEC had commenced a formal investigation, requesting documents and information. According to the company's August 2005 Form 10-Q, Amerada Hess was notified that, on July 21, 2005, the SEC had commenced a private investigation into payments related to the matter. The SEC has requested documents and information related to its operations and interests in Equatorial Guinea. Up until that point, the investigation had been conducted as an informal inquiry. Amerada Hess stated that it is continuing to cooperate with the SEC investigation. According to an in-depth Human Rights Watch report on the Equatoguinean economy published in July 2009, Hess was informed by the SEC that is no longer under investigation.

In press reports and the company's November 2005 Form 10-Q filing, Devon Energy, based in Oklahoma City, reported that it was also an additional target of the SEC investigation. On August 9, 2005, Devon Energy received a subpoena issued by the SEC pursuant to a formal order of investigation. According to a November 2007 Form 10-Q filing, after responding to the SEC's initial request for information in this matter, Devon has not been contacted by the SEC. Nonetheless, Devon stated that it is committed to cooperating with relevant authorities in the event that it receives additional inquiries. According to an in-depth Human Rights Watch report, Devon was informed by the SEC that is no longer under investigation.

Exxon received a letter from the SEC in August 2004 regarding the matter. According to an in-depth Human Rights Watch report, Exxon stated that there had been no allegation or charge by any enforcement authority of any illegal activity by Exxon or its affiliates in Equatorial Guinea. As of December 2018, no information on the investigation into Exxon has been made publicly available.

Chevron received a letter from the SEC in July 2004 regarding the matter. According to an in-depth Human Rights Watch report on the Equatoguinean economy published in July 2009, when asked about the investigation, Chevron stated that its policy is not to discuss governmental inquiries. As of December 2018, no information on the investigation into Chevron has been made publicly available.

See DOJ Digest Number B-59.
See SEC Digest Number D-42.
See Parallel Litigation Digest Number H-F8

G. PRE FCPA PROSECUTIONS

G. PRE FCPA PROSECUTIONS

1. *U.S. v. J. Ray McDermott & Co. Inc.*, E.D. La., Feb. 22, 1978

2. *U.S. v. General Electric Co., et al.* (Cr. No. 80-320), D.N.J., Sept. 4, 1980

3. *U.S. v. Bethlehem Steel Corp.* (80 Cr. No. 0431), S.D.N.Y., July 24, 1980

4. *U.S. v. The Williams Companies.* (Cr. No. 78-00144), D.D.C., filed March 24, 1978
Currency and Foreign Transactions Reporting Act (transporting currency in excess of $5,000 into and out of the U.S. without proper reporting). Fine and civil penalty of $187,000.

5. *U.S. v. Control Data Corp.* (Cr. No. 78-00210), D.D.C., filed April 26, 1978
Mail fraud and Currency and Foreign Transactions Reporting Act. Fine and penalty of $1,381,000.

6. *U.S. v. Westinghouse Electric Co.* (Cr. No. 78-00566), D.D.C., filed Nov. 15, 1978
False statements to the Export-Import Bank and Agency for International Development. Fine of $300,000.

7. *U.S. v. Company* (Cr. No. 78-538), S.D.N.Y., filed July 19, 1978
Mail Fraud. United Brands paid $2.5 million in bribes to the president of Honduras in an effort to receive a reduced local tax on the exportation of bananas. The company also sought a 20 year extension of favorable terms on its Honduran properties. Fine of $15,000.

8. *U.S. v. United States Lines, Inc.* (Cr. No.)
Conspiracy to defraud the Federal Maritime Administration. Fine of $5,000.

9. *U.S. v. Sea-Land Services, Inc.* (Cr. No. 78-103), 1978
Conspiracy to defraud the Federal Maritime Administration. Fine of $5,000.

10. *U.S. v. Seatrain Lines, Inc.* (Cr. No. 78-49)
Conspiracy to defraud the Federal Maritime Administration and Currency and Foreign Transactions Reporting Act. Fines against Seatrain of $260,000 and against a subsidiary, Ocean Equipment, for $260,000.

11. *U.S. v. Lockheed Corp.* (Cr. No. 79-00270), D.D.C., filed June 1, 1979
Currency and Foreign Transactions Reporting Act, wire fraud, false statements to Export Import Bank. Fine and penalties of $647,000.

12. *U.S. v. Gulfstream Am. Corp. (formerly known as Grumman Am. Aviation Corp.)* (Cr. No. 79-00007), D.D.C., Filed June 7, 1979
False statements to Export-Import Bank and Commerce Department (Shipper's Export Declarations). Fine of $120,000.

13. *U.S. v. Page Airways, Inc.,* Fed. Sec. L. Rep. (Cr. No. 79-00273) (CCH), 96,393 D.D.C., filed April 12, 1978
Currency and Foreign Transactions Report Act. Fine and civil penalty of $52,647.

14. *U.S. v. Textron, Inc.* (Cr. No. 79-00330), D.D.C., July 1979
Currency and Foreign Transactions Report Act. Fine and civil penalty of $131,670.

15. *U.S. v. McDonnell Douglas Corp., et al.* (Cr. No. 79-516), D.D.C., Sept. 8, 1981
Mail fraud, wire fraud, conspiracy, false statements to Export-Import Bank.

H. PARALLEL LITIGATION

H. PARALLEL LITIGATION

Index of Parallel Litigation Sections:

H. PARALLEL LITIGATION

A. SECURITIES CASES

35. PLAUT V. THE GOLDMAN SACHS GRP., ET AL. (S.D.N.Y. 2018)

Background. On December 20, 2018, certain shareholders filed a class action securities complaint against The Goldman Sachs Group, Inc. and former CEO Lloyd Blankfein, former CFO Harvey Schwartz, and current CFO R. Martin Chavez. The complaint alleges that Goldman Sachs and its senior management violated the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. Plaintiffs filed this complaint in connection to the 1Malaysia Development Bhd. (1MDB) scandal in which billions of dollars were allegedly embezzled from Malaysia's state-owned development investment fund, and the allegations mirror the allegations involved in the charges brought by the DOJ against Tim Leissner and Roger Ng, Goldman Sachs managing directors.

Plaintiffs allege that Goldman Sachs made materially false and misleading statements in its annual reports filed on Form 10-K for the fiscal years 2013 through 2016 and certain of its quarterly reports from 2016 through 2018. The complaint further alleges that, following the announcement of the criminal charges against Leissner and Ng, Goldman Sachs's share price fell by 2.76%, causing injury to plaintiffs.

Status. After the complaint was filed on December 20, 2018, the case was assigned to Judge Vernon S. Broderick. The litigation is ongoing.

See DOJ Digest Number B-205.
See Parallel Litigation Number H-H6.

34. CHURCH VI V. GLENCORE PLC., ET AL. (D.N.J. 2018)[130] ROBISON V. GLENCORE PLC., ET AL. (S.D.N.Y. 2018) [131]

Background. Glencore plc is a commodity trading and mining company based in Baar, Switzerland. Shareholder plaintiffs filed two class action securities lawsuits against Glencore in the District of New Jersey and the Southern District of New York, alleging that Glencore violated the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. According to the complaints, in 2016 Glencore reviewed allegations of bribery against its partner, Israeli billionaire Dan Gertler, in the Democratic Republic of Congo. Subsequently, in May 2018 it was reported that the U.K. Serious Fraud Office had opened an investigation into Glencore for potential violations of anti-bribery laws. Additionally, according to the complaints, in July 2018 Glencore disclosed that the United States Department of Justice had issued a subpoena to one of its subsidiaries in connection to an investigation into the company's compliance with money laundering statutes and the FCPA. Plaintiffs allege that the company made materially misleading statements regarding its compliance with anti-money laundering and anti-bribery laws, and as a result were injured by stock price drops following the announcements by regulators conducting investigations into the allegations.

Status. *Church VI v. Glencore Plc.:* On September 7, 2018, plaintiffs moved to appoint Daniel Lowman lead plaintiff. That motion is pending before the district court.

Robison v. Glencore Plc.: Plaintiffs filed a notice of voluntary dismissal on September 17, 2018.

[130] *Church VI v. Glencore Plc., et al.*, No. 2:18-cv-11477 (D.N.J. 2018).

[131] *Robison v. Glencore Plc., et al.*, No. 1:18-cv-06286 (S.D.N.Y. 2018).

H. PARALLEL LITIGATION

A. SECURITIES LITIGATION

33. SCHIRO V. CEMEX, S.A.B. DE C.V., ET AL. (S.D.N.Y. 2018)[132]

Background. On March 16, 2018, shareholders of Cemex S.A.B. de C.V., a global cement and building materials company, filed a securities class action against the company and several of its senior executives for allegedly violating the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The complaint alleges that, in 2016, two executives were dismissed from the company in connection to $20 million worth of payments to secure land and mining rights in Colombia. Plaintiffs also cite to the company's disclosure of receipt of an SEC subpoena and an ongoing DOJ investigation relating to alleged improper payments. Plaintiffs alleged that Cemex made materially false or misleading statements with respect to its failure to disclose the bribery scheme in Colombia and the lack of adequate internal controls.

Status. On August 2, 2018, the plaintiffs filed an amended complaint. On September 14, 2018, the defendants moved to dismiss the amended complaint. That motion is pending before the district court.

See Ongoing Investigation Number F-101.

32. IN RE BRF S.A. SEC. LITIG. (S.D.N.Y. 2018)[133]

Background. On March 12, 2018, shareholder plaintiffs filed a class action securities lawsuit against BRF S.A., a food processing company and one of the world's largest poultry producers. The complaint alleges that BRF violated the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. According to the complaint, BRF made payments to inspectors and politicians to overlook unsanitary practices in its production plants and acquire the necessary health certifications to operate the plants. The complaint alleges that BRF made materially false or misleading statements in its annual reports for fiscal years 2012 through 2016 by failing to disclose the alleged illegal bribery scheme, which is currently being investigated by Brazilian authorities.

Status. The court ordered the appointment of the City of Birmingham Retirement and Relief System as lead plaintiff on July 2, 2018.

See Ongoing Investigation Number F-108.

[132] Schiro v. Cemex, S.A.B. de C.V., et al., No. 1:18-cv-02352 (S.D.N.Y. 2018).

[133] *In re BRF S.A. Sec. Litig*., No. 1:18-cv-02213 (S.D.N.Y. 2018).

H. PARALLEL LITIGATION

A. SECURITIES LITIGATION

31. LONGO V. OSI SYS., INC., ET AL. (C.D. CAL. 2017)[134]
DOYEL V. OSI SYS., INC., ET AL. (C.D. CAL. 2017)[135]
KERBS V. OSI SYS., INC., ET AL. (C.D. CAL. 2017)[136]
POL. RET. SYS. OF ST. LOUIS V. OSI SYS., INC., ET AL. (C.D. CAL. 2018)[137]
GENESEE CTY. EMPLOYEES' RET. SYS. V. CHOPRA, ET AL. (CAL. SUP. CT. 2018)[138]

Background. On December 7, 2017, plaintiff Cory Longo filed a securities class action lawsuit against OSI Systems, Inc., a California-based manufacturer of electronic systems and components, and its senior officers for allegedly violating the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. According to the complaint, OSIS received an Albanian government contract in 2013, which was expected to generate $150 million to $250 million in gross revenue. The complaint alleges that the award of the government contract resulted from a bribe, in which 49% of OSIS's Albanian project company was traded to a holding company for $4.50. On December 6, 2017, Muddy Waters Research released a report detailing the alleged bribe as well as a common practice of "improper sales, cash payments to government officials, [and] fraud in significant contract." The Muddy Waters report warned that OSIS ran a risk of prosecution by the Department of Justice for violating the FCPA. The complaint further alleges that the share price fell by 29% on December 6, 2017 in reaction to the Muddy Waters report. Plainitffs allege that the annual reports in Form 10-K from 2014 through 2017 possess materially false or misleading statements by failing to disclose the Albanian bribery scheme and other improper cash payments to government officials, resulting in significant harm to the share price after the release of the Muddy Waters report. Within days of Longo's complaint, two other class action lawsuits were filed against OSIS and a fourth class action securities lawsuit was filed in February of 2018.

In a separate state court action, shareholders filed a derivative suit on behalf of OSIS against its Board of Directors and senior officers for breach of fiduciary duty, corporate waste, and unjust enrichment. On May 16, 2018, shareholders brought their action in California state court. According to the complaint, OSIS disclosed on February 1, 2018 that the SEC and the Department of Justice had begun investigations into the company for the alleged bribe to obtain the Albanian contract. The complaint alleges that the share price of OSI fell by 35% in the wake of this disclosure. This derivative action arises out of the failure to file suit against the directors and senior officers of OSIS.

Status. *Longo v. OSI Sys., Inc.*: On March 1, 2018, the district court consolidated the four related securities class actions against OSIS. On July 3, 2018, the defendants moved to dismiss the consolidated class action complaint for failure to state a claim. Plaintiffs filed their response on August 30, 2018. On October 19, 2018, Judge Virginia Phillips ordered a continuance on the hearing to decide the motion to dismiss.

Genesee Cty. Employees' Ret. Sys. v. Chopra: On October 24, 2018, defendants filed a demurrer to the plaintiff's shareholder derivative complaint. The motion is pending before the state court.

---

[134] *Longo v. OSI Sys. Inc., et al.*, No. 2:17-cv-08841 (C.D. Cal. 2017).

[135] *Doyel v. OSI Sys., Inc. et al.*, No. 2:17-cv-08855 (C.D. Cal. 2017).

[136] *Kerbs v. OSI Sys., Inc., et. al.*, No. 2:17-cv-08991(C.D. Cal. 2017).

[137] Pol. Ret. Sys. of St. Louis v. OSI Sys., Inc. et al., No. 2:18-cv-00894 (C.D. Cal. 2018).

[138] Genesee Cty. Employees' Ret. Sys. v. Chopra, et al., No. BC705968 (Cal. Sup. Ct. 2018).

H. PARALLEL LITIGATION

A. SECURITIES CASES

30. WASHINGTON STATE INVESTMENT BOARD V. ODEBRECHT S.A., ET. AL. (S.D.N.Y. 2017)[139] DOUBLELINE CAPITAL LP ET. AL. V. ODEBRECHT FINANCE, LTD. ET. AL. (S.D.N.Y. 2017)[140]

Background. On October 20, 2017, plaintiff Washington State Investment Board filed a complaint against Odebrecht, S.A., a Brazil-based engineering and construction firm, alleging that the company violated the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. According to the complaint, Odebrecht paid more than $780 million in bribes to government officials in Brazil and at least eleven other countries in Central and South America and Africa between 2001 and 2016. These payments allegedly helped Odebrecht win more than 100 large construction projects worth $3.336 billion. The complaint alleges that Odebrecht failed to disclose these payments, both in its bond offering memoranda and in its financial reports, making those documents materially false and misleading. Moreover, the complaint alleges that the plaintiff purchased 163 million units of Odebrecht bonds between October 2012 and February 2015 at artificially inflated prices. The complaint alleges that after Odebrecht made a series of public disclosures revealing the extent of the unlawful payments, the value of the plaintiff's bonds declined significantly, causing damages to the plaintiff.

A separate suit stemming from the same underlying alleged conduct was filed on June 16, 2017 by plaintiffs DoubleLine Capital LP, DoubleLine Income Solutions Fund, and DoubleLine Funds Trust against defendants Odebrecht Finance Ltd., Construtora Norberto Odebrecht, S.A. ("CNO"), Odebrecht, S.A., and Odebrecht Engenharia E Construcao S.A. ("OEC").

Status. *Washington State v. Odebrecht*: On October 20, 2017, plaintiff filed its complaint in the Southern District of New York, and subsequently filed an amended complaint on February 1, 2018. Defendants filed a motion to dismiss the amended complaint on April 20, 2018. That motion is pending before the court.

DoubleLine Capital v. Odebrecht: On October 31, 2017, defendants filed a motion to dismiss DoubleLine's first amended complaint. On November 6, 2017, Washington State Investment Board filed a notice of related case, and the court found this case was not related to *Washington State Investment Board v. Odebrecht* on December 29, 2017. On November 11, 2017, plaintiffs filed a second amended complaint. On January 12, 2018, defendants filed a motion to dismiss the second amended complaint. On August 8, 2018, the court issued a memorandum opinion and order granting in part and denying in part plaintiff's motion to dismiss the second amended complaint, finding that plaintiffs adequately stated a claim under Section 10(b) and Rule 10b–5 against defendant CNO based on CNO's opinion statements regarding the reasons for its success. The court also found that plaintiffs stated a claim under DCL § 276 against CNO. Additionally, in its August 8 order, the court dismissed plaintiffs' other Section 10(b) and Rule 10b–5 claims as well as plaintiffs' fraud claim, negligent misrepresentation claim, and conspiracy claim against CNO, OEC, and Odebrecht Finance without prejudice. Furthermore, the court dismissed plaintiffs' Section 20(a) claim against OEC without prejudice, plaintiffs' DCL § 273 claim against OEC and CNO without prejudice, and plaintiffs' DCL § 276 claim against OEC.

On September 7, 2018, plaintiffs filed a third amended complaint. On December 5, 2018, defendants filed a motion to dismiss plaintiffs' third amended complaint. As of December 31, 2018, that motion is pending before the court.

See DOJ Digest Number B-178.
See Parallel Litigation Number H-A20.

[139] *Washington State Investment Board v. Odebrecht S.A., et. al.*, No. 1:17-cv-08118 (S.D.N.Y. 2017).

[140] *DoubleLine Capital LP et. al. v. Odebrecht Finance, Ltd. et. al.*, No. 1:17-cv-04576 (S.D.N.Y. 2017).

H. PARALLEL LITIGATION

A. SECURITIES CASES

29. DENENBERG V. KBR, INC., ET. AL. (S.D. TEX. 2017)[141]

Background. On May 3, 2017, shareholder plaintiffs, led by Susan Denenberg, filed a class action complaint against KBR, Inc., a Houston, Texas-based professional services provider operating in the energy and government services industries, and several of the company's former executives. The complaint alleges that the defendants violated the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder for having failed to disclose, in the company's public financial statements, potential violations of British bribery and corruption laws. On April 28, 2017, British authorities opened an investigation into the activities of KBR's UK subsidiaries for suspected offenses of bribery and corruption. Accordingly, the complaint alleges that the company's financial statements were materially false and misleading and that the shareholders, having purchased KBR securities at artificially inflated prices, were adversely affected after the public learned of the British investigation.

Status. On September 15, 2017, the court granted plaintiffs' motion naming Kanti K. Patel and Kuberbhai M. Patel as lead plaintiffs. On October 20, 2017, plaintiffs filed an amended complaint seeking a jury trial. On December 4, 2017, defendants filed a motion to dismiss plaintiffs' consolidated class action complaint. On August 31, 2018, the court granted in full defendants' motion to dismiss. On September 20, 2018, plaintiffs filed a notice of voluntary dismissal with prejudice, and the case was subsequently dismissed and terminated by the court on September 24, 2018.

See Ongoing Investigation Number F-71.

28. RUMBAUGH V. USANA HEALTH SCIENCES INC., ET AL. (D. UTAH 2017)[142]

Background. On February 13, 2017, shareholder plaintiffs filed a class action securities fraud lawsuit against USANA Health Sciences, Inc., a Utah-based company that develops, manufactures, and sells science-based nutritional and personal care products primarily to reduce the risk of chronic degenerative disease, and members of USANA's senior management. The complaint alleges that USANA violated the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. According to the complaint, USANA's BabyCare subsidiary engaged in improper reimbursement practices in China. USANA had acquired BabyCare, a China-based manufacturing company, in 2010. According to the complaint, USANA announced that it had received official government approval to sell its products in various Chinese provinces and municipalities in February of 2013. On February 7, 2017, USANA disclosed that it began an internal investigation of its operations in China, focusing on potential violations of the FCPA. The plaintiffs allege that USANA's share price fell by 11.57% in response to the disclosure. Plaintiffs allege that USANA made materially false or misleading statements by failing to disclose that the BabyCare subsidiary engaged in improper reimbursement practices, these practices constituted violations of the FCPA, its revenues were likely unsustainable, and its conduct would make USANA subject to regulatory scrutiny. The plaintiffs further allege that they suffered significant injury and harm following the company's disclosure on February 7, 2017.

Status. Lead plaintiff filed a consolidated amended complaint on August 4, 2017, which added two additional officers of USANA as defendants. On September 18, 2017, the defendants moved to dismiss the complaint. After hearing oral arguments on the motion to dismiss on April 25, 2018, the court dismissed the action with prejudice on October 16, 2018.

See Ongoing Investigation Number F-107.

[141] *Denenberg v. KBR, Inc., et. al.*, No. 4:17-cv-1375 (S.D. Tex. 2017).

[142] *Doshi v. General Cable, et. al.*, No. 1:17-cv-00092 (S.D.N.Y. 2016).

H. PARALLEL LITIGATION

A. SECURITIES CASES

27. DOSHI V. GENERAL CABLE, ET. AL. (E.D. KY. 2017)[143]

Background. On January 5, 2017, shareholder plaintiffs, led by Satish Doshi, filed a class action complaint against General Cable Corporation, a Kentucky-based manufacturer of fiber optic wire and cable products, and several of the company's executives, alleging violations of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The complaint alleges that General Cable paid millions of dollars in bribes to government officials in foreign countries, including Angola, Bangladesh, China, Egypt, Indonesia, and Thailand. On December 29, 2016, General Cable entered into a non-prosecution agreement with the U.S. Department of Justice, in which the company agreed to settle allegations that it paid bribes to officials across Africa and Asia. The complaint alleges that the company's quarterly and annual reports, as well as SEC filings, failed to disclose the company's payments to government officials and therefore were materially false and misleading. Furthermore, the complaint alleges that plaintiffs purchased General Cable securities at artificially inflated prices. Plaintiffs allege that when the public learned of General Cable's payments to the foreign government officials, the price of General Cable securities declined.

Status. On February 22, 2017, the parties agreed to transfer the case from the Southern District of New York to the Eastern District of Kentucky. On November 7, 2017, the court appointed as lead plaintiff William Edward Long, in his capacity as Trustee of the William Edward Long & Bonnie Diane Long Living Trust. On January 19, 2018, plaintiffs filed an amended complaint. On March 26, 2018, defendants moved to dismiss the amended complaint. As of December 31, 2018, defendants' motions to dismiss remain pending before the court, with oral argument scheduled for January 10, 2019.

See DOJ Digest Number B-181.
See SEC Digest Number D-166.

[143] *Doshi v. General Cable, et al.*, No. 2:17-cv-00025-WOB-CJS (E.D. Ky. 2017).

26. DAS V. RIO TINTO PLC, ET. AL. (S.D.N.Y. 2016)[144]

Background. On December 12, 2016, shareholder plaintiffs, led by Puranjay Das, filed a class action complaint against Rio Tinto plc, an international mining company, and several of the company's former executives, alleging violations of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The complaint alleges that in 2008, Rio Tinto executives made unlawful payments in excess of $10 million to the friend and advisor of the president of Guinea. The complaint alleges that these payments were intended to persuade the Guinean government to renew its joint venture with Rio Tinto, under which Rio Tinto had mined Guinean iron-ore since 1997. According to the complaint, Rio Tinto misled shareholders by stating in public financial reports that the company's internal controls and procedures were sound, when, in fact, Rio Tinto executives were aware of the unlawful payments to the Guinean adviser. The complaint alleges that Rio Tinto's share price declined after the company disclosed that several of its executives violated the company's conduct codes and the public learned about Rio Tinto's allegedly unlawful payment to the Guinean adviser, causing damages to the shareholder class.

Status. Plaintiffs filed their first amended complaint on May 30, 2017. Defendants filed a motion to dismiss on September 11, 2017. On August 31, 2018, the case was closed pursuant to the court's opinion and order granting defendants' motion to dismiss.

See Ongoing Investigation Number F-77.

[144] *Das v. Rio Tinto plc, et. al.*, No. 1:16-cv-09572 (S.D.N.Y. 2016).

H. PARALLEL LITIGATION

A. SECURITIES CASES

25. KUKKADAPU V. EMBRAER S.A., ET AL., (S.D.N.Y. 2015)[145]

Background. On August 8, 2016 a class action securities lawsuit was filed against Embraer S.A. on behalf of purchasers of Embraer's American Depositary Receipts ("ADRs") for alleged violations of U.S. Securities laws. The class action was filed after Embraer S.A. settled FCPA actions with the Department of Justice and the Securities and Exchange Commission. Embraer S.A., a Brazilian aircraft manufacturer, allegedly paid bribes through its U.S. subsidiary to secure contracts with the Dominican Air Force and state-owned entities in Saudi Arabia and Mozambique. Following the DOJ and SEC settlements, investors brought this class action, alleging that Embraer failed to disclose the bribery scheme and repeatedly made false or misleading statements regarding its future financial performance. The news that Embraer was being investigated for the bribery conduct caused the price of Embraer's investments to decline, causing harm to investors.

Status. The Employees' Retirement System of the City of Providence was appointed lead plaintiff on October 20, 2016. Defendants filed their joint motion to dismiss on June 28, 2017. On March 30, 2018, the case was closed pursuant to the court's decision and order granting defendants' motion to dismiss with prejudice.

See DOJ Digest Number B-174.
See SEC Digest Number B-162.

[145] Kakkadapu v. Embraer S.A., et al., No. 1:160cv-06277-(S.D.N.Y. 2016).

24. PARK V. COGNIZANT TECH. SOLUTIONS CORP., ET AL. (D.N.J. 2016)[146] LEE V. D'SOUZA, ET AL. (N.J. SUPER. 2016)[147]

Background. Cognizant Technology Solutions is a global business and technology services company based in New Jersey. In its September 30, 2016 8-k filing, the company disclosed that it was "conducting an internal investigation into whether certain payments relating to facilities in India were made improperly and in possible violation of the U.S. Foreign Corrupt Practices Act and other applicable laws." Cognizant stated that it had voluntarily notified the DOJ and SEC of potential violations and was cooperating fully with both agencies. On the same day as this SEC filing, Cognizant announced that its president had resigned.

Following the company's disclosures, Cognizant's share price declined over 13%, prompting three securities class actions in the District of New Jersey alleging that the company made false and misleading statements regarding its internal controls and financial reporting in prior filings. In a separate action in N.J. state court, *Lee v. D'Souza*, a shareholder accused the new CEO of the company and other executives of selling $40 million of personally held Cognizant shares at artificially inflated prices when they knew of the bribery scandal, but had not yet disclosed it to investors. The suit alleges "breaches of fiduciary duties, unjust enrichment, corporate waste and insider selling" and was filed as a derivative action on behalf of the company.

Status. *Lee v. D'Souza*: On April 26, 2017, the New Jersey Superior Court dismissed the case without prejudice.

Park v. Cognizant Tech Solutions: On June 6, 2017, defendants moved to dismiss plaintiffs' amended complaint for failure to state a claim. On September 5, 2017, defendants also moved to strike certain allegations of plaintiffs' amended complaint under Federal Rule of Civil Procedure 12(f). On August 8, 2018, the court issued an opinion denying defendants' motion to strike. The court's August 8 opinion further dismissed plaintiffs' claims based on Cognizant's Code of Conduct and Anticorruption Policy, Cognizant's statements touting low-cost services and attributing the company's financial results to legitimate business factors, and defendants' Sarbanes-Oxley Certifications. Additionally, the court dismissed with prejudice Section 10(b) claims against defendant Coburn pursuant to plaintiffs' failure to allege any material misstatement, and the court dismissed without prejudice the claims against defendants D'Souza and McLoughlin due to plaintiffs failure to allege scienter or culpable participation. The remainder of plaintiffs' claims survived defendants' motion to dismiss.

[146] *Park v. Cognizant Tech. Solutions Corp., et al.*, No. 2:16-cv-06509 (D.N.J. 2016).

[147] *Lee v. D'Souza, et al.*, No. L-8103-16 (N.J. Super. 2016).

H. PARALLEL LITIGATION

A. SECURITIES CASES

On Sept. 7, 2018, Cognizant moved to certify the court's August 8 opinion and order for an interlocutory appeal. On October 18, 2018, the court issued an order granting Cognizant's motion for certificate of appealability. The case has been stayed pending the outcome of Cognizant's appeal petition to the Third Circuit and any subsequent ruling on the question of when scienter is adequately alleged as to a corporation in the absence of scienter allegations as to the individual who made the material misstatement.

See Ongoing Investigation Number F-66.

23. GODINEZ V. ALERE INC., ET AL. (D. MASS. 2016)[148]

Background. This class action securities case arose out of DOJ and SEC subpoenas received by Alere Inc. in relation to its sales practices in Africa, Asia, and Latin America. The company disclosed the subpoenas as well as its cooperation with the SEC and DOJ in late 2015. At the same time, the company also announced that it would delay filing its annual report as it analyzed aspects of its revenue recognition and any potential implications the investigation would have on the company's internal controls over its financial reporting. Following these disclosures, the company's share price declined significantly.

The complaint alleged that defendants made false and misleading statements and failed to disclose that the company improperly recognized and reported revenue in violation of GAAP; that, as a result of this failure, its SEC filings would be delayed; that, as an additional consequence, the company's impending merger with Abbott Laboratories would be cast into doubt; that the company lacked adequate internal controls over its accounting and financial reporting; and that the company's financial statements and defendants' statements about the company were false and misleading or lacked a reasonable basis.

Status. The consolidated class action complaint was filed on September 23, 2016. Defendants moved to dismiss for failure to state a claim on November 8, 2016. On August 23, 2017, the court granted defendants' motion to dismiss for failure to state a claim with respect to all materially false or misleading statements or omissions, with the exception of statements or omissions related to INRatio, one of Alere's medical device products. The court also dismissed all claims naming Alere executive Carla Flakne as a defendant.

Defendants filed their answer to plaintiffs' amended complaint on November 3, 2017. On March 19, 2018, plaintiffs moved for class certification. On August 31, 2018, the parties filed a joint motion to stay proceedings, which was granted by the court on September 4, 2018. On November 1, 2018, the parties filed a joint status report regarding the status of their cooperative efforts to finalize a settlement for submission to the court.

See SEC Digest Number D-174.

[148] *Godinez v. Alere Inc., et al.*, No. 1:16-cv-10766 (D. Mass. 2016).

H. PARALLEL LITIGATION

A. SECURITIES CASES

22. KUX-KARDOS V. VIMPELCOM, LTD. (S.D.N.Y. 2015)[149] WESTWAY ALLIANCE CORP. V. VIMPELCOM, LTD., ET AL. (S.D.N.Y. 2015)[150]

Background. On November 4, 2015 and later December 4, 2015, two shareholders of VimpelCom common stock, filed separate securities class action lawsuits against VimpelCom and several of the company's current and former executives. According to the complaints, the company and its officers made false and misleading statements and failed to disclose material adverse facts about the company's business operations and prospects. Specifically, the complaints allege that defendants failed to disclose and concealed illegal bribes VimpelCom allegedly paid to a company controlled by the president of Uzbekistan's daughter to secure access to Uzbekistan's telecommunications market. The complaints allege that the plaintiff class suffered an economic loss when information concerning the alleged illicit payments became public and the company's share price declined to reflect its actual value.

Status. By Opinion and Order dated April 27, 2016, United States District Judge Andrew L. Carter, Jr. consolidated the two cases under the caption *In re VEON Ltd. Securities Litigation* (S.D.N.Y. 2015) and appointed Westway Alliance Corp. as lead plaintiff. Plaintiffs filed their amended complaint on December 9, 2016. Defendants filed their motion to dismiss for failure to state a claim and to plead with sufficient particularity on January 20, 2017. On September 19, 2017, the court denied defendants' motion in large part, but dismissed claims brought by shareholders who sold VimpelCom stock prior to March 12, 2014.

On February 9, 2018, a number of the individual defendants moved to dismiss the claims against them, and defendant VEON Ltd. filed its answer to the amended complaint. On March 12, 2018, an additional individual defendant moved to dismiss the claims alleged against him in the amended complaint. On August 30, 2018, the court issued an opinion and order dismissing the allegations against each individual defendant.

See DOJ Digest Number B-166.
See SEC Digest Number D-146.
See Ongoing Investigation Number F-44.
See Parallel Litigation Number H-H3

[149] *Kux-Kardos v. Vimpelcom, Ltd. et al.*, No. 1:15-cv-08672 (S.D.N.Y. 2015).

[150] *Westway Alliance Corp. v. Vimpelcom, Ltd., et al.*, No. 1:15-cv-09492 (S.D.N.Y. 2015).

21. IN RE ELETROBRAS SECURITIES LITIGATION (S.D.N.Y. 2015)[151]

Background. On August 15, 2015, the City of Providence filed a class action securities lawsuit against Centrais Elétricas Brasileiras S.A. ("Eletrobras") and its officers and directors, for multiple alleged violations of U.S. securities laws.[152] According to the complaint, the company was engaged in an illegal scheme aimed at diverting billions of dollars paid to the company, ostensibly for construction and services contracts, to Eletrobras's executives and political parties associated with the company's management. The City of Providence claimed that Eletrobras and its codefendants overstated the value of the securities by failing to disclose *inter alia* certain bribery allegations which are now the subject of investigations by Brazilian and U.S. authorities.

Status. The City of Providence was appointed as lead plaintiff on October 2, 2015 and the related stockholder actions were all consolidated under the caption *In re Eletrobras Securities Litigation*. Plaintiffs filed their amended complaint on December 8, 2015 and a second amended complaint on February 26, 2016. After full briefing of defendants' motion to dismiss, Judge John G. Koeltl granted plaintiffs' letter motion for leave to file additional briefing on the motion to dismiss.

On March 27, 2017, the court granted in part and denied in part defendants' motion to dismiss. The court dismissed all claims against former Eletrobras CEO Jose Antonio Muniz Lopez and plaintiffs' scheme liability claims under Rule 10b-5(a) and (c) against former Eletrobras executives Carvalho and Arajo. Defendants' motion to dismiss was otherwise denied. On June 30, 2017, plaintiffs moved to certify the class; defendants filed their opposition to class certification on October 6, 2017.

Before the court rendered a decision on that motion, lead plaintiffs filed an unopposed motion for settlement and a stipulation of settlement on June 29, 2018, with Eletrobras agreeing to pay plaintiffs $14.75 million. Following preliminary approval of the settlement on August 17, 2018, plaintiffs filed a motion for final approval of the class action settlement on October 31, 2018. This motion is currently pending before the court.

See SEC Digest Number D-187.
See Ongoing Investigation Number F-53.

[151] *In re Eletrobras Sec. Litig.*, No. 1:15-cv-05754 (S.D.N.Y. 2015).

[152] *City of Providence, R.I, et al. v. Centrais Elétricas Basileiras, et al.*, No. 1:15-cv-06434 (S.D.N.Y. 2015).

H. PARALLEL LITIGATION

A. SECURITIES CASES

20. IN RE BRASKEM SECURITIES LITIGATION (S.D.N.Y. 2015)[153]

Background. On July 1, 2015, shareholder plaintiffs, led by Douglas Peters, filed a class action complaint against Braskem S.A., a Brazil-based petrochemical producer, and several of the company's executives, alleging violations of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. (Braskem's American Depositary Shares trade on the New York Stock Exchange.) The complaint alleges that Braskem failed to disclose in its public financial statements alleged violations of the company's internal controls. Specifically, the complaint alleges that Braskem paid $5 million in bribes to executives at Petrobras, Brazil's state-owned oil company, between 2006 and 2012. In turn, Petrobras allegedly agreed to sell naphtha, a critical ingredient in Braskem's petrochemicals, to Braskem at reduced prices. The complaint alleges that the plaintiffs purchased Braskem securities at artificially inflated prices and that the shareholders were adversely affected when Braskem later disclosed potential violations of its internal controls and procedures. The complaint alleges that these disclosures caused the price of Braskem securities to decline significantly, causing damages to the plaintiffs.

Status. On September 8, 2015, the Southern District of New York granted plaintiffs' motion to consolidate *Peters v. Braskem S.A.* and *Vitolo v. Braskem S.A.* under the name, *In re Braskem Securities Litigation*. Moreover, the court named Boilermaker-Blacksmith National Pension Trust ("BBNPT") as the lead plaintiff. Plaintiffs filed a second amended complaint on May 20, 2016, which Braskem moved to dismiss on July 6, 2016. On March 30, 2017, the court granted in part and denied in part Braskem's motion to dismiss. Plaintiffs and Braskem reached a preliminary settlement agreement on September 14, 2017, with Braskem agreeing to pay plaintiffs $10 million. On February 21, 2018, the court held a settlement conference and entered a final judgment approving the class action settlement.

See DOJ Digest Number B-178.
See SEC Digest Number D-164.
See Parallel Litigation Number H-A29.

[153] *In re Braskem Securities Litigation*, No. 1:15-cv-05132 (S.D.N.Y. 2015).

19. IN RE PETROBRAS SECURITIES LITIGATION (S.D.N.Y. 2014)[154]

Background. On December 24, 2014, the City of Providence filed a class action securities lawsuit against Petróleos Brasileiro S.A. ("Petrobras"), its officers and directors, and several financial underwriters for multiple alleged violations of U.S. securities laws. Since the commencement of this lawsuit, dozens of plaintiffs have filed additional actions against the company making similar allegations. These cases were consolidated into *In re Petrobras Securities Litigation* on November 25, 2015. According to the amended complaint, between 2012 and 2015, Petrobras and its subsidiaries issued a number debt securities as part of a capital financing plan on the New York Stock Exchange. The City of Providence claims that Petrobras and its codefendants overstated the value of the securities by failing to disclose *inter alia* certain allegations of systematic and widespread bribery which are now the subject of investigations by Brazilian and U.S. authorities.

Status. After the actions were consolidated on November 25, 2015, a Fourth Amended Complaint was filed on November 30, 2015. The consolidated case is before Judge Jed S. Rakoff in the S.D.N.Y. Defendants filed an amended motion to dismiss on December 7, 2015. On December 21, 2015, this motion was granted with respect to certain minor claims, but was denied in all other respects. While the Court subsequently dismissed additional claims and defendants in the course of the litigation, the central securities claims remained in the case.

Judge Rakoff granted class certification on February 2, 2016. Three class representatives were appointed for two certified classes and Pomerantz LLP was named class counsel. Defendants filed an interlocutory appeal in the United States Court of Appeals for the Second Circuit on June 15, 2016 challenging the class certification. The trial, which had initially been scheduled for September 19, 2016, was stayed pending resolution of the appeal. On July 7, 2017, the Second Circuit vacated in part the district court's class certification order, decertifying investor classes asserting claims under the Exchange Act and the Securities Act. On October 31, 2017, defendants petitioned the U.S. Supreme Court to review the Second Circuit's order. Although that order was largely favorable to defendants, they allege that the Second Circuit should have decertified the remaining classes. Defendants contended that it is not administratively feasible to locate the remaining class members and that plaintiffs, in their motion for class certification, failed to show reliance on defendants' alleged misstatements.

On February 1, 2018, plaintiffs filed an unopposed motion for preliminary approval of class action settlement, with the

[154] *In re Petrobras* Sec. Litig., No. 1:14-cv-09662 (S.D.N.Y. 2014).

H. PARALLEL LITIGATION

A. SECURITIES CASES

Petrobras defendants agreeing to pay $2.95 billion and defendant PwC Brazil agreeing to pay $50 million to plaintiffs. A fairness hearing was held on February 23, 2018. The court preliminarily approved the settlement on March 1, 2018. On June 25, 2018, the court granted plaintiffs' motion for certification of the settlement class and for final approval of the settlement agreement. The court entered an order and final judgment approving the settlement on July 2, 2018.

See DOJ Digest Number B-206.
See SEC Digest Number D-185.
See Ongoing Investigation Number F-51.
See Parallel Litigation Digest Numbers H-C32 and H-C31.

18. ST. LUCIE CNTY. FIRE DIST. FIREFIGHERS' PENSION TRUST FUND, ET AL. V. BYRANT, ET AL. (S.D. TEX. 2014)[155]

Background. In November 2014, the St. Lucie County Fire District Firefighters' Pension Trust Fund filed a class action securities lawsuit against Cobalt International Energy, the company's executives and board of directors, and investment firms that assisted the company to issue securities. According to the complaint, Cobalt obtained access to Angolan oil wells by bribing high-level Angolan government officials, placing the company at risk of enforcement actions by the SEC and DOJ. During the relevant period, Cobalt, with the assistance of five investment firms, made multiple securities offerings of common stock and convertible notes without disclosing the company's FCPA risks in its offering materials and by failing to report that the Angolan oil wells it was developing contained little to no oil.

The allegations stem from an SEC investigation into the company's Angolan operations beginning in February 2012. In August 2014, the SEC broadened the scope of its investigation to include potential securities fraud allegations.

Status. Following consolidation of multiple securities claims, the plaintiffs filed an amended complaint on May 1, 2015 under the caption *In re Cobalt International Energy, Inc. Securities Litigation*.[156] Plaintiffs moved for class certification on November 2, 2016 and the court has set a deadline for responsive briefings of January 27, 2017. On June 15, 2017, the district court granted plaintiffs' motion for class certification. Defendants appealed that order to the Fifth Circuit on August 4, 2017.

On December 15, 2017, the district court entered an order staying all claims against Cobalt pursuant to its filing of a voluntary petition in bankruptcy court in the Southern District of Texas. Plaintiffs filed a notice on December 22, 2017, requesting voluntary dismissal of claims against defendant Cobalt International without prejudice. On January 24, 2018, the court denied plaintiffs' request for voluntary dismissal. On April 21, 2018, pursuant to a January 4, 2018 judgment in bankruptcy court, the stay was lifted as to all matters in the Southern District of Texas civil action.

On October 12, 2018, , plaintiffs filed a motion for preliminary approval of class action settlement, an approval hearing was held on November 1, 2018, and the district court entered an order preliminarily approving the settlement on November 2, 2018. As of October 18, 2018, appellate proceedings in the Fifth Circuit were stayed pending final approval of the settlement-related proceedings in the district court.

See Ongoing Investigation Number F-22.

---

[155] *St. Lucie Cnty. Fire Dist. Firefighters' Pension Trust Fund, et al. v. Bryant, et al.*, 14-cv-03428 (S.D. Tex. 2014).

[156] In re Cobalt International Energy, Inc. Securities Litigation , 4:14-cv-03488 (S.D. Tex. 2014).

H. PARALLEL LITIGATION

A. SECURITIES CASES

17. PARKER V. HYPERDYNAMICS CORPORATION, ET AL. (S.D. TEX. 2012)[157] GERAMI V. HYPERDYNAMICS CORP. (S.D. TEX. 2014)[158] STAHELIN V. HYPERSYNAMICS CORPORATION, ET AL. (S.D. TEX. 2014)[159]

Background. On September 30, 2013, the Houston-based oil and gas exploration company, Hyperdynamics Corporation, announced it received a subpoena from the DOJ over potential FCPA violations through its operations in Guinea. In January 2014, Hyperdynamics received a second subpoena from the SEC inquiring into similar FCPA violations. As a result of the announcements regarding the pending FCPA investigations, Hyperdynamic's joint partner in Guinea (Tullow Oil Plc) halted its joint-venture operations in March 2014 arguing that the FCPA probes constituted a force majeure event under the terms of the companies' joint operations agreement.

Immediately after Tullow Oil Plc's announcement, two Hyperdynamics shareholders filed separate class action lawsuits on March 13, 2014, and March 14, 2014, alleging that the company violated federal securities laws by failing to disclose the bribery scheme in its SEC filings and instead filed misleading statements in various quarterly and annual reports. The two cases, *Gerami* and *Stahelin* proceeded alongside a third securities class action lawsuit, *Parker v. Hyperdynamics*, for other alleged securities violations related to the company's operations in Guinea.

Status. In 2015, the plaintiffs in *Parker* unsuccessfully attempted to consolidate the three cases. After denying the *Parker* plaintiffs' motion to consolidate, the court granted Hyperdynamics' motion to dismiss in full and ordered the case dismissed with prejudice on August 25, 2015. Following the court's ruling in *Parker*, on September 16, 2015 the plaintiffs in *Gerami* filed a notice of voluntary dismissal which the court in *Germani* accepted and ordered the case terminated. In April, 2015, the *Stahelin* case was reassigned to Judge Alfred H. Bennet. *Stahelin* remained inactive until Judge Bennet entered an order of dismissal on October 7, 2016.

See SEC Digest Number D-140.

16. CADY V. KEY ENERGY SERVICES, INC., ET AL. (S.D. TEX. 2014)[160] DAVIDSON V. KEY ENERGY SERVICES, INC., ET AL. (S.D. TEX. 2014)[161]

Background. In August 2014, a pair of shareholders of the Houston-based oilfield services company, Key Energy Services, Inc. ("Key Energy"), independently filed two class action lawsuits against the company and its board of directors for violations of various securities laws. According to the complaints, the company failed to disclose certain material facts about the company's financial health, including an ongoing FCPA investigation by the SEC into the company's operations in Russia. Plaintiffs allege that they were negatively impacted when the public learned of the SEC investigation.

Status. On December 4, 2014, *Cady* and *Davidson* were consolidated into a single case. On March 31, 2016, the court granted Key Energy's motion to dismiss, but also granted the plaintiffs leave to file a second amended complaint. After plaintiffs submitted a notice of intent not to file the second amended complaint, the court issued a final judgment dismissing the action on April 26, 2016.

See SEC Digest Number D-155

[157] *Parker v. Hyperdynamics Corp.*, 4:12-cv-00999 (S.D. Tex. 2012).

[158] *Gerami v. Hyperdynamics Corp.*, 4:14-cv-00641 (S.D. Tex. 2014).

[159] *Stahelin v. Hyperdnynamics Corp.,* 4:14-cv-00649 (S.D. Tex. 2014).

[160] *Cady v. Key Energy Servs*., Inc., et al., No. 4:14-cv-02368 (S.D. Tex. 2014).

[161] *Davidson v. Key Energy Servs., Inc.*, et al., No. 4:14-cv-02403 (S.D. Tex. 2014).

H. PARALLEL LITIGATION

A. SECURITIES CASES

15. AVERY V. JUNIPER NETWORKS, INC. ET AL. (N.D. CAL. 2013)[162] WASHTENAW COUNTY EMPLOYEES RETIREMENT SYSTEM V. KRIENS, ET AL. (N.D. CAL. 2013)[163]

Background. On August 12, 2013, shareholder plaintiffs, led by plaintiff Warren Avery, filed a class action complaint against Juniper Networks, Inc. alleging violations of the Securities Exchange Act of 1934. Just prior to filing the complaint, on August 8, 2013, Juniper Networks announced that it was being investigated by the SEC and DOJ for potential violations of the FCPA. The complaint alleges that Juniper misled shareholders when it published its reports, filings, releases and statements because they failed to disclose that the Company knowingly (1) violated the FCPA, (2) derived its revenues in part by violating the FCPA, and (3) lacked effective internal controls over financial reporting. The plaintiffs believe they were negatively impacted when the public learned of the SEC and DOJ's investigation into Juniper's violation of the FCPA. The plaintiffs further allege artificial stock price inflation due to the false and misleading statements in the public filings.

Shortly thereafter, on August 25, 2013 the Washtenaw County Employees Retirement System filed a state court derivative action against Juniper Networks and its board of directors alleging, breach of fiduciary duty, abuse of control, and corporate waste. The allegations stem from the ongoing FCPA investigation into Juniper's operations in China. The complaint also claims the announcement of the SEC's and DOJ's investigations wiped "out more than $628.4 million in shareholders' equity" and that Juniper's board of directors did nothing to mitigate the losses.

Status. On October 17, 2013, *Washtenaw County Employees Retirement System* was removed to federal court in the Northern District of California. On December 10, 2013 the Court granted the plaintiffs' administrative motion in *Avery* consolidate the two cases. In the case of *Washentaw County Employees Retirement System*, the parties reached a settlement and the case was voluntarily dismissed on March 12, 2014.

See Ongoing Investigation Number F-34.

[162] *Avery v. Juniper Networks, Inc.*, No. 13-cv-3733 (N.D. Cal. 2013).

[163] Washtenaw Cnty. Emps Ret. Sys. v. Kriens, 3:13-cv-04829 (N.D. Cal. 2013).

14. CITY OF PONTIAC GENERAL EMPLOYEES RETIREMENT SYSTEM V. WAL-MART STORES, INC. (W.D. ARK 2012)[164] FOGEL V. VEGA (S.D.N.Y. 2013)[165]

Background. Wal-Mart is currently the subject of an FCPA investigation after an exposé was published in the *New York Times* on April 21, 2012 regarding alleged foreign bribery by senior Wal-Mart managers in Mexico. Several lawsuits have been filed, both derivatively and individually, in response to the allegations of foreign bribery.

The plaintiffs in *Pontiac* filed a securities class action on behalf of shareholders alleging that certain Wal-Mart officers and directors violated the Securities Exchange Act of 1934. They charged that the defendants issued materially false and misleading statements regarding Wal-Mart's rules and practices with respect to ethics by failing to disclose that it had been involved in a multi-million dollar bribery scheme at Wal-Mart's Mexican subsidiary, Wal-Mart de Mexico SAB de CV ("Walmex"), involving current and former executives. The plaintiffs charged that as a result of Wal-Mart's false statements regarding its ethics practices, the stock traded at an artificially high price and it plummeted after the news of foreign bribery came to light.

In April 2013, the plaintiffs in *Fogel* filed a securities class action on behalf of shareholders of purchasers of American Depositary Shares of Walmex against Walmex and Ernesto Vega, Chairman of the Walmex Board of Directors and Chairman of the Audit and Corporate Practices Committee of Walmex. The allegations are substantially similar to those brought in the *Pontiac* case.

Status. *Pontiac* was transferred from the Middle District of Tennessee to the Western District of Arkansas. On February 14, 2013, plaintiffs amended the complaint, limiting the defendants to Wal-Mart and the current CEO of Wal-Mart. The defendants filed a motion to dismiss the amended complaint which was later denied on September 17, 2013. Lead plaintiff City of Pontiac Employees Retirement System filed a motion for class certification on November 3, 2015, to which defendants responded on November 24, 2015. After the court granted class certification on September 20, 2016, defendant filed a petition for permission to appeal to the U.S. Court of Appeals for the Eighth Circuit. The Eighth Circuit denied this petition on November 8, 2016.

Defendants filed a motion to dismiss plaintiffs' damages claims on January 4, 2017. The district court denied that motion on September 29, 2017. On October 20, 2017, defendants filed a motion requesting that the court certify for interlocutory appeal its September 29 order denying the motion to dismiss. On September 27, 2018, the parties filed a joint motion to stay the court's ruling on defendants' motion to certify, which the court

[164] City of Pontiac Gen. Emps Ret. Sys., No. 5:12-cv-05162 (W.D. Ark. 2012).

[165] *Fogel v. Vega*, No. 1:13-cv-02282 (S.D.N.Y. 2013).

H. PARALLEL LITIGATION

A. SECURITIES CASES

subsequently granted on September 28. On October 26, 2018, the parties filed a joint stipulation of settlement and moved for the court's preliminary approval, with Wal-Mart agreeing to pay $160 million to plaintiffs. An approval hearing was held on December 4, 2018, and the court entered an order preliminarily approving the settlement on December 6, 2018.

When initially filed, *Fogel* first appeared under the caption *Egleston v. Vega, et al.* with Egleston being the mother and legal guardian of the lead plaintiff, a minor under 14 years of age. The second amended class action complaint was filed with a new lead plaintiff, Michael Fogel, on April 7, 2016, causing the caption to become *Fogel v. Vega, et al.* On February 27, 2017, the district court dismissed with prejudice plaintiffs' amended complaint for failure to state a claim and to plead with sufficient particularity. On September 4, 2017, plaintiffs filed a motion to amend the district court's order to provide that the dismissal is without prejudice; plaintiffs also filed a motion for leave to file a third amended complaint. Defendants filed their memorandum in opposition to plaintiffs' motion on October 2, 2017. The court denied plaintiffs' motion to amend the judgment on February 21, 2018. On March 7, 2018, plaintiffs appealed the court's February 27, 2017 judgment and its February 21, 2018 order to the Second Circuit. The appeal was briefed before the Second Circuit, and oral arguments were held on November 1, 2018. Litigation remains ongoing pending the Second Circuit's opinion.

See Ongoing Investigation Number F-12.
See Parallel Litigation Digest Number H-F22.

13. CITY OF BROCKTON RETIREMENT SYSTEM V. AVON PRODUCTS, INC. (S.D.N.Y. 2011)[166]

Background. On July 6, 2011, shareholder plaintiffs filed a class action complaint against Avon Products, Inc. alleging violations of the Securities Exchange Act of 1934. The complaint alleged that Avon bribed foreign officials in several countries, in violation of the FCPA. In 2008, Avon conducted an internal investigation into allegations of bribery in its China office but assured shareholders that effective internal controls were in place. However, the internal investigations discovered more widespread wrongdoing, and the shareholders alleged that they were negatively impacted when the market learned of the internal investigation. They further alleged artificial stock price inflation due to the false and misleading statements as to the legitimacy of Avon's foreign practices.

Status. The plaintiffs amended the complaint on March 16, 2012, limiting the defendants to Avon and the CIO and former CFO of Avon. The defendants filed a motion to dismiss the amended complaint on October 12, 2012. On September 29, 2014, the court granted the defendants' motion to dismiss but also granted the plaintiffs leave to amend the first amended complaint. Plaintiffs filed a motion for settlement on October 27, 2015 and a settlement conference was held before the judge on December 1, 2015. The court entered a final judgment approving the class action settlement on August 24, 2016. The court approved the class action settlement on January 3, 2017.

See DOJ Digest Number B-156.
See SEC Digest Number D-132.
See Parallel Litigation Digest Numbers H-B2 and H-F13.

[166] *City of Brockton Ret. Sys. v. Avon Prods., Inc.*, No. 1:11-cv-04665 (S.D.N.Y. 2011).

H. PARALLEL LITIGATION

A. SECURITIES CASES

12. IN RE SCICLONE PHARMACEUTICALS SECURITIES LITIGATION (N.D. CAL. 2010)[167]

Background. On October 27, 2010 the district court consolidated two class action suits against SciClone Pharmaceuticals, Inc., Friedhem Blobel, the CEO and President of SciClone, and Gary S. Titus, the CFO, Senior Vice President of Finance, and Principal Accounting Officer of SciClone. Plaintiffs allege in two separate previously filed complaints that the defendants made false and misleading statements about SciClone's financial results because they failed to disclose that they were engaged in corrupt conduct and SciClone's success was due to this wrongful conduct. In August 2010, SciClone disclosed an SEC subpoena and a letter from the DOJ investigating the sale, licensing, and marketing of its products in foreign countries, including China.

Status. On December 1, 2010, the case was voluntarily dismissed by plaintiffs, without prejudice.

See SEC Digest Number D-144.

11. JOHNSON V. SIEMENS AG (E.D.N.Y. 2009)

Background. On December 3, 2009, plaintiff filed a securities class action against Siemens AG. One year earlier, Siemens had pleaded guilty to violations of the FCPA and the Securities Exchange Act of 1934 based on bribery throughout the company's businesses. Siemens ultimately paid penalties of over $1.6 billion . Citing the plea agreements and other Siemens disclosures, the securities fraud class action alleges that from November 8, 2007 to March 17, 2008, Siemens falsely represented that it had cleaned up its business practices, when in reality its ability to generate revenue was still dependent on bribery. In the Amended Complaint filed by the newly appointed lead plaintiff on May 17, 2010, plaintiff changed its theory of liability and attempted to add control person claims against individual defendants. In the Amended Complaint, plaintiff alleged that statements made by Siemens and Siemens executives regarding Siemens's financial prospects were fraudulent because they failed to account for severe problems plaguing certain large scale "Legacy Projects."

Status. On May 10, 2011, the court dismissed the case for failure to plead a claim because the amended complaint failed to allege facts giving rise to a strong inference of scienter as required under the Private Securities Litigation Reform Act, and because an individual defendant cannot be held liable as a control person in the absence of an alleged violation of § 10(b) of the Securities Exchange Act or Rule 10b 5 promulgated thereunder.

See DOJ Digest Numbers B 123 and B 78.
See SEC Digest Numbers D 99 and D 56.
See Parallel Litigation Digest Numbers H-C27, H C24, H-D12, and H H1.

[167] *In re SciClone Pharm. Sec. Litig.*, No. 5:10-cv-03584 (N.D. Cal. 2010).

H. PARALLEL LITIGATION

A. SECURITIES CASES

10. DECCAN VALUE ADVISERS FUND L.P., ET AL. V. PANALPINA WORLD TRANSPORT (HOLDING) LTD., ET AL. (S.D. TEX. 2009)[168]

Background. On July 23, 2009, plaintiff investment funds filed a securities fraud complaint against Panalpina, its former chairman of the board, and other former top executives. Plaintiffs allege fraudulent misrepresentations and omissions about Panalpina's work as a logistics provider and freight forwarder in the oil and gas industry. Specifically, the complaint alleges that Panalpina concealed that its lucrative business in Nigeria and depended on bribes to customs officials in violation of the FCPA resulting in artificial inflation of Panalpina's stock price until the company made partial disclosures about its Nigerian business practices during 2007 and 2008.

Status. Defendants filed motions to dismiss based on jurisdiction, *forum non conveniens*, and other substantive grounds. The court dismissed the case on September 3, 2010.

See DOJ Digest Number B-112.
See SEC Digest Number D-86.

[168] *Deccan Value Advisers Fund L.P., et al. v. Panalpina World Transport (Holding) Ltd., et al.,* No. 5:09-cv-00080 (S.D. Tex. 2009).

9. IN RE UTSTARCOM, INC. SECURITIES LITIGATION[169]

Background. A class of investors who acquired securities of UTStarcom, Inc. between February 21, 2003 and October 12, 2007 sued UTStarcom and the main officers of UTStarcom alleging violations of the federal securities laws.

The complaint alleges, *inter alia*, that UTStarcom possibly violated the FCPA by bribing foreign government officials to obtain sales in China, Mongolia, India and Southeast Asia. This resulted in the unwinding of certain joint ventures, financial restatements, and continuing investigations by the DOJ and SEC. The plaintiffs allege that individual defendants, the main officers of UTStarcom, knew there were insufficient controls in place to ensure UTStarcom was not recognizing revenues on sales that were obtained by bribing foreign government officials, which would not be permissible under GAAP. In addition, the plaintiffs noted that UTStarcom, in its securities filings, stated it had become aware a former employee of UTStarcom had made a payment to a Thailand government official in possible violation of the FCPA and that company disclosures strongly infer illegal payments were made to a Mongolian government official, all of which caused UTStarcom to report false financial results in 2005.

The plaintiffs allege that UTStarcom will likely have to report additional violations of the FCPA, incur additional charges to unwind transactions, and incur additional charges to resolve the SEC and DOJ investigations. They allege that each of the individual defendants was at least deliberately reckless in representing that UTStarcom's disclosure controls and procedures were effective and that the company's financial results were fairly presented.

Status. UTStarcom filed objections to the plaintiffs' fourth amended complaint on procedural grounds, arguing that the complaint did not conform to the court's rulings concerning the form of a complaint and that the complaint impermissibly added allegations of backdating and expanded the class period. On July 24, 2008, the Northern District of California court overruled the objections, noting that the Ninth Circuit advises leniency with procedural rules when an amendment adds allegations relating to events that occurred after the initial pleading was filed. The court also quoted language from the complaint stating that the SEC and DOJ are also investigating possible violations of the FCPA. The court stayed the case until after mediation, which took place in September 2009. On May 13, 2010, the court approved a settlement of the case.

See DOJ Digest Number B-95.
See SEC Digest Number D-68.

[169] *In re UTStarcom, Inc. Sec. Litig.*, No. 04-cv-04908, 2008 WL 2949264 (N.D. Cal. July 23, 2008).

H. PARALLEL LITIGATION

A. SECURITIES CASES

8. IN THE MATTER OF WILLBROS GROUP, INC. SECURITIES LITIGATION (S.D. TEX. 2007)[170]

Background. A consolidated amended complaint was filed January 9, 2006, against Willbros Group, Inc., a Panamanian corporation, and its officers, subsequently amended April 26, 2006, on behalf of all persons who purchased or acquired publicly traded securities of Willbros. This action relates to allegations of bribery of foreign government officials in Bolivia, Nigeria, and Ecuador to obtain construction projects. On November 27, 2006, the court approved the settling parties' application for settlement set forth in the Stipulation of Settlement dated November 13, 2006. The settlement amount is in the amount of $10,500,000, which will be funded by Willbros's insurance carrier. The settlement also includes the dismissal of all claims against all defendants.

Status. On February 15, 2007, the court issued the final judgment effectuating the Stipulation. The case is closed.

See DOJ Digest Numbers B-76, B-67, B-54, and B-45.
See SEC Digest Numbers D-51 and D-28.

[170] *In re Willbros Grp., Inc.* Sec. Litig., No. 4:05-cv-01778 (S.D. Tex. 2007).

7. IN THE MATTER OF INVISION TECHS. SECURITIES LITIGATION (N.D. CAL. 2006)[171]

Background. On August 4, 2004, shareholders filed a class action complaint against InVision Technologies, Inc., a U.S. corporation, and certain of its officers and directors. Plaintiffs filed a consolidated complaint on December 9, 2004, which was subsequently amended on April 13, 2005 and February 22, 2006. Plaintiffs alleged that InVision and its CEO and CFO violated Section 10(b) of the Exchange Act and Rule 10b-5 when the defendants made misrepresentations and omissions in the company's financial statements. Specifically, plaintiffs alleged that InVision misrepresented in a merger agreement, attached to an SEC filing, that it was in compliance with all laws, including the FCPA and the books and records provision of section 13(b) of the Exchange Act, and failed to disclose that the company's foreign distributors made improper payments related to foreign sales activities in violation of the FCPA.

Status. On August 31, 2006, the court granted the defendants' motion to dismiss. On September 29, 2006, plaintiffs appealed. The Ninth Circuit issued an opinion on November 26, 2008 affirming the district court's ruling. The Court of Appeals rejected InVision's argument that the alleged misrepresentations could not be considered communications to investors because they appeared in a private merger agreement, which expressly disavowed the creation of rights or remedies in other parties, attached to an SEC filing and not in the filing itself. Although the court considered the context of the statements relevant to scienter, it disagreed that it was a *per se* bar to securities law liability. Though not discussed in the opinion, the Ninth Circuit effectively adopts the SEC's interpretation in the Report of Investigation under 21(a) of the Securities and Exchange Act of 1934 issued in connection with Titan case. That Report warned that disclosure in an SEC transactional document must be accurate and complete even if the merger provisions are merely attached to the SEC filing or incorporated by reference.

The Court of Appeals next focused on whether the plaintiffs had adequately pled facts establishing InVision's representations to be false or misleading and establishing the element of scienter. On the first point, the Ninth Circuit disagreed with the district court, which had read a knowledge element into InVision's representations of legal compliance. The Ninth Circuit found that InVision warranted that it was "in compliance in all material respects with all laws," including section 13(b) of the Exchange Act. Because the SEC cease-and-desist order of February 14, 2005 specifically found a violation of section 13(b), the Court of Appeals concluded that the plaintiffs had satisfied the pleading requirements with respect to the issue of falsity.

[171] *In re InVision Techs. Sec. Litig.,* No. 3:04-cv-03181 (N.D. Cal. 2006); *Glazer Capital Mgmt. v. Magistri, et al.,* No. 06-16899 (9th Cir. 2006).

H. PARALLEL LITIGATION

A. SECURITIES CASES

Turning to scienter, the court refused to follow the Second and Seventh Circuits in adopting a theory of "collective scienter," which would hold the company as a whole responsible for the statements contained in the merger agreement. Although the court left open the possibility that a plaintiff might be able to plead scienter under a collective theory in certain circumstances, it found that such circumstances were not present in this case due to the limited nature and unique context of the alleged misstatements, which were made months before the company began an internal investigation into alleged FCPA violations. The court then concluded that the plaintiffs had pled insufficient facts to demonstrate that CEO Sergio Magistri, who had signed the merger agreement, possessed the requisite scienter, which the court defined as "deliberately reckless or conscious misconduct." Plaintiffs had pointed to several factors to demonstrate scienter: (1) the nature of InVision's business, described as a small company with an important overseas component; (2) the fact that Magistri signed a Sarbanes-Oxley certification; (3) the fact that GE discovered the FCPA violations relatively early in the merger due diligence process; (4) Magistri's personal financial incentives to consummate the merger; and (5) the conclusions in the DOJ and SEC settlement documents, including InVision's acceptance of responsibility. However, the court found that these five factors, individually or collectively, failed to create the required "strong inference" of scienter.

Finally, the Ninth Circuit held that the district court did not abuse its discretion when it refused the plaintiffs leave to file a third amended consolidated complaint naming the former senior vice president for sales and marketing, who oversaw the department in which the illegal conduct occurred. Plaintiffs filed a petition for rehearing *en banc* on December 11, 2008, which the Court of Appeals denied on January 7, 2009.

See DOJ Digest Number B-35.
See SEC Digest Numbers D-27 and D-20.

6. IN THE MATTER OF IMMUCOR, INC. SECURITIES LITIGATION (N.D. GA. 2006)[172]

Background. On February 2, 2006, a consolidated amended complaint was filed against Immucor, Inc., a U.S. corporation, and its officers on behalf of persons who purchased the common stock of Immucor. Plaintiffs alleged fraudulent misrepresentations and omissions about alleged bribery by the company's former president and CEO, Dr Gioacchino De Chirico, and its Italian subsidiary.

Status. On October 4, 2006, the court denied Immucor's motion to dismiss, finding that the company had made material misrepresentations concerning its FCPA violations. On September 26, 2007, the court issued a final judgment granting the plaintiff's motion for final approval of class action settlement. Under the settlement, Immucor's insurance carrier will pay $2.5 million to the plaintiff class for an absolute and unconditional release of all claims against the defendants. On January 2, 2008, the court granted the motion for attorneys' fee for the plaintiff's lead counsel. The case is closed.

See SEC Digest Number D-47.

[172] *In re Immucor, Inc. Sec. Litig.*, No. 1:05-cv-02276 (N.D. Ga. 2006).

H. PARALLEL LITIGATION

A. SECURITIES CASES

5. IN THE MATTER OF NATURE'S SUNSHINE PRODUCTS SECURITIES LITIGATION (D. UTAH 2006)[173]

Background. On November 6, 2006, plaintiffs filed an amended consolidated complaint against Nature's Sunshine Products, Inc., a U.S. corporation, and its officers on behalf of all persons who purchased the common stock of Nature's Sunshine. Plaintiffs alleged that defendants issued false and misleading financial statements, failed to maintain adequate internal controls, and failed to disclose the CEO's approval of a payment in violation of the FCPA.

Status. On May 21, 2007, the court dismissed plaintiffs' Rule 10b-5(a) and (c) claims as they relate to the class period before March 15, 2005, but denied defendants' motion to dismiss in all other respects. On September 23, 2008, the court granted defendants' motion to dismiss the plaintiffs' claim of scheme liability because defendants' alleged misrepresentations to KPMG to obtain a clean audit were not disclosed to the public. A July 10, 2009 mediation between the parties resulted in settlement in principle. On February 9, 2010, the district court entered an order and final judgment certifying the action as a class action on behalf of all persons who purchased Nature's Sunshine common stock between April 23, 2002 and April 5, 2006 and approving the settlement, settlement fund of $6 million, and award of attorney fees and expenses as fair and reasonable. The settlement is not an admission or finding of wrongdoing by the defendants, and this matter is closed.

See SEC Digest Number D-63.

4. IN THE MATTER OF FARO TECHS., INC. SECURITIES LITIGATION (M.D. FLA. 2005)[174]

Background. On May 16, 2006, a consolidated amended complaint was filed, subsequently further amended February 22, 2007, on behalf of all persons who purchased or acquired the securities of FARO Technologies, Inc., a U.S. corporation. Plaintiffs allege that FARO reported, and certain corporate officers caused the company to report, false and misleading sales, gross margin and profit calculations predicated upon alleged manipulation or improper reporting of inventory levels and selling administrative expenses. In addition, plaintiffs allege that FARO overstated its revenues by reporting revenues in violation of the FCPA due to suspicious payments in China and the Asia/Pacific region in 2004 and 2005.

Status. On September 18, 2007, the court issued an order denying the defendants' motion to dismiss on the ground that the plaintiffs' amended complaint satisfies the pleading standards applicable to securities fraud actions. During the course of discovery, the parties entered mediation. On October 3, 2008, the court approved the settlement of the action for the sum of $6,875,000.

See DOJ Digest Number B-69.
See SEC Digest Numbers D-65 and D-52.
See Parallel Litigation Digest Number H-F6.

[173] *In re Nature's Sunshine Prods. Sec. Litig.*, No. 2:06-cv-267 (D. Utah 2006).

[174] *In re FARO Tech., Inc. Sec. Litig.*, No. 6:05-cv-1810 (M.D. Fla. 2005).

H. PARALLEL LITIGATION

A. SECURITIES CASES

3. MCBRIDE, ET AL. V. TITAN CORP., ET AL. (S.D. CAL. 2004)[175]

Background. A consolidated amended complaint was filed September 17, 2004, and subsequently amended July 18, 2005, against Titan Corporation, a U.S. corporation, and two corporate officers, on behalf of purchasers of company stock. Plaintiffs alleged that defendants exposed Titan to liability for FCPA violations to further the sale of tactical hand-held radios and radio consoles to foreign military and security services and that they made statements, including blanket denials of wrongdoing, designed to conceal the violations until Titan's purchase by Lockheed could be completed, allegedly with the goal of securing payments for the executives related to the purchase. Titan later pleaded guilty to FCPA violations involving payments to the President of Benin's re-election campaign to enable the company to develop a telecommunications project in Benin.

Status. The court gave preliminary approval to a proposed settlement and certified the settlement class in September 2005. The suit was settled for over $60 million and therefore dismissed in December 2005.

See SEC Digest Number D-19.
See DOJ Digest Numbers B-42 and B-33.

[175] *McBride v. Titan Corp.*, No. 3:04-cv-00676 (S.D. Cal. 2004).

2. IN THE MATTER OF SYNCOR INT'L CORP. SECURITIES LITIGATION (C.D. CAL. 2004)[176]

Background. On November 21, 2002, shareholders filed a class action against Syncor International Corp., a Delaware corporation, and several executives of Syncor and its affiliates, alleging that the executives made public statements intended to drive up the price of the company's stock to increase their bonuses, while failing to disclose the potential liabilities to the company of the company's practice of making side payments to doctors to increase sales internationally, particularly in Taiwan.

Status. After the District Court dismissed the third amended complaint with prejudice for failure to satisfy the pleading requirements of the PSLRA, plaintiffs appealed and the Court of Appeals reversed in part. The case was remanded to the District Court in late 2007, defendant Syncor filed its Answer January 17, 2008, and defendant Monty Fu filed his answer February 6, 2008. On September 22, 2008, the court preliminarily approved a settlement of the action for the sum of $15,500,000. On April 6, 2009, finding the settlement to be fair, reasonable, and adequate, the court approved $3.875 million in attorney's fees, amounting to 25% of the settlement fund, and apportioned the fees among the three firms that had represented the plaintiffs.

See DOJ Digest Number B-28.
See SEC Digest Numbers D-40 and D-15.
See Parallel Litigation Digest Number H-B1.

[176] *In re Syncor Int'l Corp. Sec. Litig.*, No. 2:02-cv-8560 (C.D. Cal. 2004).

H. PARALLEL LITIGATION

A. SECURITIES CASES

1. STICHTING TER BEHARTIGING VAN DE BELANGEN VAN OUDAANDEELHOUDERS IN HER KAPITAAL VAN SAYBOLT INT'L B.V. (FOUNDATION OF THE FORMER SHAREHOLDERS OF SAYBOLT INT'L B.V.) V. PHILIPPE S.E. SCHREIBER AND WALTER, CONSTON, ALEXANDER & GREEN P.C. (S.D.N.Y. 2001)[177]

Background. On November 18, 1999, the plaintiffs, a shareholders' committee of Saybolt International B.V., filed a complaint against an attorney and his law firm concerning the company's violation of the FCPA because of a $50,000 bribe to Panamanian officials for acquiring land in Panama. The plaintiffs alleged that the defendants committed malpractice because they failed to advise the company that its affiliate's payment of bribe in Panama could result in criminal liability. The company was prosecuted and pleaded guilty to the offense and its CEO was found guilty. On June 12, 2001, the District Court granted the defendants' motion for summary judgment. The plaintiffs appealed.

On April 21, 2003, the Second Circuit Court of Appeals vacated the District Court's judgment, finding that the company's guilty plea and the CEO's conviction did not collaterally estop the plaintiff from litigating the issue in its civil claim against the defendants. In addition, the Court of Appeals found that the definition of "corruptly" in the FCPA did not require the government to establish that the defendant in fact knew its conduct violated the FCPA to be guilty of such a violation. On remand, the District Court granted the defendants' motion to dismiss on grounds that the shareholders' committee was not a real party in interest and that the applicable law barred assignments of legal malpractice claims. After the plaintiffs appealed, the Court of Appeals certified certain questions of state law to the New York Court of Appeals.

Status. On August 12, 2005, the parties submitted a stipulation to withdraw their appeal with prejudice based on settlement of this case. The terms of settlement were not disclosed. The case is closed.

See DOJ Digest Number B-19.

[177] *Stichting Ter Behartiging Van De Belangen Van Oudaandeelhouders In Her Kapitaal Van Saybolt Int'l B.V. v. Philippe S.E. Schreiber,* 145 F. Supp. 2d 356 (S.D.N.Y. 2001), judgment vacated by 327 F.3d 173 (2d Cir. 2003), on remand to 279 F. Supp. 2d 337 (S.D.N.Y. 2003), on appeal at 407 F.3d 34 (2d Cir. 2005) and 421 F.3d 124 (2d Cir. 2005).

H. PARALLEL LITIGATION

B. ERISA CASES

3. ELEY V. GEN. CABLE CORP. (E.D. KY. 2017)[178]

Background. On March 15, 2017, participants in General Cable Corporation's retirement savings plan filed a class action complaint against the company, its retirement planning committee, and senior officers for allegedly violating their legal obligations as reasonable fiduciaries under ERISA. According to the complaint, General Cable allowed its stock to be selected as an investment option to participants in the plan although the company's stock was artificially inflated. Specifically, plaintiffs allege that General Cable should have disclosed its potential liability under the FCPA and recommended an alternate investment vehicle.

On December 22, 2016, General Cable entered into a non-prosecution agreement with the Department of Justice. The complaint relies on this settlement, and plaintiffs allege that General Cable paid millions of dollars in foreign bribes from 2003 to 2016.

Status. On September 9, 2017, defendants moved to dismiss the complaint, to which plaintiffs responded on October 19, 2017. The district court granted defendants' motion to dismiss on July 23, 2018. On August 22, 2018, the plaintiffs appealed the district court's decision to the Eleventh Circuit. The appeal is pending.

See FCPA Digest Number B-181.
See SEC Digest Number D-166.
See Parallel Litigation Number H-A27.

[178] *Eley v. Gen. Cable Corp.*, No. 2:17-cv-00045 (E.D. Ky. 2017).

2. IN RE 2014 AVON PRODUCTS, INC. ERISA LITIGATION (S.D.N.Y. 2015)[179]

Background. Two overlapping classes of employees and beneficiaries of Avon's Personal Savings Account Plan and the company's predecessor retirement account program, filed a lawsuit against the company in December 2014[180] and March 2015,[181] claiming that the company harmed employee retirement accounts by concealing FCPA violations while the plan fiduciaries kept funds invested in Avon stock. The two complaints were consolidated in April 2015.

Plaintiffs allege that the Avon plan fiduciaries were aware of Avon's FCPA violations, its program of firing or paying off potential whistleblowers, and its series of misrepresentations to the public about those violations. Additionally, plaintiffs claim that Avon's plan fiduciaries knew that the company's stock was trading at artificially high levels due to concealment of the violations, yet kept the plan funds invested in Avon stock up to and after the point in time when the information became public and the stock's price adjusted to accurately reflect its value.

Status. The two classes were consolidated in early April 2015 and co-lead counsel was appointed. The court granted preliminary approval of class certification and a class action settlement on June 7, 2016. The court approved the settlement on January 3, 2017.

See DOJ Digest Number B-156.
See SEC Digest Number D-132.
See Parallel Litigation Digest Numbers H-A13 and H-F13.

[179] *In re 2014 Avon Prods., Inc.* ERISA Litig., No. 1:14-cv-10083 (S.D.N.Y. 2015).

[180] *Poovathur v. Avon Prods., Inc., et al.,* No. 1:15-cv-10083 (S.D.N.Y. 2015).

[181] *McCoy, et al v. Avon Prods., Inc., et al*, No. 1:15-cv-01828 (S.D.N.Y. 2015).

H. PARALLEL LITIGATION

B. ERISA CASES

1. IN THE MATTER OF SYNCOR ERISA LITIGATION (C.D. CAL. 2004)[182]

Background. On February 24, 2004, participants in an employee stock ownership plan at Syncor International Corp., a Delaware corporation, filed a consolidated complaint against the company and individual defendants. Plaintiffs alleged that the company and certain board members violated their fiduciary duties under ERISA by investing in Syncor's stock while the company was engaged in a scheme to bribe foreign physicians and hospital officials in Taiwan and China to obtain business.

Status. On January 1, 2006, the District Court granted summary judgment for the defendants, finding that plaintiffs did not overcome the presumption that defendants did not breach their fiduciary duty. Plaintiffs appealed to the Ninth Circuit Court of Appeals. The appeal was argued on November 9, 2007. On February 19, 2008, the Ninth Circuit Court of Appeals reversed the decision of the District Court, finding that genuine issues of material fact existed regarding whether the defendants breached their fiduciary duty, and remanded the case to the District Court. The District Court granted the plaintiffs' preliminary motion for a class action settlement, and it approved the notice of class action settlement on August 11, 2008. The notice states the Defendants will establish a $4,000,000 settlement fund.

The District Court held a hearing on the motion for final approval of the class action settlement on October 6, 2008. The court approved the settlement on October 22, 2008.

See DOJ Digest Number B-28.
See SEC Digest Numbers D-40 and D-15.
See Parallel Litigation Digest Number H-A2.

[182] *In re Syncor ERISA Litig*., No. 2:03-cv-02446 (C.D. Cal. 2004); In re Syncor ERISA Litig., No. 03-cv-02446 (9th Cir. 2007).

H. PARALLEL LITIGATION

C. COMMERCIAL CASES

37. DIETZ, ET AL. V. LINDE GAS NORTH AM. LLC (N.Y. SUP. CT. 2018)[183]

Background. On June 18, 2018, shareholders of Spectra Gases, Inc. filed a lawsuit against Linde Gas North America, LLC for breach of contract. According to the complaint, Linde Gas, a New Jersey-based company, agreed to purchase all of Spectra's stock on December 20, 2005 for the sum of $105 million. Linde Gas failed to pay the amount due in 2010, citing Spectra's potential violation of the FCPA. Linde Gas alleges that Spectra may have violated the FCPA in connection with an investment into a boron column in Georgia. According to the complaint, Linde Gas controlled Spectra at the time of the boron column investment, and Linde Gas subsequently self-reported the investment to the Department of Justice. The Justice Department opened its own investigation into the investment. Linde Gas argues that the Justice Department found a violation of the FCPA but issued a declination letter due to Linde Gas's cooperation. This breach of contract claim arises out of the alleged failure to pay $10 million due in May of 2010.

Status. On June 28, 2018, defendants filed a motion to dismiss the complaint. The plaintiffs filed their response on July 17, 2018.

36. CWCAPITAL INVESTMENTS LLC V. CWCAPITAL COBALT VR LTD., ET AL. (NY. SUP. CT. 2018)[184]

Background. On April 30, 2018, CWCapital Investments LLC ("CWCI") filed a lawsuit against CWCapital Cobalt VR Ltd. ("Cobalt") and several other defendants, including Och-Ziff Capital Management Group LLC ("Och-Ziff), for fraudulent inducement, tortious interference, and breach of contract. According to the complaint, CWCI served as the Collateral Manager for a collateralized debt obligation issued by Cobalt. In August of 2016, Och-Ziff purchased a portion of the notes issued by the CDO structure. The complaint alleges that as part of that transaction, Och-Ziff represented that it was in compliance with the FCPA. Och-Ziff, however, entered into a deferred prosecution agreement with the DOJ, paying more than $200 million in criminal penalties. Plaintiff therefore alleges that Och-Ziff fraudulently induced CWCI into agreeing to the sale of the CDO notes by misrepresenting its compliance with the FCPA.

Status. Defendants CWCapital Cobalt and Carbolic LLC filed a motion to dismiss on May 21, 2018, to which plaintiff responded on June 1, 2018. On June 7, 2018, the Och-Ziff defendants filed their motion to dismiss the complaint. Plaintiff filed an amended complaint on July 6, 2018, and all defendants moved again to dismiss the amended complaint. These motions are pending before the state court.

See Ongoing Investigation Number F26.
See Parallel Litigation Number H-A18.

[183] *Dietz, et al. v. Linde Gas North Am., LLC*, No. 653023/2018 (N.Y. Sup. Ct. 2018).

[184] *CWCapital Investments LLC v. CWCapital Cobalt VR LTD., et al.*, No. 652092/2018 (N.Y. Sup. Ct. 2018).

H. PARALLEL LITIGATION

C. COMMERCIAL CASES

35. OTTO CANDIES LLC, ET AL. V. KPMG LLP, ET AL. (DEL. CH. 2018)[185]

Background. On June 13, 2018, shareholders and creditors of Oceanografia S.A. de C.V., once the largest offshore oil services company in Latin America, filed a claim of negligent misrepresentation against accounting firm KPMG LLP. The lawsuit alleges that Citigroup provided millions of dollars to Oceanografia in an unlawful cash advance scheme. KPMG audited both Citigroup and Oceanografia. According to the complaint, Petròleos Mexicanos, Mexico's state-owned oil and gas company, exposed the cash advance scheme in 2014 when it showed Citigroup that several Oceanografia invoices contained forged signatures. When the cash advance scheme was exposed, Oceanografia collapsed and allegedly cost the plaintiffs over $1.1 billion in damages.

The SEC conducted its own investigation of Citigroup. On August 16, 2018, the SEC announced two enforcement actions against Citigroup for violating the FCPA's books and records and internal controls provisions. The SEC fined Citigroup $10.5 million for its role in the scheme. This negligent misrepresentation claim targets KPMG's role, or lack thereof, in establishing effective internal controls to audit Citigroup and Oceanografia.

Status. Plaintiffs filed their complaint initially in the Superior Court of the State of Delaware on February 26, 2016. The case was transferred to the Delaware Court of Chancery on May 15, 2018 due to a lack of subject matter jurisdiction. Plaintiffs re-filed their complaint on June 13, 2018. On November 7, 2018, the court heard oral arguments over defendants' motion to dismiss. The motion is pending before the state court.

34. EIG ENERGY FUND XIV L.P., ET AL. V. KEPPEL OFFSHORE & MARINE LTD. (S.D.N.Y. 2018)[186]

Background. On February 6, 2018, EIG Global Energy Partners filed a civil RICO claim against Keppel Offshore & Marine, a Singaporean developer of drillships and shipyard owner. The complaint alleges that Keppel participated in an unlawful bribery scheme in Brazil, working alongside Petròleo Brasileiro S.A. (Petròbras), the state-owned oil company, and the Workers' Party of Brazil, to acquire government contracts to build drillships, citing the company's DPA it entered into with the DOJ in December 2017. Plaintiffs seek recovery of lost investment, treble damages, and attorneys' fees under RICO.

Status. On April 30, 2018, plaintiffs filed their first amended complaint. On August 24, 2018, defendant filed a motion to dismiss the first amended complaint. As of December 2018, this motion remains pending before the court.

See DOJ Digest Number B-196.

[185] *Otto Candies, LLC, et al. v. KPMG LLP, et al.*, No. 2018-0435 (Del. Ch. 2018).

[186] *EIG Energy Fund XIV L.P., et al.* v. Keppel Offshore & Marine Ltd., No. 1:18-cv-01047, (S.D.N.Y. 2018)

H. PARALLEL LITIGATION

C. COMMERCIAL CASES

33. CECIL (BEIJING) SCIENCE AND TECHNOLOGY CO., LTD. V. MISONIX, INC., ET. AL. (E.D.N.Y. 2015)[187]

Background. On March 3, 2017, Beijing-based corporation Cecil filed suit against Misonix, Inc. and certain of its executives in federal court, alleging unfair competition and interference with contractual relations with existing and future customers. During the relevant time, Cecil served as a sole distributor of certain of Misonix's medical device products in China. Cecil alleges that Misonix intentionally and improperly terminated its contract, and Misonix enriched itself by assuming the distribution network developed by Cecil. Further, Cecil alleges that certain filings Misonix made with the SEC insinuated that Cecil may have engaged in unlawful activity under the FCPA, which Cecil believes damaged its reputation and caused it to lose business.

Status. On April 5, 2017, plaintiff filed its amended complaint. On May 19, 2017, Misonix filed a motion to dismiss all counts listed in Cecil's complaint. On October 7, 2017, District Judge Arthur D. Spatt granted the dismissal of Cecil's claims for unfair competition, tortious interference with existing and future contracts, conversion, and fraudulent inducement. The court, however, denied Misonx's motion to dismiss Cecil's breach of contract claim. On November 2, 2017, Misonix filed its answer to the amended complaint. On October 16, 2018, plaintiff filed its second amended complaint. As of December 2018, litigation is still pending.

See Ongoing Investigation Digest Number F-69.

32. EIG ENERGY FUND XIV, L.P., ET AL V. PETROLEO BRASILIERO S.A. (D.D.C. 2016)[188]

Background. Energy Intelligence Group, LLC and eight of its managed funds claim that Petrobras—Brazil's state-owned petroleum company—and various other companies, including shipyard operator Odebrecht S.A., fraudulently misled the firm into investing over $221 million to purchase equity of a now-bankrupt Petrobras affiliate Sete Brasil Participacoes S.A. The complaint alleges that the confidential memoranda provided to EIG by Petrobras in connection with soliciting investment in Sete contained material misstatements and failed to disclose that Petrobras had already been engaged for years in a massive bribery and kickback scheme.

Status. EIG filed its complaint against Petrobras on February 23, 2016. EIG filed an amended complaint on May 18, 2016, adding Odebracht SA and other shipyard companies as defendants. All of the defendants filed motions to dismiss in August 2016. On March 30, 2017, the court granted most of defendants' motion to dismiss, leaving only plaintiffs' fraud and aiding-and-abetting claims against defendant. On April 21, 2017, defendant s filed a notice of appeal with the D.C. Circuit, contending that the district court should have dismissed plaintiffs' full complaint. On April 27, 2017, the district court stayed the matter pending the resolution of defendants' appeal.

On July 3, 2018, the D.C. Circuit issued an opinion affirming the judgment of the district court. On August 2, 2018, Petrobras filed for a rehearing en banc, which the D.C. Circuit denied on October 1, 2018. The district court lifted its stay following the D.C. Circuit's October 9, 2018 mandate, and defendant filed its answer to the amended complaint on December 4, 2018. Litigation remains ongoing as of December 2018.

See DOJ Digest Number B-206.
See SEC Digest Number D-185.
See Ongoing Investigation Number F-51.
See Parallel Litigation Digest Numbers H-A19 and H-A31.

[187] *Cecil (Beijing) Sci. and Tech. Co., Ltd., et al.*, No. 2:17-cv-01642 (E.D.N.Y. 2017).

[188] *EIG Energy Fund XIV, L.P., et al. v. Petroleo Brasileiro S.A.*, No. 1:16-cv-0033 (S.D.N.Y. 2016).

H. PARALLEL LITIGATION

C. COMMERCIAL CASES

31. HUXLEY CAPITAL CORPORATION V. OAS S.A., ET AL. (S.D.N.Y. 2015)[189]

Background. On March 5, 2015, plaintiff filed a complaint alleging that the defendant, OAS S.A., a large Brazilian construction company, participated in a complex scheme of fraud associated with Brazil's state-owned oil company Petróleo Brasileiro S.A. ("Petrobras"). The complaint alleges that OAS charged exorbitant fees in its construction contracts with Petrobras and funneled kickbacks to Petrobras executives and high-level Brazilian politicians. The complaint further alleges that when the Petrobras scandal came to light, OAS's access to capital was cut off and the desperate company responded by defrauding its creditors, including plaintiff. While the complaint does not specifically contain FCPA or bribery related allegations, it mentions that Brazilian federal prosecutors have accused OAS of bribery in connection with Petrobras contracts.

Status. After the exchange of preliminary discovery motions, plaintiff filed an amended complaint on June 22, 2015. Defendant filed a motion to dismiss on July 13, 2015, which was withdrawn by court order on October 20, 2015 pursuant to a temporary stay requested by the parties. The ninety-day stay on proceedings was scheduled to end on January 11, 2016 but has since been extended multiple times, most recently setting the expiry date for March 13, 2019.

See DOJ Digest Number B-206.
See SEC Digest Number D-185.
See Ongoing Investigation Number F-51.
See Parallel Litigation Digest Numbers H-A19.

30. PETRÓLEOS MEXICANOS, ET AL. V. HEWLETT-PACKARD COMPANY, ET AL. (N.D. CAL. 2014)[190]

Background. On December 2, 2014, the Mexican state-owned oil company, Petróleos Mexicanos ("Pemex"), filed suit against Hewlett-Packard and its Mexican subsidiary for various violations of RICO and other related tort claims. Stemming from an FCPA investigation and enforcement action against HP which was announced in April 2014, Pemex alleges that HP engaged in a conspiracy to bribe high-level Pemex officials in exchange for lucrative contracts. According to Pemex, the contracts were inflated as a result of HP's bribery scheme and that Pemex suffered millions of dollars in harm as a result. In addition to the conduct in Mexico, Pemex highlights the DOJ's and SEC's enforcement actions against HP for improper payments made to Russian and Polish officials, citing the additional bribery schemes as evidence of a "global labyrinth of bribery." According to Pemex, in bribing the Pemex official, HP violated various federal laws including the federal money laundering statute (18 U.S.C. § 1956), Travel Act (18 U.S.C. § 1952), and wire fraud statue (18 U.S.C. § 1952). Pemex argued that any one of these violations is sufficient to establish a cause of action under RICO against HP.

Status. On November 4, 2015, the parties jointly filed a stipulation of dismissal agreeing that the case should be dismissed with prejudice. The case is now closed.

See DOJ Digest Number B-153.
See SEC Digest Number D-126.
See Parallel Litigation Digest Number H-F27.

[189] *Huxley Capital Corp. v. OAS, S.A., et al.*, No. 15-cv-01637 (S.D.N.Y. 2015).

[190] *Petróleos Mexicanos, et al. v. Hewlett-Packard Co., et al.*, No. 14-cv-05292 (N.D. Cal. 2014).

H. PARALLEL LITIGATION

C. COMMERCIAL CASES

29. RIO TINTO PLC V. VALE, S.A., ET AL. (S.D.N.Y. 2014)[191]

Background. On April 30, 2014, the British-Australian multinational metals and resource extraction company, Rio Tinto Plc ("Rio Tinto") filed a complaint in the Southern District of New York against the Vale S.A. ("Vale"), BSG Resources Limited ("BSGR") (along with BSGR's subsidiaries and employees/agents), the former Guinean Minister of Mines, the wife of the former president of Guinea. The complaint alleges that Vale and BSGR violated RICO and defrauded Rio Tinto, by engaging in a scheme to steal a valuable mining concession that Rio Tinto had been developing in Simandou region of Guinea for approximately 11 years.

Rio Tinto argues that Vale, using proprietary information provided during negotiations over the sale of certain mining rights in Guinea, paired with BSGR to misappropriate Rio Tinto's mining concessions in Guinea. The two companies allegedly planned to use Rio Tinto's proprietary information to develop the mining concession to their benefit.

According to the complaint, BSGR facilitated bribes to Guinean authorities to convince those officials to revoke Rio Tinto's mining rights in favour of BSGR. In December 2008, the Guinean government rescinded Rio Tinto's mining rights in the country and awarded the concession to BSGR. Approximately six months later, Vale purchased a majority share in BSGR's Guinean subsidiary for $2.5 billion, $500 million of which was allegedly used to bribe the Guinean Minister of Mines.

In January 2013, the United States initiated its own investigation into how BSGR obtained such lucrative mining rights in Guinea. Several other countries, including the United Kingdom, France, Guinea, Switzerland, and Guernsey had also initiated investigations into BSGR's operations. In April 2014, the Guinean government completed its investigation and concluded that BSGR won the mining concession through bribery and subsequently revoked Vale's and BSGR's mining rights.

Status. On January 7, 2015, the court entered a default entry against Frederic Cilins, an agent/employee of BSGR, for his failure to respond to Rio Tinto's complaint. Similarily, on October 23, 2015, the court entered a default entry against Madame Toure, the wife of the former president of Guinea, for her failure to answer Rio Tinto's complaint.

Earlier the same year, on February 6, 2015, Vale, BSGR, and Mahmoud Thiam jointly filed a motion to dismiss asserting that Rio Tinto's claims are time-barred and its complaint fails to state a claim for relief. On November 20, 2015, the court granted the defendants' motion to dismiss, ordering the plaintiffs' federal law claims be dismissed with prejudice and the plaintiffs' state law claims without prejudice. The case is now closed.

See DOJ Digest Number B-140.
See Ongoing Investigation Number F-38.
See Parallel Litigation Digest Number H-E7.

[191] *Rio Tinto v. Vale, S.A., et al.*, No. 14-cv-3042 (S.D.N.Y.2014).

28. WYNN RESORTS, LTD. V. OKADA (D. NEV. CLARK COUNTY 2012)[192] OKADA V. WYNN RESORTS, LTD. (D. NEV. 2013)[193]

Background. On February 19, 2012, Wynn Resorts filed a complaint against Kazuo Okada, a member of its board of directors, for breach of fiduciary duties. The complaint alleges that Okada violated the FCPA in the course of his independent development of a casino in the Philippines. Wynn Resorts averred that by engaging in such conduct while he was a director of Wynn Resorts, Okada directly damaged the interests of Wynn Resorts. Specifically, Wynn Resorts alleged that Okada's alleged violations of the FCPA placed Wynn Resorts' casino license in jeopardy, and, by doing so, Okada breached his fiduciary duties by failing to protect and advance Wynn Resort's interests. Wynn Resorts also alleges that Okada independently breached his fiduciary duties when he (1) failed to disclose to and cooperate with Wynn Resort's investigators regarding his business activities in the Philippines and (2) when he refused to attend director training sessions on compliance with all applicable laws and avoidance of corruption.

On January 24, 2013, Okada filed a complaint against Wynn Resorts alleging violations of the Securities Exchange Act of 1934. On January 3, 2013, Wynn Resorts issued a proxy statement to announce that the Board of Directors had called a Special Meeting of the Company's shareholders. The proxy statement sought the shareholder's approval to remove Okada from the board. The complaint alleges that in recommending that the shareholders vote to remove Okada, the proxy statement made numerous false and misleading statements and omitted material facts. The complaint further alleges that the false and misleading statements usurped the shareholders' right to make an informed decision regarding corporate governance and were a deliberate effort to deceive shareholders.

Status. On February 11, 2013, Okada's motion to dismiss was denied without prejudice. On April 8, 2013, the United States filed a motion in the *Wynn Resorts* case to intervene and for temporary and partial stay of discovery. The court granted the government's motion on May 2, 2013 for the limited purpose of requesting a stay of discovery. On March 12, 2018, Wynn Resorts moved to voluntarily dismiss all its claims against Okada. The parties filed a stipulation and order for dismissal with prejudice on April 16, 2018, and the case is now closed.

The *Okada* litigation was terminated when, on March 4, 2013, Okada voluntarily dismissed his case without prejudice.

See Ongoing Investigation Number F-27.

[192] *Wynn Resorts, Ltd. v. Okada*, No. A-12-656710-B (D. Nev. Clark Cnty. 2012).

[193] *Okada v. Wynn Resorts, Ltd.*, No. 13-cv-136 (D. Nev. 2013).

H. PARALLEL LITIGATION

C. COMMERCIAL CASES

27. CONPROCA S.A. DE C.V. V. PETRÓLEOS MEXICANOS (S.D.N.Y. 2011)[194] PETRÓLEOS MEXICANOS, ET AL. V. CONPROCA S.A. DE C.V., ET AL. (S.D.N.Y. 2012)[195]

Background. In 1997, Siemens Aktiengesellschaft ("Siemens"), SK Engineering & Construction Co. Ltd. ("SK"), by way of their joint venture entity and CONPROCA S.A. de C.V. ("CONPROCA"), were awarded an oil refinery modernization contract in the Cadereyta region of Mexico in exchange for allegedly making various illicit payments to officials at Petróleos Mexicanos and Pemex-Refinanción (collectively "Pemex") Over the course of the project, CONPROCA allegedly continued to bribe Pemex officials to maintain their engagement despite ongoing problems with the joint venture entity's performance. As a result of these bribes, the continued engagement of CONPROCA allegedly cost Pemex millions of dollars in damages due to the selection of an inadequate contractor, the acceptance of harmful contractual terms, and the acceptance of significant cost overruns.

Beginning in 2001 CONPROCA iniated ICC arbitration in Mexico against Pemex, claiming that Pemex was responsible for millions in cost overruns and delays. In response, Pemex alleged that the costs overruns and delays were due CONPROCA's own faulty management, which had been prolonged by its bribes to Pemex officials. In April 2012, the arbitral tribunal awarded CONPROCA approximately $530 million (disputed by the parties) in damages which CONPROCA sought to enforce in New York federal court. Pemex challenged the arbitral award in the Mexican Courts which entered an anti-suit injunction requiring CONPROCA to refrain from commencing any action aimed at enforcing the award in Mexico and abroad on December 11, 2012.

Thereafter, on December 12, 2012, Pemex filed a complaint against Siemens, SK, and CONPROCA for violations of the Travel Act and the Racketeer Influenced and Corrupt Organizations Act (RICO) resulting from the alleged acts of bribery by the defendants.

In April 2013, Pemex dismissed its claims against CONPROCA for unstated reasons, leaving Siemens and SK as the sole defendants in the matter. For their part, Siemens and SK filed a motion to dismiss which, in part, alleged that Pemex's claims were extraterritorial in nature and therefore were beyond the authority of the two statutes. Pemex later filed an amended complaint, dropping the Travel Act claim and included details from the testimony of Siemens Mexico's former general counsel confirming that the company paid $2.6 million to an unnamed official at Pemex.

Status. On July 30, 2013, Judge Louis Stanton dismissed Pemex's December 12, 2012 complaint on the grounds that Pemex had failed to demonstrate that the claims had sufficient contact with the United States and thus were beyond the scope of the statutes. According to Judge Stanton, "[t]he Rico claims here are extraterritorial: they allege a foreign conspiracy against a foreign victim conducted by foreign defendants participating in foreign enterprises."

On October 17, 2013, the New York federal court overseeing CONPROCA's effort to enforce its $530 million arbitral award stayed the matter in light of the ongoing proceedings before the Mexican courts. Nearly a year later, on August 1, 2014, the Fourth Collegiate Court on Civil Matters in Mexico issued an opinion, declining to set aside the arbitral tribunal's final award. Although PEMEX appealed the lower court's decisions to the Supreme Court of Justice of Mexico, Conproca filed a motion in the S.D.N.Y. to mandate that Pemex post security pending the stay of enforcement proceedings or, in the alternative lift the court's stay. On December 11, 2014, Judge Stanton of the S.D.N.Y. ordered PEMEX to post security in the amount of $592,926,082.74 but declined to lift the stay and confirm the arbitration award. On July 8, 2015, the parties reached an undisclosed settlement and filed a stipulation agreeing to dismiss the case with prejudice. The case is now closed.

See DOJ Digest Numbers B-123 and B-78.
See SEC Digest Numbers D-99 and D-56.
See Parallel Litigation Digest Numbers H-A11, H-C24, H-D12, and H-H1.

[194] *Conproca S.A. de C.V v. Petróleos Mexicanos*, No. 11-cv-9165 (S.D.N.Y. 2011).

[195] *Petróleos Mexicanos v. Conproca S.A. de C.V.*, No. 12-cv-9070 (S.D.N.Y. 2012).

H. PARALLEL LITIGATION

C. COMMERCIAL CASES

26. NEWMARKET CORP. AND AFTON CHEMICAL CORP. V. INNOSPEC INC. AND ALCOR CHEMIE VERTRIEBS GMBH (E.D. VA.)[196]

Background. On July 23, 2010, NewMarket Corporation and Afton Chemical Corporation filed a complaint against Innospec Inc. and Alcor Chemie Vertriebs GmbH. Plaintiffs filed a second amended complaint on January 27, 2011. The action arose from Innospec's guilty pleas in which it admitted violations of the FCPA by bribing government officials in Iraq and Indonesia to ensure ongoing sales in those countries of tetraethyl lead, an octane-boosting fuel additive. Plaintiffs alleged that the defendants' actions harmed the plaintiffs' sale of a competing and alternative octane-boosting fuel additive, methylcyclopentadienyl manganese tricarbonyl. Plaintiffs alleged unlawful conspiracies in restraint of trade in violation of the Sherman Act, unlawful commercial bribery in violation of the Robinson-Patman Act, unlawful conspiracy in restraint of trade in violation of the Virginia Antitrust Act, unlawful commercial bribery in violation of the Virginia Antitrust Act, and unlawful conspiracy to injure another in its trade or business in violation of the Virginia Business Conspiracy Act.

Status. On September 22, 2011, the action was dismissed after all parties agreed to stipulate to the dismissal with prejudice.

See DOJ Digest Number B-98.
See SEC Digest Number D-70.

25. HUCK V. PFIZER (S.D. CAL. 2008)[197]

Background. On June 13, 2008, plaintiff James Huck filed a breach of contract and fraud action against Pfizer, Inc., based on human resources consulting services Huck provided to Pfizer. That action, originally filed in the Superior Court of California, San Diego County, was removed to federal court on July 16, 2008.

In its 10-K filed February 26, 2010, Pfizer disclosed that the company is voluntarily cooperating with the SEC and DOJ with investigations into the sales activities in certain countries outside the United States. While the complaint in this case did not initially refer to the FCPA, on February 22, 2010, plaintiff sought, and was granted, leave to amend his complaint to allege that his relationship with Pfizer was terminated by Pfizer because he had discovered and reported what he believed to be violations of the FCPA to Pfizer.

Status. On July 25, 2011, Pfizer was granted summary judgment as to some of the fraud claims (intentional misrepresentation and concealment) but summary judgment was denied in all other respects. Close of discovery was set for November 9, 2011, and a mandatory settlement conference was held on December 14, 2011.

Pursuant to a settlement agreement, the parties filed a joint motion to dismiss the case with prejudice. Their motion was granted on October 11, 2012.

See DOJ Digest Number B-135.
See SEC Digest Number D-111.
See Parallel Litigation Digest Number H-C14.

[196] *NewMarket Corp. and Afton Chemical Corp. v. Innospec Inc. & Alcor Chemie Vertriebs GmbH*, No. 3:10-cv-00503 (E.D. Va. 2010).

[197] *Huck v. Pfizer, et al.*, No. 3:08-cv-01277 (S.D. Cal. 2008).

H. PARALLEL LITIGATION

C. COMMERCIAL CASES

24. HIDALGO, ET AL. V. SIEMENS AKTIENGESELLSCHAFT, ET AL. (S.D. FLA. 2011)[198]

Background. On January 11, 2011, plaintiffs Carlos A. Moran Hidalgo ("Hidalgo") and Celina Liliana Moran filed a complaint against Siemens Aktiengesellschaft, Siemens S.A., and two Siemens officers, under the Alien Tort Statute of 1789, alleging attempted extrajudicial killing, torture, cruel, inhuman or degrading treatment or punishment, and crimes against humanity. Plaintiff alleged this claim derived from conduct forming the basis of the criminal convictions in *United States v. Siemens Aktiengesellschaft*, (D.D.C 2008). Plaintiffs alleged that Siemens conspired with or aided and abetted individuals with influence over Argentinean government officials to violate plaintiffs' rights. Specifically, plaintiffs alleged that Hidalgo recommended to his employer, an independent "watchdog" agency, that the government of Argentina reject Siemens's offer due to suspected corruption of government officials. Plaintiffs further alleged that Siemens employees physically assaulted Hidalgo, to dissuade him from disclosing his recommendation and findings.

On March 8, 2011, the Court conditionally granted plaintiffs' counsel's motion to withdraw and allowed plaintiffs until April 14, 2011 to obtain new counsel, which they never obtained. After granting the second extension, the Court notified plaintiffs that it would dismiss the action without prejudice as to each defendant not served by June 17, 2011.

Status. On July 28, 2011, the Court (1) denied plaintiffs' third application for extension of time to obtain counsel and to file a joint scheduling report; and (2) dismissed the action without prejudice and closed the case, for failure to timely serve the defendants.

See DOJ Digest Numbers B-124 and B-78.
See SEC Digest Numbers D-99 and D-56.
See Parallel Litigation Digest Numbers H-A11, H-C27, H-D12, and H-H1.

[198] *Hidalgo, et al v. Siemens Aktiengesellschaft et al.*, No. 1:11-cv-20107 (S.D. Fla. 2011).

23. OMEGA ADVISORS, INC. V. FEDERAL INSURANCE COMPANY (D.N.J. 2010)[199]

Background. On February 22, 2010, Omega Advisors, Inc. filed a complaint in the United States District Court for the District of New Jersey, alleging that Federal Insurance Company ("Federal Insurance") breached a duty to indemnify Omega for losses covered under the Omega's insurance policy. The policy insured against employee dishonesty for up to $5 million in losses. Omega alleged that the Federal Insurance denied coverage for at least $5 million in losses, resulting from misappropriation of funds by the plaintiff's then-employee, Clayton Lewis. Omega's claim arose in connection with its investment in privatization securities issued by the Republic of Azerbaijan in 1998 (the "Azeri Investment"). According to the Omega's complaint, Lewis was involved in wrongdoing with Viktor Kozeny, a Czech businessman who promoted the Azeri Investment. The matter was subsequently investigated by the U.S. government, and Omega entered into a non-prosecution agreement with the Department of Justice, agreeing to pay a $500,000 fine. Omega then filed an action against Lewis in the Southern District of New York on February 2, 2006. On August 2, 2007, Omega notified Federal Insurance of a claim under the insurance policy, in connection with Lewis. Federal Insurance refused to pay the alleged covered losses, on the ground that Omega was obligated to provide sufficient facts in connection with the claim in 2006, when it filed the federal lawsuit against Lewis. Omega argued that they were not in possession of sufficient facts at the time that claim was made, and subsequently provided Federal Insurance with newly-learned facts relating to the insurance claim on February 26, 2009. On April 23, 2010, Federal Insurance moved to dismiss the case.

Status. On November 30, 2010, the Court granted the defendant's motion to dismiss. The Court held that the plaintiff had more than a mere suspicion that Lewis was engaged in wrongdoing at the time the insurance claim was made to the defendant on August 2, 2007. On December 21, 2010, the plaintiff filed a notice of appeal to the United States Court of Appeal for the Third Circuit. The appeal was dismissed on April 15, 2011.

See DOJ Digest Number B-39.

[199] *Omega Advisors, Inc. v. Fed. Ins. Co.*, No. 3:10-cv-00912 (D.N.J., 2010).

H. PARALLEL LITIGATION

C. COMMERCIAL CASES

22. RSM PRODUCTION CORPORATION, JACK J. GRYNBERG AND GRYNBERG PETROLEUM COMPANY V. MIKHAIL FRIDMAN, LEN BLAVATNIK, LEV KORCHAGIN AND GREGORY BOWEN (S.D.N.Y. 2009)[200]

Background. On November 1, 2006, RSM Production Company, a Texas corporation, Jack Grynberg and Grynberg Petroleum Company filed a complaint, subsequently amended on August 24, 2007, October 2, 2007, and February 28, 2008, alleging: (a) intentional tortious interference with prospective business advantages; (b) tortious interference with contract; and (c) civil conspiracy.

RSM and the nation of Grenada signed an exclusive agreement in July 1996 resulting in an oil and natural gas exploration, development and production license to be issued by Grenada in favor of RSM. As president and owner of GPC, Grynberg worked on behalf of RSM to advance these efforts. In September 2006, Gregory Bowen, Deputy Prime Minister in charge of Grenada's Energy affairs, advised Jack Grynberg that he expected significant bribe payments for plaintiffs to do business in Grenada. Plaintiffs allege that after RSM refused to pay such amounts, defendants developed and implemented a scheme to: (a) persuade Grenada to not issue the required license; (b) finance Grenada's defense of the non-issuance of the exclusive oil and natural gas exploration; (c) divert valuable petroleum rights that belong to RSM to Global Petroleum Group Ltd., an alleged front for defendants Blavatnik, Fridman, BP, p.l.c. and TNK-BP Limited (Russia's third largest oil company); and (d) misappropriate proprietary information concerning Grenada's offshore reserves. These actions were allegedly taken to substitute defendants (excluding Bowen) for RSM. Plaintiffs further allege that the defendants' wrongful conduct has included violations of the FCPA, the Travel Act, and the 1997 OECD Convention on Bribery of Foreign Public Officials in International Business Transactions. Specifically, the plaintiffs allege that Bowen has been the direct and indirect recipient of bribes from the other defendants. Plaintiffs allege damages of at $500 million.

Status. On February 19, 2009, the court issued an order granting the defendants' motion to dismiss the amended complaint in its entirety with prejudice. On July 21, 2010, the Second Circuit affirmed the dismissal.

21. ELANDIA V. GRANADOS AND RETAIL AMERICAS VOIP, LLC (FLA. CIR. CT. 2008)[201]

Background. According to a 10Q filed by eLandia on May 19, 2009, the company filed an action on June 27, 2008 against Jorge Granados, individually, and Retail Americas VoIP, asserting claims for contractual indemnification, breach of contract, breach of the obligation of good faith and fair dealing, fraud, fraudulent inducement, unjust enrichment, and specific performance against the escrow agent. eLandia asserted that Granados and RAV failed to disclose as in the preferred stock purchase agreement, by which eLandia purchased 80% of Latin Node's equity, that Latin Node had made payments to various parties in violation of the FCPA.

Status. On February 12, 2009, the parties entered into a settlement agreement. Pursuant to that agreement, the defendants returned 375,000 shares of eLandia stock that were held in escrow as part of the sale agreement. The action was dismissed on March 13, 2009.

See DOJ Digest Numbers B-114 and B-83.

[200] *See RSM Prod. Corp., et al. v. Fridman, et al.*, 2009 U.S. Dist. LEXIS 12898 (S.D.N.Y., Feb. 19, 2009).

[201] *eLandia v. Granados & Retail Americas VoIP, LLC*, No. 08-37352 CA20 (Fla. Cir. Ct. 2008).

H. PARALLEL LITIGATION

C. COMMERCIAL CASES

20. HANA AHMED KARIM, RANJDAR MUSTAFA HASAN, REBAR JAHUR ISMAIL, HERISH SAID ALI, KARZAN SHERKO TOFIA, FARHAD M. MURASL, AND HERISH HASSAN YOUSIF, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED V. AWB LIMITED, BNP PARIBAS, AWB (U.S.A. LIMITED), AND COMMODITY SPECIALISTS CO. (S.D.N.Y. 2008)[202]

Background. On December 22, 2006, the plaintiffs filed a consolidated RICO class action complaint, and subsequently amended on June 15, 2007, on behalf of all Iraqi citizens who: (a) were specific intended beneficiaries of humanitarian benefits under the U.N. Oil-for-Food Program; (b) were qualified to receive program benefits; and (c) did not receive the full benefits of which they were entitled. Such persons include the subclass of citizens who were minors during any portion of the program. Plaintiffs allege that the defendants conspired with various other entities, including certain agencies of the Iraqi government, front companies, and international shipping companies to form an enterprise that bribed the Iraqi government with money illegally siphoned from the U.N. Oil-For-Food Program through bank accounts in the Unites States. It is alleged that, through this scheme, escrow account funds earmarked for the U.N. Oil-for-Food Program were improperly transferred into the coffers of the Hussein Regime or used to indemnify good suppliers, including AWB, for the bribes they had paid to Iraq. Plaintiffs allege four claims for relief: (a) violation of RICO; (b) conspiracy to violate RICO; (c) unjust enrichment; and (d) an accounting as to the disposition of all funds received by defendants. Specifically, plaintiffs allege that the defendants engaged in a pattern of racketeering activity and committed numerous RICO "predicate acts" by repeatedly violating several statutes, including the FCPA.

Status. On October 9, 2008, the court issued an order granting the defendants' motion to dismiss the amended complaint in its entirety. On October 22, 2008, plaintiffs filed an appeal with the Court of Appeals for the Second Circuit. On October 2, 2009, the court of appeals affirmed the judgment of the district court, stating the plaintiffs failed to allege an injury-in-fact that is fairly traceable to the defendants' conduct.

See Ongoing Investigation Number F-2.

19. SHOAGA V. MAERSK, INC., ET AL. (N.D. CAL. 2008)[203]

Background. On February 4, 2008, plaintiff Rami Shoaga filed a complaint against defendant Maersk, Inc. and others in connection with a shipment of household goods belonging to Shoaga from California to Lagos, Nigeria on one of Maersk's cargo ships. The Nigerian government detained the goods from August 2004 through January 2005. Shoaga refused to pay the contract charges for the extended use of the cargo container. An initial complaint filed by Shoaga, which did not include FCPA claims, was dismissed for non-prosecution. In the complaint filed on February 4, 2008, Shoaga alleged breach of contract, fraud, interference with commerce, and an FCPA violation. Shoaga also alleged his uncle told him that the defendants sold the contents of the containers.

Status. The court dismissed the FCPA claim and closed the case on October 17, 2008, holding that there was no private right of action for a violation of the FCPA.

[202] *Karim, et al. v. AWB Ltd., et al.*, No. 06-cv-15400 (S.D.N.Y., Oct. 9, 2008).

[203] *Shoaga v. Maersk, Inc.*, Nos. 08-CV-786, 05-CV-2213, 2008 WL 4615445 (N.D. Cal. Oct. 17, 2008).

H. PARALLEL LITIGATION

C. COMMERCIAL CASES

18. SUPREME FUELS TRADING FZE V. HARRY SARGEANT III, MUSTAFA ABU-NANA'A, INT'L OIL TRADING COMPANY, LLC AND INT'L OIL TRADE CENTER (S.D. FLA. 2008)[204]

Background. On October 21, 2008, plaintiff Supreme Fuels Trading FZE, a United Arab Emirates corporation and a global provider of support to both military and non-military customers, filed a complaint against International Oil Trading Company ("IOTC"), a U.S. corporation, its Jordanian subsidiary, and its two owners. That complaint was amended on November 19, 2008. The amended complaint alleges that, in 2004, defendants began bribing key Jordanian government officials to ensure that IOTC would be the sole recipients of more than $1 billion worth of U.S. government contracts for the supply of fuels to the U.S. military in Iraq. The U.S. government will award these contracts to a company only if it possesses a Letter of Authorization ("LOA") from the Jordanian government authorizing the transport of fuel across Jordan into Iraq. The complaint alleges that the defendants have bribed Jordanian government officials to prevent them from issuing a LOA to any other company, including lower bidders such as plaintiff, thus securing for IOTC every contract tendered since 2004. Furthermore, plaintiff alleges that defendants have consistently overcharged the U.S. government for fuel, resulting in a profit of $210 million, $70 million of which was personally procured by defendant Sargeant, and unnecessary charges to taxpayers in excess of $180 million.

Status. On January 9, 2009, defendants filed a motion to dismiss plaintiffs' amended complaint. Defendant Mustafa Abu-Nana'a moved to dismiss the action on the basis of insufficiency of service and lack of *in personam* jurisdiction, and all defendants moved to dismiss on the grounds of *forum non conveniens* and the act of state doctrine (that the court should not declare invalid the actions of a sovereign government taken within its own territory). The court denied the motion to dismiss on December 18, 2009. On May 6, 2011, an Amended Final Judgment was filed in favor of the plaintiff, in the amount of $5 million.

17. JACK J. GRYNBERG, GRYNBERG PRODUCTION CORPORATION (TX), GRYNBERG PRODUCTION CORPORATION (CO) AND PRICASPIAN DEVELOPMENT CORP. (TX) V. BP P.L.C., BP CORP NORTH AMERICA INC, STATOILHYDRO ASA, BG GROUP P.L.C., BG NORTH AMERICA, JOHN BROWNE, ANTHONY HAYWARD, PETER SUTHERLAND, HELGE LUND, EIVIND REITEN, ROBERT WILSON, AND FRANK CHAPMAN (D.D.C. 2008)[205]

Background. On February 21, 2008, plaintiffs filed a complaint alleging various claims, including RICO, common law fraud and theft/conversion. The plaintiffs seek to recover their proportional share of approximately $40.5 million in bribes allegedly paid to foreign nationals in Kazakhstan to secure various oil rights for a joint venture consortium between plaintiffs and defendants. The plaintiffs allege that the defendants engaged in bribery and lied to the plaintiffs and paid a portion of the illegal bribes out of the profits owed to the plaintiffs, thereby financially harming the plaintiffs and harming their reputation.

Status. A default judgment was entered against the defendants on July 30, 2008, for failure to plead or otherwise defend the action. In a November 12, 2008 opinion, the court granted motions by BP and Statoil to compel arbitration. Plaintiffs' complaint was thereby dismissed against BP, individual BP defendants, and Statoil with prejudice. On February 9, 2009, the court granted BG Group P.L.C.'s motion to set aside the default judgment and compel arbitration. On March 2, 2009, the plaintiffs filed a notice of appeal to the Court of Appeals for the District of Columbia. The parties, however, filed a joint motion to dismiss appeal, which was granted by the Court of Appeals on August 7, 2009. The case has been dismissed.

[204] *Supreme Fuels Trading FZE v. Sargeant*, No. 08-cv-81215 (S.D. Fla. 2008).

[205] *Grynberg, et al. v. BP PLC, et al.*, No. 1:08-cv-00301 (D.D.C. 2008).

H. PARALLEL LITIGATION

C. COMMERCIAL CASES

16. ARGO-TECH CORP. V. YAMADA CORP. AND UPSILON INT'L CORP. (N.D. OH. 2008)[206]

Background. On March 24, 2008, plaintiff Argo-Tech Corporation, a Delaware corporation, which manufactures high performance commercial and military aerospace equipment, filed a complaint against Yamada Corporation, a Japanese defense equipment trading corporation, and its indirect subsidiary, Upsilon International Corporation, for declaratory relief finding Yamada in breach of a distributorship agreement between Argo-Tech and Yamada ("the Agreement"), which designates Upsilon as distributor and sales agent of Argo-Tech products.

The complaint alleges that Yamada engaged in unethical conduct, in violation of the Agreement's provisions requiring Yamada to use "legal and ethical means" to sell Argo-Tech products "in strict compliance" with applicable laws, including the FCPA. Specifically, the complaint avers that Upsilon and its parent company funneled approximately $900,000 in corrupt payments through a charitable organization to help secure a Japanese military hazardous clean-up project.

Upsilon and Yamada have counterclaimed for breach of contract asserting that Argo-Tech anticipatorily repudiated the Agreement without a material basis. Defendants' principal argument is that none of the corruption allegations are related to Upsilon or Argo-Tech products and activities. Defendants allege that Argo-Tech is attempting to wrongfully terminate the Agreement, which has a remaining term of 35 years. Finally, Defendants contend that the relevant terms of the Agreement apply to Yamada's activities as a sales agent, not as a distributor, so there are no grounds for termination of the distributorship portion of the Agreement.

Status. The parties answered and cross-answered in July 2008 and initiated fact discovery. Mediation was ordered on September 30, 2009 and held in October 2009. On November 18, 2009, the parties informed the court they reached an agreement fully resolving the case. The case is marked as settled and dismissed with prejudice.

15. HIJAZI MEDICAL SUPPLIES V. AGA MEDICAL CORP. (D. MINN. 2007)[207]

Background. On July 23, 2007, plaintiff filed a complaint to recover losses associated with its termination by defendant. The complaint alleged that, on October 20, 2004, plaintiff and defendant had entered into an agreement whereby plaintiff would act as the exclusive distributor for defendant's medical devices throughout the Middle East. In 2005, defendant allegedly discovered that its distributor to China had likely violated the FCPA by bribing doctors in government-owned hospitals to secure contracts with those hospitals and bribing Chinese government patent officials to influence them to approve AGA's patent applications. The complaint alleges that the defendant terminated the relationship with that distributor and self-disclosed the matter to the DOJ and informed the plaintiff of its decision to terminate the Chinese distributor.

The plaintiff thereafter allegedly requested to be appointed as the defendant's new distributor to China. The request was denied. The complaint alleges that, at that point, plaintiff had already shipped defendant's products to China and continued to do so even after the request for appointment was denied. On April 13, 2007, the defendant allegedly terminated the relationship with the plaintiff citing that the plaintiff had breached its agreement with the defendant by shipping products to China.

On August 3, 2007, defendants filed a counterclaim against the plaintiffs, including claims alleging breach, conversion, fraud, and account stated.

Status. On September 26, 2008, the court heard argument on 1) the defendant's motion for partial summary judgment, seeking a damages limitation on plaintiffs' breach of contract claim and judgment on AGA's account stated counterclaim and 2) plaintiffs' opposition to defendants' motion for partial summary judgment, as to AGA's liability on plaintiffs' breach of contract claim. On November 10, 2008, the court denied plaintiff's motion and granted in part defendant's motion for partial summary judgment. The case was set to go to trial on February 9, 2009, but on January 30, 2009, the court ordered the case dismissed having been advised by counsel that it was in the process of settlement. On March 9, 2009, the parties stipulated to the dismissal with prejudice of all claims and counterclaims, except the defendant's account stated counterclaim. On that claim, the parties agreed to a judgment of $500,000 to be paid by the plaintiffs. On April 7, 2009, the court entered judgments in accordance with the parties' stipulation.

See DOJ Digest Number B-68.

[206] *Argo-Tech Corp. v. Yamada Corp., et al.*, No. 08-cv-0721 (N.D. Ohio 2008).

[207] *Hijazi Med. Supplies v. AGA Med. Corp.*, No. 07-cv-3419 (D. Minn. 2007).

H. PARALLEL LITIGATION

C. COMMERCIAL CASES

14. CASTELLANOS, ET AL. V. PFIZER, INC., ET AL. (S.D. FLA. 2007)[208]

Background. On May 7, 2007, plaintiffs, members of a legal and economic services firm representing Acromax, an Ecuadorian drug manufacturer, along with Vera Castellanos, an Ecuadorian patent court judge, who was allegedly defamed by the defendants, filed a complaint against Pfizer, Acromax's competitor, and members of the United States Department of State. The complaint alleged that Acromax had appeared before the Ecuadorian patent judge to petition for a license to distribute a drug similar to Viagra. The complaint alleged that defendants offered a bribe to Judge Castellanos to influence him to deny Acromax's petition. The complaint also alleged that the individual defendants conspired with Pfizer to authorize the payment of a gift to influence Judge Castellanos to rule in Pfizer's favor.

The complaints then alleged that the defendant members of the United States Department of State conspired with Pfizer to defame Judge Castellanos and revoke his United States visa without cause, which resulted in the judge being fired and branded corrupt. The plaintiffs filed an Amended Complaint on August 9, 2007 reiterating the previous allegations and alleging violations of the FCPA and conspiracy and attempt to violate the Act. Plaintiffs filed a Second Amended Complaint on September 10, 2007.

Status. On June 30, 2008, the case was dismissed without prejudice for plaintiffs' failure to establish diversity jurisdiction.

See DOJ Digest Number B-135.
See SEC Digest Number D-111.
See Parallel Litigation Digest Number H-C25.

[208] *Castellanos v. Pfizer, Inc.*, No. 07-cv-60646 (S.D. Fla. 2008).

13. GRACE & DIGITAL INFO. TECH., LTD. V. FIDELITY NAT'L FINANCIAL, INC., ET AL. (M.D. FLA. 2006)[209]

Background. On March 6, 2006, the plaintiff, a Chinese company that provides consultation and information technology solutions to financial institutions, filed a lawsuit against Fidelity National Financial, Inc., a U.S. corporation, and its officers. The plaintiff alleged that the defendants violated the RICO and the FCPA because the bank terminated procurement contracts, originally obtained through the efforts of the plaintiff, due to the defendants' bribery of Chinese bank officials. The plaintiff claimed that the defendants made inappropriate payments in the form of travel expenses, consulting fees, and other miscellaneous expenses to bank officials to obtain procurement contracts.

Status. On April 17, 2007, the court ordered that all claims and cross-claims be dismissed with prejudice pursuant to the parties' settlement agreement, the terms of which were not disclosed. The case is closed.

[209] *Grace & Digital Info. Tech., Ltd. v. Fidelity Nat'l Fin., Inc.*, No. 3:06-cv-00239 (M.D. Fla. 2006).

H. PARALLEL LITIGATION

C. COMMERCIAL CASES

12. METRO COMMUNICATION CORP. V. ADVANCED MOBILECOMM TECHNOLOGIES, INC., ET AL. (DEL. CH. 2004)[210]

Background. On December 26, 2002, Metro Communication Corp., BVI filed a complaint against Fidelity Ventures Brazil, LLC ("Fidelity Brazil") and certain of its former members and managers alleging breach of contract, breach of fiduciary duty, and fraud. Metro, an investor in Fidelity Brazil, alleges that Fidelity Brazil concealed and failed to disclose a bribery scandal that involved Fidelity Brazil's employees paying local Brazilian officials, via a New York bank account, to obtain permits authorizing work in Brazil. As a result of the bribery scandal, the expected value of Metro's investments in Fidelity Brazil was reduced to a fraction of its original $31.5 million value.

Status. On April 30, 2004, the court granted defendants' motion to dismiss in part: most of the common law fraud claims, the equitable fraud claims, and the fraudulent transfer claims were dismissed. The court allowed the plaintiff to proceed with, *inter alia*, the claims for breach of contract and certain statutory derivative claims under the Limited Liability Company Act. On December 29, 2004, a confidential settlement agreement in the case was filed under seal.

11. NATIONAL GROUP FOR COMMUNICATIONS & COMPUTERS, LTD. V. LUCENT TECHNOLOGIES, INC., ET AL. (S.D.N.Y. 2003)[211]

Background. On August 8, 2003, the plaintiff filed a complaint against Lucent Technologies, Inc., a U.S. corporation, and its officers, alleging that the defendants violated the RICO Act and the FCPA because of the defendants' participation in schemes to bribe a Saudi government official to persuade him to make contractual decisions favorable to Lucent and harmful to the plaintiff.

Status. On February 28, 2006, the court issued an order granting the defendants' motion to dismiss on statute of limitations grounds. On March 28, 2006, the plaintiff appealed. On October 5, 2007, the Court of Appeals received a letter from the plaintiff stating that the parties were working toward a settlement. On August 27, 2008, the parties submitted a stipulation of dismissal with prejudice, which was approved by the court on the following day.

See DOJ Digest Number B-115.
See SEC Digest Number D-46.

[210] *Metro Commc'n Corp., BVI v. Advanced Mobilecomm Tech. Inc., et al.*, 854. A.2d 121, 144 (Del. Ch. 2004).

[211] *Nat'l Grp. for Commc'ns & Computs., Ltd. v. Lucent Techs., Inc., et al.*, No. 1:03-cv-06001 (S.D.N.Y. 2003).

H. PARALLEL LITIGATION

C. COMMERCIAL CASES

10. FABRI, ET AL. V. UNITED TECHNOLOGIES INT'L, INC., ET AL. (D. CONN. 2002)[212]

Background. Juan Fabri Sr. and Juan Fabri Jr. sued United Technologies International, Inc., a manufacturer and distributor of helicopters, alleging breach of contract, tortious interference, and a violation of Connecticut's unfair trade statute after United Techologies unilaterally terminated its contract with the Fabris and failed to pay the Fabris a commission for the sale of certain helicopters to the Argentine government. United Technologies argued that an outside investigator uncovered certain FCPA "red flags" during an investigation of the Fabris' sale of helicopters to the Argentine government and, therefore, it was allowed to terminate the contract under a provision in the contract wherein the Fabris warranted that they would not violate the FCPA.

A jury found for the defendants on the contract and tortious interference claims but in the plaintiffs' favor on the state unfair trade claim. The defendants moved for judgment as a matter of law, which the district court denied. On appeal to the Second Circuit, United Technologies argued that the jury verdict was inconsistent. With respect to the FCPA issue, the defendants argued that, since the contract claim and the state unfair trade claim both turned on whether the defendants violated a duty of good faith and fair dealing, the jury must have applied a heightened requirement of good faith and fair dealing to the state unfair trade claim. According to the defendants, applying such a heightened standard conflicted with the company's legal duty not to violate the FCPA and, consequently, the FCPA preempted the state unfair trade statute. The Second Circuit disagreed with defendants, holding that the proof offered in support of the state unfair trade claim was sufficient to support the jury's verdict without applying a heightened standard of fairness. The court therefore concluded that the defendant's preemption argument was meritless.

Status. The case settled on remand to the district court on July 28, 2005.

9. ROTEC INDUSTRIES, INC. V. MITSUBISHI CORP., ET AL. (D. OR. 2001)[213]

Background. Plaintiff Rotec Industries, a manufacturer of heavy construction machinery, sued its Japanese competitor Mitsubishi Corp., among others, alleging bribery in the form of monetary payments and a job offer to an individual on the evaluation committee overseeing the award of contracts for concrete placement equipment for a large Chinese dam construction project, in violation of, *inter alia*, the FCPA. Plaintiff alleged various state law and common law claims in addition to RICO.

Status. On September 14, 2001, the District court granted defendant's motion for summary judgment, holding that the allegations were insufficient to establish a violation of the FCPA, one of the two alleged predicate acts for the RICO claim, given that plaintiff had no knowledge of any specific payments that were alleged to have been made to Chinese officials, and that there was no evidence to suggest that mails or other instrumentality of interstate commerce were used to make such payments.

[212] *Fabri, et al. v. United Techs. Int'l Inc., et al.*, No. 96-2358 (D. Conn. 2002); *Fabri v. United Techs. Int'l Inc.*, 193 F. Supp. 2d 480 (D. Conn. 2002) aff'd in part, rev'd in part 387 F.3d 109 (2d Cir. 2004).

[213] *Rotec Indus., Inc. v. Mitsubishi Corp., et al.*, 163 F. Supp. 2d 1268 (D.Or. 2001).

H. PARALLEL LITIGATION

C. COMMERCIAL CASES

8. SCIENTIFIC DRILLING, ET AL. V. GYRODATA (C.A. FED. TEX. 1999)[214]

Background. Plaintiff Scientific Drilling International, Inc. filed suit against Gyrodata Corp., claiming that Gyrodata had infringed six of its patents relating to high-resolution well-boring surveying. Gyrodata responded by denying the charge of infringement and filing a number of counterclaims, including a charge that Scientific had violated the FCPA, on the basis that plaintiffs interfered with Gyrodata's customer contracts. The District Court dismissed all of Gyrodata's counterclaims and Gyrodata appealed.

Status. The Texas Court of Appeals upheld the dismissal of Gyrodata's FCPA counterclaim, concluding that there is no implied private right of action under the FCPA. The court cited the Sixth Circuit's decision in *Lamb v. Phillip Morris, Inc.*, 915 F.2d 1024 (6th Cir. 1990), for the proposition that "the introduction of private plaintiffs interested solely in post-violation enforcement, rather than pre-violation compliance, most assuredly would hinder congressional efforts to protect companies and their employees concerned about FCPA liability." *Id.* at 1029-30.

7. J.S. SERVICE CENTER CORP., ET AL. V. G.E. TECHNICAL SERVICES CO., ET AL. (S.D.N.Y. 1996)[215]

Background. Plaintiffs, J.S. Service Center Corp. and Sercenco, S.A., sued General Electric Technical Services Company, Inc. and General Electric Company (together "GE"), U.S. corporations, in New York state court for damages under, *inter alia*, the FCPA and RICO, relating to GE's non-renewal of Sercenco's Service Sales Representative Agreement with GE, pursuant to which Sercenco was designated GE's authorized sales representative for Peru. Defendants removed the action to federal court on June 1, 1995.

Sercenco alleged that officials of ElectroPeru, Peru's state-owned electric utility, were attempting to extort bribes from it on an unrelated project and that when it refused to pay the officials, they fabricated complaints to GE about Sercenco's work. Serenco alleged that GE told Sercenco to "resolve" the problem without involving GE so that GE could obtain additional contracts with ElectroPeru. Sercenco further alleged that although GE purported to comply with, and to insist that its agents comply with the FCPA, GE in fact had a policy of using agents who it knew would pay bribes, and that GE had in fact replaced Sercenco with another agent because Sercenco would not pay bribes and the new agent had and would.

Status. The District Court dismissed the plaintiffs' claim under the FCPA, holding that there is no private right of action under the FCPA. Plaintiffs' RICO claims were also dismissed. The plaintiffs appealed to the Second Circuit, but withdrew their appeal in December 1996. The case is closed.

[214] *Sci. Drilling Int'l, Inc. v. Gyrodata Corp.*, 215 F.3d 1351 (C.A. Fed. Tex.) 1999 WL 674511.

[215] *J.S. Serv. Ctr. Corp. v. Gen. Elec. Tech. Servs. Co.*, 937 F. Supp. 216 (S.D.N.Y. 1996).

H. PARALLEL LITIGATION

C. COMMERCIAL CASES

6. ABRAHAMS V. YOUNG & RUBICAM, INC., ET AL. (D. CONN. 1994)[216]

Background. Plaintiff Eric Abrahams was the former Minister of Tourism and Information for the Government of Jamaica. On October 7, 1991, Abrahams filed suit against Young & Rubicam, an advertising firm, alleging that Young & Rubicam had embarked on a scheme to bribe him to secure an advertising account with the Jamaican government. Abrahams had no knowledge of the scheme until he, Young & Rubicam, and others were indicted by the DOJ under the FCPA. Young & Rubicam pleaded guilty and conceded that there was no evidence that Abrahams was involved. Abrahams's suit alleged injuries to his reputation and to his emotional, financial, political, and social status resulting from widespread false publicity about his role in the bribery scheme.

Status. On June 26, 1992, the United States District Court for the District of Connecticut granted the defendants' motion to dismiss the complaint, based in part on deficiencies in the complaint concerning causality. The court held that plaintiff had not sufficiently alleged that defendants' conspiracy had proximately caused injury to him and that the indirect injuries flowing from his indictment were too tenuous to state a claim.

On appeal, the United States Court of Appeals for the Second Circuit affirmed the lower court's decision in part, with the dismissal of the negligence and defamation claims reversed and remanded. The district court, however, entered judgment for defendants on October 3, 1997 on the grounds that the requisite proximate cause for the negligence claim was lacking and that the defamation claim was time-barred.

See DOJ Digest Number B-12.

[216] *Abrahams v. Young & Rubicam, Inc., et al.*, 793 F. Supp. 404 (D. Conn. 1994), aff'd in part and rev'd in part, 79 F.3d 234 (2d Cir. 1996).

5. DOOLEY V. UNITED TECHNOLOGIES CORP. (D.D.C. 1992)[217]

Background. On October 4, 1991, plaintiff Thomas F. Dooley, an employee of Sikorsky Aircraft, a subsidiary of United Technologies Corp., both domestic corporations, filed suit against United Technologies alleging RICO violations. The complaint alleged that United Technologies, along with two British entities and Saudi Arabian co-conspirators, engaged in a scheme to bribe Saudi officials to facilitate the sale of Black Hawk helicopters in violation of the FCPA, constituting predicate offenses under RICO.

Status. In October 1992, defendants' motion to dismiss was denied on the grounds that the court had personal jurisdiction over all defendants and the FCPA extended to foreign individuals acting as agents for a domestic concern or issuer. The case was later dismissed with prejudice in July 1993 after the parties settled out of court.

[217] *Dooley v. United Techs. Corp.*, 803 F. Supp. 428 (D.D.C. 1992).

H. PARALLEL LITIGATION

C. COMMERCIAL CASES

4. CITICORP INTERNATIONAL TRADING CO., INC. V. WESTERN OIL & REFINING CO., INC., ET AL. (S.D.N.Y. 1991)[218]

Background. Two officers of Western Oil and Refining Co., Inc., Robert and Karin Zander, entered into an agreement with a Nigerian petroleum company to permit Western to export oil from Nigeria. Western then entered into an agreement with Citicorp International Trading Co., Inc. ("CITC"), under which CITC would provide letters of credit in connection with the proposed oil transaction. In the spring of 1987, CITC failed to provide the letters of credit and the Nigerian petroleum company also failed to supply the oil. Shortly thereafter, the Zanders executed a promissory note on their behalf and on behalf of Western. After they defaulted on the note, CITC filed a suit against Western and the Zanders on August 2, 1988. The Zanders filed counterclaims against CITC, including an FCPA claim that CITC personnel unsuccessfully attempted to bribe the Nigerian petroleum company to secure time to fulfill CITC's obligations under the agreement.

Status. The court dismissed the FCPA claim, holding that no private right of action exists under the FCPA. The court did, however, mention the possibility that the allegations could comprise a valid tortious interference with contractual relations or prospective business relationship claim. Ultimately, the court concluded that the counterclaim had not been pled with sufficient facts to sustain either of those claims.

3. W.S. KIRKPATRICK & CO., INC., ET AL. V. ENVIRONMENTAL TECTONICS CORP., INT'L (1990)[219]

Background. After defendants settled an FCPA action with the DOJ, Environmental Tectonics Corporation, International ("ETC") filed a complaint in the United States District Court for the District of New Jersey, later amended on July 14, 1986, alleging that ETC was outbid on a contract it would otherwise have won if not for defendants' bribery, through an intermediary, of Nigerian officials.

Status. The United States District Court for the District of New Jersey dismissed the action, holding that the act of state doctrine, barring inquiry into the acts of a foreign sovereign, precluded it. The Court of Appeals for the Third Circuit reversed and, in 1990, the Supreme Court affirmed the Court of Appeals' decision that the act of state doctrine did not preclude the action. The Supreme Court held that the fact that a judgment might require the court to impute to foreign officials an improper motive is insufficient to invoke the act of state doctrine. The act of state doctrine, it held, is not a rule of abstention applied whenever international comity, respect for the sovereignty of foreign nations, or the avoidance of embarrassment to the Executive Branch in its conduct of foreign relations are implicated.

The case was remanded and subsequently settled that same year.

See DOJ Digest Number B-7.

[218] *Citicorp Int'l Trading Co., Inc. v. W. Oil & Refining Co., Inc.*, 771 F. Supp. 600 (S.D.N.Y. 1991).

[219] *W.S. Kirkpatrick & Co., Inc, et al. v. Envtl. Tectonics Corp.*, Int'l, 493 U.S. 400 (1990).

H. PARALLEL LITIGATION

C. COMMERCIAL CASES

2. LAMB V. PHILLIP MORRIS, INC., ET AL. (6TH CIR. 1990)[220]

Background. On August 21, 1985, plaintiffs Billy Lamb and Carmon Willis filed a complaint against Phillip Morris, Inc. and B.A.T. Industries, PLC, alleging violations of federal antitrust laws, and later amended their complaint to add a claim under the FCPA. Plaintiffs Lamb and Willis were Kentucky tobacco growers who routinely sold tobacco to defendants, who also bought tobacco from other countries, such as Venezuela. According to the complaint, defendants' subsidiaries entered into contracts with a charity headed by the wife of the then-President of Venezuela under which the subsidiaries would make periodic donations to the charity in exchange for price controls on Venezuelan tobacco and assurances that taxes on tobacco companies would not be increased. As a result of this unlawful arrangement, plaintiffs alleged that defendants artificially depressed prices in the U.S. tobacco market.

Status. The district court dismissed plaintiffs' claim as barred by the act of state doctrine and dismissed their FCPA claim. The Sixth Circuit reversed the lower court's dismissal of plaintiffs' antitrust claims but affirmed the dismissal of the FCPA claim on the grounds that there is no implied private right of action under the FCPA.

1. INSTITUTO NACIONAL DE COMERCIALIZACION AGRICOLA (INDECA) V. CONTINENTAL ILLINOIS NAT. BANK & TRUST CO., ET AL. (N.D. ILL. 1983)[221]

Background. Instituto Nacional de Comercializacion Agricola ("Indeca"), a Guatemalan quasi-governmental entity that purchased foodstuffs on the global market, sued various defendants for breach of contract, negligence, and fraud. Indeca entered into an agreement to purchase foodstuffs from Rumux International, Inc., and retained Banco de Guatemala to issue a letter of credit. Banco subsequently engaged the services of defendant Continental Illinois National Bank & Trust Co. to arrange for the delivery of documents from Rumux in conformity with the letter of credit. After Rumux failed to perform in accordance with its contract, Indeca brought suit to recover damages arising from Continental's allegedly negligent and fraudulent conduct in assisting with the letter of credit.

Continental raised an affirmative defense alleging that the Indeca/Rumux contract violated the Foreign Corrupt Practices Act ("FCPA"). Indeca moved to strike Continental's FCPA affirmative defense arguing that the FCPA prohibits only U.S. companies from corrupt foreign acts and provides no private right of action. The district court denied the motion to strike, finding that it was premature at the pleading stage.

Status. The FCPA issue was not discussed in later opinions. The case terminated after appeal in 1987.

[220] *Lamb v. Phillip Morris, Inc., et al.*, 915 F.2d 1024 (6th Cir. 1990).

[221] *Instituto Nacional de Comercializacion Agricola (Indeca) v. Continental Illinois Nat. Bank & Trust Co., et al.*, No. 81 C 1934 (N.D. Ill. 1981); 576 F. Supp. 985 (N.D. Ill. 1983).

H. PARALLEL LITIGATION

D. EMPLOYMENT CASES

17. KATZ V. UNDERWRITER'S LABORATORIES, INC. (ILL. CIR. CT. 2018)[222]

Background. On April 13, 2018, Gene Katz filed a lawsuit against Underwriter's Laboratories, Inc. for retaliatory discharge and violation of Illinois's whistleblower protection law. Underwriter's is an Illinois company that tests, inspects, and certifies products going to market in the energy, electronics, food services, and medical device industries. According to the complaint, Katz was Underwriter's business development director who began working for the company in 2017. Katz alleges that he was placed on administrative leave for voicing concerns that Underwriter's was violating applicable anti-trust laws, the FCPA, and its fiduciary duty. He further alleges that he was terminated for reporting these concerns to the government while on administrative leave. According to the complaint, Katz believed that Underwriter's had engaged in bribery in China and entered into suspicious transactions in the acquisition of Chinese companies. Katz allegedly ordered an internal review prior to a merger in China, but Underwriter's withheld the results of the review and terminated him. This action alleges unlawful retaliation despite Katz's good faith and reasonable belief that Underwriter's had committed misconduct.

Status. On June 25, 2018, defendant filed its answer to the complaint. On August 3, 2018, the plaintiff filed his reply. The litigation is ongoing.

16. JACOBS V. LAS VEGAS SANDS, ET AL. (D. NEV. CLARK CNTY. 2010)[223]

Background. Former Macau chief executive Steven Jacobs first brought suit against Las Vegas Sands in 2010, alleging that he was wrongfully terminated for refusing to pay illegal bribes related to the company's operations in China. According to Jacobs, Sheldon Adelson, Chairman and CEO of Las Vegas Sands, directed him to engage in illegal conduct to obtain leverage against local government officials in Macau, to be used to bring about desirable business consequences for the company. Jacobs also alleged that Adelson directed him to withhold truthful and material information from the Board of Directors of Sands China (the company's Chinese subsidiary). According to Jabcobs, when he objected to and refused to carry out these demands, he was threatened with termination, and eventually was terminated as the result of continuing disagreement. Jacobs brought his employment lawsuit under theories of breach of contract and tortious discharge in violation of public policy.

Status. After the suit was initially filed in 2010, it was subject to repeated delays. These included disputes over evidentiary issues, which were appealed to the Nevada Supreme Court, and multiple unsuccessful demands by the defense that the presiding judge recuse herself following statements purportedly made about the case in an interview with *Time* Magazine. After Las Vegas Sands resolved an FCPA enforcement action with the SEC and the Nevada Gaming Control Board, Las Vegas Sands reached an undisclosed settlement with Jacobs on May 31, 2016, which the media reported as between $75 million and $100 million, citing undisclosed sources familiar with the matter.

See SEC Digest Number D-150.
See Parallel Litigation Digest Number H-F16.

[222] *Katz v. Underwriter's Laboratories, Inc.*, No. 2018-L-003788 (Ill. Cir. Ct. 2018).

[223] *Jacobs v. Las Vegas Sands, et al.*, No. A-10-627691-C (D. Nev. Clark Cnty. 2010).

H. PARALLEL LITIGATION

D. EMPLOYMENT CASES

15. THE LOUIS BERGER GROUP, INC. V. RICHARD J. HIRSCH (N.J. SUPER. 2016)[224]

LOUIS BERGER INTERNATIONAL, INC., ET AL. V. JAMES MCCLUNG (N.J. SUPER. 2016)[225]

Background. Civil engineering firm Louis Berger entered into a deferred prosecution agreement with the DOJ in July 2015, resolving charges that it bribed foreign officials in India, Indonesia, Vietnam and Kuwait to secure government construction management contracts. In connection with the DPA, the company paid a criminal penalty of $17.11 million and two of its former executives, Richard Hirsch and James McClung, pleaded guilty to conspiracy and violating the FCPA for their roles in the alleged bribery scheme. Approximately one year later, on June 10, 2016 and July 1, 2016, Louis Berger sued the former executives, claiming that their admitted criminal conduct resulted in financial and reputational damages, including the $17.1 million DOJ fine.

In its complaint in *Hirsch*, Louis Berger argued that Hirsch's conduct violated the company's internal policies and procedures and that his activities breached his fiduciary obligation to the company. In its case against Hirsch's co-defendant, James McClung, Louis Berger accused the defendant of embezzling funds from the company by setting up third-party consulting companies that submitted false or inflated charges to Louis Berger for worker placement, rent, and construction services.

Status. Louis Berger settled with Richard Hirsch on undisclosed terms in August 2016. The company's case against McClung was dismissed with prejudice in June 2016. The case is now closed.

See DOJ Digest Number B-161.

14. HALL V. TEVA PHARMACEUTICAL INDUSTRIES, LTD. (S.D. FLA. 2015)[226]

Background. On July 28, 2015, plaintiff Keisha Hall filed a complaint against her former employer Teva Pharmaceuticals USA, Inc. alleging that she was terminated by Teva after she cooperated with a joint SEC/DOJ investigation into potential FCPA and Sarbanes-Oxley Act violations by Teva. Hall alleges that she notified Teva's global compliance officer and external auditors about compliance deficiencies in the company's Latin American operations, participated in filing Sarbanes-Oxley Act deficiency reports, and met with officials from the DOJ and FBI to discuss the company's compliance issues. The complaint claims that Hall was terminated in retaliation for her compliance with the SEC and DOJ investigation on the false pretense that she had violated Teva's electronic communications policy by using her laptop for personal emails and the storage of personal videos.

Status. . The court awarded summary judgment in favor of Teva Pharmaceutical Industries, Ltd. on September 30, 2016. On October 28, 2016, plaintiff appealed the court's grant of summary judgment to the Eleventh Circuit. On February 21, 2017, plaintiff voluntarily dismissed her appeal.

See DOJ Digest Number B-179.
See SEC Digest Number D-165.

[224] *The Louis Berger Group, Inc. v. Hirsch*, No. L-1293-16 (N.J. Super. 2016).

[225] *Louis Berger International Inc., et al. v. McClung*, No. 1-1474-16 (N.J. Super. 2016).

[226] *Hall v. Teva Pharm., Ltd.*, No. 0:15-cv-61536 (S.D. Fla. 2015).

H. PARALLEL LITIGATION

D. EMPLOYMENT CASES

13. WADLER V. BIO-RAD LABORATORIES, INC. (N.D. CAL. 2015)[227]

Background. On May 27, 2015, Sanford S. Wadler, former General Counsel and Vice President of Bio-Rad Laboratories filed a complaint against the company alleging violations of the whistleblower provisions of the Dodd-Frank Wall Street Reform and Consumer Protections Act. The complaint alleged that Bio-Rad retaliated against Wadler after he undertook an internal investigation of the company's business practices in China following its 2014 resolution of alleged FCPA violations in Russia, Thailand, and Vietnam with the DOJ and SEC.

Wadler claims when he notified Bio-Rad's CEO and CFO that the investigation raised suspicion of bribery, books-and-records violations, and circumvention of Bio-Rad's internal controls, his concerns were dismissed. Furthermore, the complaint alleges Wadler was "effectively shut out of the investigation" when Bio-Rad hired outside counsel to investigate the concerns he persistently raised with the company's senior management and Audit Committee. Finally, Wadler claims that he was terminated when he refused to suppress his findings after the investigation conducted by outside counsel failed to uncover any wrongdoing.

Status. On December 16, 2016, the parties filed a stipulation agreeing to dismiss the plaintiff's claims against four Bio-Rad executives. The case against Bio-Rad and Bio-Rad's CEO and Chairman of the Board, Norman Schwartz, went to trial in January 2017. The claims tried before the jury were for retaliation in violation of Sarbanes-Oxley and in violation of Dodd-Frank, and for wrongful termination in violation of public policy. Following the trial, the jury returned a verdict in favor of Wadler on all three claims. On February 10, 2017, U.S. Magistrate Judge Joseph C. Spero ordered Bio-Rad and Schwartz to pay $5,920,000, with prejudgment interest of $141,608, ordered Bio-Rad to pay an additional sum of $5,000,000, and ordered both defendants to pay litigation costs, expert witness fees, and reasonable attorney's fees. Defendants entered a renewed motioned for judgement as a matter of law and a motion for a new trial. The court denied both motions.

On June 6, 2017, defendants filed a notice of appeal to the Ninth Circuit. Oral arguments took place in the court of appeals on November 14, 2018, and judgment on the appeal remains pending as of December 2018.

See DOJ Digest Number B-154.
See SEC Digest Number D-129.
See Parallel Litigation Digest Number H-F28 and H-F17.

[227] *Wadler v. Bio-Rad, Inc., et al.*, No. 3:15-cv-2356 (N.D. Cal. 2015).

12. MENG-LIN LIU V. SIEMENS A.G. (S.D.N.Y. 2013)[228]

Background. On January 15, 2013, Meng-Lin Liu, a former employee of Siemens China Ltd. ("SLC"), a wholly-owned Chinese subsidiary of Siemens A.G. ("Siemens"), filed a complaint against Siemens alleging violations of the whistleblower provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The complaint alleged that Siemens retaliated against Liu when he raised compliance issues at SLC. In particular, Liu alleged that he identified a number of instances where SLC circumvented internal FCPA controls, where it failed to conduct adequate due diligence on third parties, and where it inflated bids to pass funds through intermediaries to government officials. Liu alleged that when he raised the issues to senior business and compliance officials at SLC, he received a negative performance review, his job responsibilities were repeatedly scaled back, and he was ultimately told that he should not return to work for the remainder of his employment contract, which was then terminated.

Status. On October 21, 2013, the court granted Siemens' motion to dismiss and dismissed Liu's claims with prejudice. The court found that the Anti-Retaliation Provision protections afforded to whistleblowers by Dodd-Frank do not apply extraterritorially and, therefore, do not cover Liu. Further, the court found that an FCPA violation is not within the scope of Section 806 of the Sarbanes-Oxley Act, which provides that a violation must be "required or protected" by Section 806. The court discussed but did not ultimately decide whether Liu was a whistleblower under Dodd-Frank, having not disclosed the potential FCPA violations to the SEC until after his employment was terminated. Plaintiff appealed the court's decision to the Second Circuit on November 14, 2013, and the court of appeals affirmed the district court's judgment on September 9, 2014.

See DOJ Digest Numbers B-124 and B-78.
See SEC Digest Number D-56.
See Parallel Litigation Digest Numbers H-A11, H-C27, H-C24, and H-H1.

[228] *Liu v. Siemens A.G.*, 13-cv-0317 (S.D.N.Y. 2013).

H. PARALLEL LITIGATION

D. EMPLOYMENT CASES

11. KHALED ASADI V. G.E. ENERGY (USA), LLC (S.D. TEX. 2012)[229]

Background. Plaintiff Khaled Asadi (a dual citizen of the United States and Iraq) was employed by G.E. Energy as its Country Executive for Iraq. In a complaint filed February 3, 2012, Asadi alleged that he objected to the hiring of a woman closely associated with the Senior Deputy Minister of Electricity (Iraq) to curry favor with the Ministry of Electricity while in negotiation for a Sole Source Joint Venture Contract with the Ministry. Asadi was allegedly concerned that the hire could be damaging to GE's reputation and potentially violate the FCPA, and so he raised the issue with his supervisor, and later, to GE's ombudsperson. Asadi alleged that, in direct response to his actions, Asadi's supervisor began to pressure him to step down from his position at GE. Asadi alleged that he was wrongfully terminated about one year after he first raised his concerns.

In his complaint, Asadi pleaded a cause of action against GE for Whistleblower Retaliation under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Status. GE filed a motion to dismiss, and on June 28, 2012, U.S. District Court Judge Nancy Atlas granted GE's motion. Judge Atlas noted that the definition of "whistleblower" under Dodd-Frank is an individual who provides information "to the SEC" and that because Asadi did not claim to report GE's alleged FCPA violations to the SEC but rather to his supervisor and GE's ombudsperson, Asadi "does not fit within Dodd-Frank's definition of a whistleblower." Judge Atlas also held that Dodd-Frank's Anti-Retaliation Provision does not extend to or protect Asadi's extraterritorial whistleblowing activity. Asadi appealed the court's dismissal to the Fifth Circuit on July 25, 2012, and the court of appeals affirmed the district court's judgment in August 2013.

See SEC Digest Number D-75.

[229] *Asadi v. G.E. Energy (USA), LLC*, No. 12-cv-00345 (S.D. Tex. 2012).

10. JEWETT V. IDT CORPORATION (D.N.J. 2011)[230]

Background. In 2004, plaintiff D. Michael Jewett filed a complaint against IDT Corporation, Mount Salem Management, Ltd., and their respective directors and officers. The third amended complaint, filed on January 25, 2006, alleged employment discrimination on the basis of religion, retaliation in the form of attempting to terminate unemployment benefits, damage to plaintiff's name and intentional infliction of emotional distress. Jewett alleged that the defendants were involved in a "deal" with the President of Haiti to provide telecom services, wherein IDT would put money into an offshore account managed by Mount Salem for the President of Haiti. Jewett repeatedly expressed reservations regarding the legality of the "deal." Jewett also refused to contribute to solicitations for donations to Jewish charities that were encouraged by IDT. Plaintiff alleged that he was discharged for these reasons.

Status. On September 11, 2007, the court dismissed plaintiff's claim for abuse of process and for defamation, and dismissed retaliation claims against most individual defendants. On February 19, 2008, the court dismissed plaintiff's claim for intentional infliction of emotional distress. The parties then were required to participate in mediation on October 29, 2008, which ultimately proved unsuccessful. On February 1, 2011, all claims made by the plaintiff against the remaining defendants, and all counterclaims by the defendants against the plaintiff were dismissed with prejudice.

See DOJ Digest Numbers B-85, B-86, and B-93.

[230] *Jewett v. IDT Corp., et al*, No. 2:04-cv-01454 (D. N. J. 2004).

H. PARALLEL LITIGATION

D. EMPLOYMENT CASES

9. LEBRON V. AIG, INC., ET AL. (S.D.N.Y. 2009)[231]

Background. A former employee of AIG brought an action against the company for unlawful and retaliatory termination in violation of the Sarbanes-Oxley Act ("SOX"). Kimberly Lebron had been employed by AIG as a Compliance Manager within the Legal and Compliance Department of AIG Investments when she learned about an arrangement in which a South Korean government entity, Korea Post, would invest approximately $50 million into an AIG Global Real Estate Managed Fund. In exchange for the investment, AIG would sponsor a "six week paid vacation" for an employee of Korea Post to New York and London. Lebron believed the arrangement to be a potential violation of the FCPA and reported the activity to AIG's Global Anti-Corruption Officer. A couple weeks later, she was terminated from her position at AIG, prompting the lawsuit.

Status. On August 3, 2009, defendants filed a motion to dismiss arguing that Lebron's suit is barred by res judicata because she already filed an administrative complaint with the Department of Labor, received an unfavorable determination on the complaint, and then failed to file an objection or request a hearing with the Department's Chief Administrative Law Judge. In addition, the motion states Lebron failed to fulfill the jurisdictional prerequisite under SOX of informing the Administrative Law Judge prior to bringing the claim. On October 19, 2009, the court granted defendants' motion to dismiss on the basis that the court lacked subject matter jurisdiction over Lebron's claims because Lebron failed to exhaust her administrative remedies.

8. GENERAL ELECTRIC CO. V. KOECK (E.D. VA. 2008)[232]

Background. An employee of General Electric Consumer and Industrial ("C & I"), a subsidiary of General Electric ("GE"), alleged that she was terminated in retaliation for reporting questionable business practices by GE in Brazil. Andrea Koeck alleged a claim for violation of the Sarbanes-Oxley Act's whistleblower protection provision and filed a complaint with the U.S. Department of Labor. While employed at C & I, Koeck reported to the General Counsel and covered legal matters for C & I in Brazil, Chile, and Argentina. It was during this time that Koeck discovered a value added tax fraud scheme in Brazil that would expose GE to financial liability and possible criminal prosecution. In addition, in March 2006, Koeck was informed that GE and GEVISA (a GE Brazilian joint venture) were in a group of major corporations participating in a "bribery club," involving corporations paying bribes to Brazilian politicians in exchange for the award of orders from the public sector throughout Brazil. According to Brazilian news reports, more than $20 million in bribes were paid out to more than 150 Brazilian politicians. Koeck raised the topic of the company's potential for exposure under the FCPA, but was ultimately ignored by her superiors who assured her that the matter was being taken care of. She was later terminated from GE after filing an internal complaint that alleged retaliation by the company against her including threats of salary reduction because she had reported illegal activity.

Status. The U.S. Department of Labor dismissed Koeck's complaint for failure to file within 90 days of the occurrence of the alleged violation. The Administrative Review Board determined that the violation occurred no later than January 18, 2007 (the date Koeck had been informed GE would be taking an adverse employment action against her) and Koeck had filed her complaint on April 23, 2007. On June 6, 2008, GE filed a civil action against Koeck, alleging that Koeck had disclosed privileged and confidential information in her administrative complaint and to the press. Koeck counterclaimed, alleging retaliation for protected "whistleblowing" activity and wrongful termination. GE filed a motion to dismiss the counterclaims on the grounds that the matter was subject to compulsory arbitration and that Koeck's counterclaims were time-barred. The parties filed a joint stipulation of dismissal of the entire action on January 28, 2009.

[231] *Lebron v. AIG, Inc., et al.*, No. 09-CV-4285 (S.D.N.Y. May 1, 2009).

[232] *Gen. Elec. Co. v. Koeck*, No. 08-CV-591 (E.D. Va. June 6, 2008).

H. PARALLEL LITIGATION

D. EMPLOYMENT CASES

7. HADDAD V. ITT INDUSTRIES INC., ET AL. (N.D. IND. 2005)[233]

Background. Plaintiff, a former employee of ITT Industries, Inc., filed a complaint against ITT on January 7, 2005. Plaintiff alleged that in an attempt to secure contracts with the Kuwaiti government, ITT paid bribes to Kuwaiti government officials. Plaintiff alleged that he suggested the payments cease and refused to cooperate in the scheme. Plaintiff alleged that as a result of his refusal to cooperate, he was demoted and given a poor performance review. After speaking with ITT's senior management and in-house counsel about his concerns, plaintiff was informed that he had been suspended. On April 9, 2003, Plaintiff filed a Sarbanes-Oxley whistleblower claim. Plaintiff's complaint states multiple claims in connection with defendant's treatment of the plaintiff once plaintiff refused to cooperate.

Status. On June 14, 2007, the defendant filed a Stipulation to Dismiss with Prejudice. The case was dismissed on June 25, 2007.

6. BAZZETTA V. DAIMLERCHRYSLER CORP. (E.D. MICH. 2005)[234]

Background. David Bazzetta was a financial analyst working in the Corporate Audit department of DaimlerChrysler Corp., a Delaware corporation. On September 28, 2004, he filed a whistleblower suit against DaimlerChrysler, claiming retaliation under the Sarbanes-Oxley Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and state law. He alleged that DaimlerChrysler maintained secret bank accounts to bribe foreign government officials and that he was fired on a pretext in retaliation for complaining about auditing and financial improprieties related to those accounts.

Status. After the court dismissed the Sarbanes-Oxley count and the count for retaliation against public policy, the parties stipulated to a dismissal of the remaining counts with prejudice and the case was dismissed in July 2005. The terms of the settlement were not disclosed.

[233] *Haddad v. ITT Ind. Inc.*, No. 1:05-cv-00370 (N.D. Ind. 2005).

[234] *Bazzetta v. DaimlerChrysler Corp.*, No. 2:04-cv-73806 (E.D. Mich. 2005).

H. PARALLEL LITIGATION

D. EMPLOYMENT CASES

5. DUHA V. AGRIUM, INC., ET AL. (E.D. MICH. 2003)[235]

Background. On January 28, 2003, Wayne Duha filed a complaint against his former employer, Agrium Inc., alleging that Agrium unlawfully terminated his employment after he reported Agrium's Argentine subsidiary to U.S. authorities and company officials for violating the Foreign Corrupt Practices Act ("FCPA"). Agrium, a U.S. company involved in crop production services, claimed that it terminated Duha for making inappropriate jokes in an e-mail to a co-worker.

Defendants moved to dismiss on *forum non conviens* grounds and Duha argued that the FCPA tilted the "public interest" factor of the *forum non conviens* in favor of resolving the dispute in the United States. The district court rejected this argument, noting that the FCPA provides no private right of action, but dismissed the action on other *forum non conviens* grounds.

The Sixth Circuit Court of Appeals reversed and found that the district court erred in not giving sufficient deference to the plaintiff's choice of forum and did not appropriately consider the inconvenience imposed on witnesses and parties if the suit proceeded in Argentina.

Status. The case settled on remand to the district court.

4. DEPUYDT V. FMC CORP. (N.D. CAL. 1995)[236]

Background. Gregory Depuydt accused FMC Corp., a Delaware corporation, of firing him for refusing to violate the FCPA by preparing an intra-office "rack-up" containing a bribe-inflated commission, alleging that the firing on those grounds violates public policy.

Status. The District Court granted partial summary judgment and the Court of Appeals affirmed, holding that Depuydt could have prepared the "rack-up" without violating the FCPA, since no instrumentality of interstate commerce was involved (the process was wholly internal) and he would have lacked the requisite "corrupt" intent. On remand, the case was settled in April 1995 and the case officially closed three months later.

[235] *Duha v. Argium, Inc., et al.*, No. 03 Civ. 10027 (E.D. Mich. 2003).

[236] *Depuydt v. FMC Corp.*, No. 5:89-cv-20470 (N.D. Cal. 1995).

H. PARALLEL LITIGATION

D. EMPLOYMENT CASES

3. D'AGOSTINO V. JOHNSON & JOHNSON, INC. (ESSEX COUNTY CT. 1994)[237]

Background. Richard D'Agostino, an employee of a Swiss subsidiary of Johnson & Johnson, Inc., a U.S. corporation, alleged that he was fired at Johnson & Johnson's behest for refusing to participate in the payment of consulting fees, which he believed were intended to bribe Swiss licensing authorities.

Status. The New Jersey Supreme Court held in 1993 that New Jersey's interest in resolving the dispute under its law was greater than Switzerland's interest, even though D'Agostino was employed in Switzerland by a Swiss company, since the claim involved an alleged FCPA violation in New Jersey, and that the claim could therefore proceed. No information on subsequent proceedings could be located.

2. WILLIAMS V. HALL, ET AL.; MCKAY V. ASHLAND OIL, INC., ET AL. (E.D. KY. 1988)[238]

Background. Harry Williams and Bill McKay, former officers of Ashland Oil, Inc., a U.S. corporation, brought actions alleging wrongful discharge and RICO violations against Ashland Oil. Plaintiffs alleged that Ashland Oil paid bribes to officials in Oman and Abu Dhabi to secure crude oil procurement contracts in violation of the FCPA. Plaintiffs further alleged that when they refused to participate in these illegal activities and to cooperate in the cover-up, they were discharged from their employment. The court held plaintiffs had standing to bring a civil RICO suit if they could show their terminations were overt acts done in furtherance of a conspiracy to violate RICO.

Status. On June 10, 1988, a jury awarded Williams and McKay $7.7 million and $14.4 million, respectively. These amounts were tripled to a total of $69.5 million because of a finding that Ashland Oil had violated RICO. In addition, Ashland Oil and its chairman, John Hall, were assessed $3 million in punitive damages for their handling of the matter. Ashland Oil intended to appeal the decision but announced a settlement of $25 million with plaintiffs in August 1988.

See SEC Digest Number D-6.
See Parallel Litigation Digest Number H-F2.

[237] *D'Agostino v. Johnson & Johnson, Inc.* (Essex County Ct. 1994), *appeals at* 542 A.2d 44 (N.J. App. Div. 1988), 559 A.2d 420 (N.J. 1989), 576 A.2d 893 (N.J. App. Div. 1990), 605 A.2d 252 (N.J. App. Div. 1992), 628 A.2d 305 (N.J. 1993).

[238] *Williams v. Hall, et al.*; *McKay v. Ashland Oil, Inc., et al.*, No. 84-149, (E.D. Ky. 1988).

H. PARALLEL LITIGATION

D. EMPLOYMENT CASES

1. PRATT V. CATERPILLAR INC. (3RD DIST. 1986)[239]

Background. Plaintiff Donald M. Pratt, a former employee at will of Caterpillar, Inc., filed a complaint on March 8, 1985 alleging that he was subjected to retaliatory discharge for his refusal to violate the FCPA at the behest of his superiors and to sign a document swearing he had no knowledge of FCPA violations by Caterpillar.

Status. The court dismissed Pratt's complaint, holding that no contravention of clearly mandated public policy, an essential element of a claim of retaliatory discharge, had occurred since the FCPA is a federal, rather than state, law. On November 10, 1986, the Appellate Court of Illinois affirmed the lower court's dismissal, and the Supreme Court of Illinois refused to grant Pratt's petition for leave to appeal.

[239] *Pratt v. Caterpillar Inc.*, 149 Ill. App. 3d 588, 500 N.E. 2d 1001 (Ill. App. Ct. 1986).

H. PARALLEL LITIGATION

E. CASES INVOLVING FOREIGN SOVEREIGNS

10. PDVSA US LITIGATION TRUST V. LUKOIL PAN AMERICAS LLC ET AL. (S.D. FL. 2018)[240]

Background. On March 3, 2018, the PDVSA US Litigation Trust filed a lawsuit in the Southern District of Florida against various entities and individuals associated with Petròleos de Venezuela, S.A. ("PDVSA"), the Venezuelan state-owned energy company, alleging violations of civil RICO, antitrust, breach of contract, breach of fiduciary duty, fraud, and state law. Plaintiffs allege that agents and officials within PDVSA conspired to fix oil prices, rig bids, embezzle PDVSA funds, and block competitors in a corrupt global scheme. According to the complaint, Francisco Morillo and Leonardo Baquero formed an energy consulting firm and bribed officials in PDVSA's Commrecial and Supply Department to give sensitive information related to the PDVSA tenders for contracts. Using a web of shell Panamanian companies, Morillo and Baquero allegedly concealed their scheme to appropriate proprietary information from PDVSA, which they then delivered to numerous oil companies. The complaint alleges that these oil companies used the information provided by Morillo and Baquero to manipulate the procedures of the bidding process and win their choice of PDVSA contracts.

Status. On March 3, 2018, plaintiffs filed their complaint and moved for a temporary restraining order and preliminary injunction to prevent certain defendants from destroying records and transferring assets. The district court granted and denied in part the temporary restraining order. Defendants filed a response to the motion for preliminary injunction, arguing that the plaintiffs lacked standing. The parties agreed that the motion for preliminary injunction should be decided only after the determination of standing. On July 23, 2018, defendants moved to dismiss the complaint for lack of standing. On November 5, Magistrate Judge Alicia Otazo-Reyes recommended that the district court grant the defendants' motion to dismiss for lack of standing and lack of subject matter jurisdiction.

9. HARVEST NAT. RESOURCES, INC. V. GARCIA (S.D. TEX. 2018)[241]

Background. In the Southern District of Texas, Harvest Natural Resources, Inc., a Houston-based energy company, brought a civil RICO claim and anti-trust claims against entities and individuals associated with PDVSA. Harvest alleges that PDVSA officials required Harvest to pay a $10 million bribe in order to sell its assets in Venezuela. According to the complaint, Harvest's refusal to pay the bribe resulted in the failure to acquire government approval. From 2012 through 2014, Harvest made unsuccessful attempts to acquire government approval for its share purchase agreements with potential buyers. In 2016, Harvest sold its assets at a price of $130 million, which it alleges is a $470 million loss. Harvest, now dissolved, brought this action alleging significant injury from PDVSA officials' retaliation for rejected bribes.

Status. On April 13, 2018, defendants moved to dismiss the complaint for lack of personal jurisdiction. On April 30, 2018, certain defendants moved to dismiss for failure to state a claim. On May 11, 2018, Judge Rosenthal ordered a schedule for jurisdictional discovery. On August 2, 2018, the parties agreed to extend time for briefing on the jurisdiction issue. On November 13, 2018, multiple defendants were dismissed.

[240] *PDVSA US Litigation Trust v. Lukoil Pan Americas LLC et al.*, No. 1:18-cv-20818 (S.D. Fl. Mar. 2018)

[241] *Harvest Nat. Resources, Inc. v. Garcia*, No. 4:18-cv-00483 (S.D. Tex. 2018).

H. PARALLEL LITIGATION

E. CASES INVOLVING FOREIGN SOVEREIGNS

8. THE LIBYAN INVESTMENT AUTHORITY V. GOLDMAN SACHS INTERNATIONAL (2016)[242]

Background. Goldman Sachs Asset Management entered into several derivatives trades with the Libyan Investment Authority ("LIA")—Libya's sovereign wealth fund—between January and April 2008. In these transactions, the LIA paid Goldman Sachs $1.2 billion in "premiums" in exchange for "exposure" to a number of shares in each of various underlying companies. Under these arrangements, the LIA stood to benefit from increases in share value at a rate higher than if it had actually purchased shares of the companies with the "premium" payments, but the LIA also bore all of the downside risk if the share value of the underlying companies decreased. As a result of the financial crises, by the maturity date of the agreements in 2011, all of the underlying companies that were the bases of the Goldman Sachs-LIA transactions had suffered a decline in share price, causing a total loss of LIA's $1.2 billion investment.

After this loss, the LIA brought a suit against Goldman Sachs in the London High Court, alleging that Goldman exercised improper influence and misled the LIA as to the highly speculative nature of the investment. Specifically, the LIA alleged that Goldman abused its advisory relationship with the LIA—through which it had provided training to LIA staff from the fall of 2007 until the end of July 2008—and that Goldman also provided expensive meals, prostitutes, and extravagant entertainment to win over LIA officials. The LIA also claimed improper influence occurred through the offer of a Goldman Sachs internship to a relative of a high ranking LIA official.

Status. The case was tried by the London High Court in June and July 2016. On October 14, 2016, the court issued its opinion, dismissing LIA's claim that the transactions resulted from undue influence exercised over it by Goldman Sachs. The court found that no protected relationship of trust and confidence existed between the LIA and Goldman beyond the "normal cordial and mutually beneficial relationship that grows up between a bank and a client." The court also rejected the LIA's argument that the transactions constituted unconscionable bargains.

7. BSG RESOURCES LIMITED V. THE REPUBLIC OF GUINEA (2014)[243]

Background. Beginning in 2012, the Republic of Guinea opened an investigation into the 2008 award of a valuable mining concession in the Simandou region of Guinea to the Guernsey-based mining and resource extraction company, BSG Resources Limited ("BSGR"). The investigation, funded by George Soros, stemmed from allegations that BSGR paid bribes to members of the administration of the former Guinean president, Lansana Conté.

Aided by U.S. officials conducting their own investigation into BSGR's activities in Guinea, the Guinean investigation concluded that BSGR bribed members of the Guinean government in exchange for the valuable mining rights in the Simandou region of the country. Accordingly, in April 2014, the government of Guinea revoked BSGR's mining rights.

On August 1, 2014, BSGR filed a request to arbitration before the International Centre for Settlement of Investment Disputes alleging that Guinea unlawfully expropriated its property in Guinea. BSGR's request for arbitration accuses the president of Guinea, Alpha Condé, along with George Soros, and other parties, of conspiring to deprive the company of valuable mining rights to reopen bidding on the concession.

Status. BSG Resources filed its memorial on the merits of the dispute on September 9, 2015, and filed an amended memorial on February 29, 2016. The Republic of Guinea filed its counter-memorial on June 17, 2016. BSG Resources filed its reply on the merits on January 10, 2017, and the Republic of Guinea filed its rejoinder on the merits on March 31, 2017. As of December 2018, the arbitration is ongoing.

See DOJ Digest Number B-140.
See Ongoing Investigation Number F-38.
See Parallel Litigation Digest Number H-C29.

[242] *The Libyan Investment Authority v. Goldman Sachs International* [2016] EWHC 2530 (Ch), HC-2014-000197.

[243] *BSG Res. Ltd. v. The Republic of Guinea* (ICSID Case No. Arb/14/22, Sept. 8, 2014).

H. PARALLEL LITIGATION

E. CASES INVOLVING FOREIGN SOVEREIGNS

6. ALUMINUM BAHRAIN B.S.C. V. SOJITZ CORPORATION AND SOJITZ CORPORATION OF AMERICA (S.D. TEX. 2009)[244]

Background. On December 18, 2009, Aluminium Bahrain B.S.C. ("Alba"), a company majority-owned by the government of Bahrain, filed a complaint alleging that Sojitz Corporation and its U.S. subsidiary Sojitz Corporation of America (collectively "Sojitz") perpetrated fraud on Alba by illegally bribing Alba officials and employees to obtain substantial illegitimate discounts on purchases of aluminum. The plaintiff makes RICO, fraud, and conspiracy claims. The plaintiff alleges Sojitz paid more than $14.8 million to two Alba employees from 1993 to 2006 to ensure discounts on aluminum purchases.

Status. The case was stayed on June 9, 2010 following a motion to intervene by the United States for the purpose of staying discovery pending an investigation into the defendants and possible criminal prosecution for violation of the FCPA.

On September 28, 2012, the defendants notified the court that the parties had agreed to settle their disputes out of court and requested for an extension of the stay to draft the settlement agreement. The plaintiffs filed a letter of agreement requesting a further extension of the stay until November 11, 2012 to finalize the settlement documentation and obtain corporate approval from the parties. The parties submitted a stipulation of dismissal with prejudice on December 21, 2012, and the court dismissed the action with prejudice on January 16, 2013.

See DOJ Digest Number B-150.
See SEC Digest Number D-125.
See Parallel Litigation Digest Number H-E4, H-F23, and H-F7.

5. THE REPUBLIC OF IRAQ V. ABB AG, ET AL. (S.D.N.Y. 2008)[245]

Background. On June 27, 2008, a complaint was filed by the Republic of Iraq against companies it alleges participated in a conspiracy to corrupt the U.N. Oil-for-Food Program. The complaint alleges the defendants paid kickbacks or surcharges to representatives of the Iraqi government resulting in a diversion of funds from the U.N. Oil-for-Food Program escrow account. The plaintiff claims the defendants' actions violate RICO, the FCPA, the Money Laundering Control Act, and the Robinson Patman Act among other laws.

Status. On March 3, 2011, the court denied a motion to compel arbitration filed by the plaintiff, which the plaintiff appealed. On July 29, 2011, plaintiff and defendant Avio S.P.A. stipulated and agreed that Avio S.P.A. be dismissed from the action with prejudice.

The motion to dismiss was granted on February 14, 2013. Shortly thereafter, the plaintiff filed an appeal with the Second Circuit. On September 18, 2014, the Court of Appeals affirmed the lower court's dismissal and on June 15, 2015, the U.S. Supreme Court denied the plaintiff's petition for the writ of certiorari. The case is now closed.

See DOJ Digest Numbers B-75, B-47, and B-31.
See SEC Digest Numbers D-26 and D-17.
See DOJ FCPA Opinion Procedure Release Digest Number E-41.
See Ongoing Investigation Number F-2.

[244] *Aluminum Bahrain B.S.C. v. Sojitz Corp., et al.*, No. 4:09-cv-04032 (S.D. Tex. 2009).

[245] *The Republic of Iraq v. ABB AG*, No. 1:08-cv-05951 (S.D.N.Y. 2008); No. 13-618 (Second Circuit).

H. PARALLEL LITIGATION

E. CASES INVOLVING FOREIGN SOVEREIGNS

4. ALUMINUM BAHRAIN B.S.C. V. ALCOA, INC., ALCOA WORLD ALUMINA LLC, WILLIAM RICE, AND VICTOR DAHDALEH (W.D. PA. 2008)[246]

Background. On February 27, 2008, Aluminum Bahrain B.S.C. ("Alba"), a company majority-owned by the government of Bahrain, filed a complaint alleging that Alcoa, Inc. ("Alcoa"), a corporate officer of Alcoa, and an agent of Alcoa perpetrated fraud on Alba, through a conspiracy of illegally bribing Alba officials, to induce Alba to cede a controlling interest in the company that principally owns it (Bahrain Mumtalakat Holding Co., B.S.C.) to Alcoa and to overpay for aluminum. The plaintiff alleged that it paid $2 billion in overcharges over a two year period, that this money was funneled through shell companies controlled by Victor Dahdaleh, as an agent of Alcoa, and that a portion of this money was then used to bribe Alba officials in return for additional supply contracts. On February 28, 2008, the case was designated for placement into the District Courts' Alternative Dispute Resolution program. On February 29, 2008, the plaintiff was instructed to file a RICO case statement. On March 20, 2008, there was an unopposed motion for the United States to intervene. In the interim, federal authorities in the United States launched their own investigation into whether Alcoa and its executives and agents violated the FCPA and mail and wire fraud statutes and this litigation was stayed on March 27, 2008 in light of that criminal investigation.

Status. On November 8, 2011, the case was re-opened, and on November 28, 2011, a first amended complaint was filed against the same defendants. The amended complaint alleges violations of federal civil RICO, conspiracy to violate federal civil RICO, fraud, and conspiracy to defraud.

On October 11, 2012, the claims against defendants Alcoa Inc., Alcoa World Alumina LLC, and William Rice were dismissed with prejudice. On November 20, 2012, the court ordered that the case be administratively closed while discovery was stayed and defendant Victor Dahdaleh petitioned for an interlocutory appeal. On January 25, 2013, Dahdaleh's petition for an interlocutory appeal was denied by the Third Circuit. On July 9, 2013, the District Court continued the discovery stay until Dahdaleh's November 4, 2013 criminal trial in the U.K. ended. In early 2014, the U.K. Serious Fraud Office's case against Dahdaleh was dismissed after a key witness allegedly refused to testify in favor of the prosecution. Shortly after the dismissal of the U.K. charges, Judge Ambrose of the Western District of Pennsylvania dismissed Alba's case against Dahdaleh. Alba appealed the district court's dismissal to the Third Circuit in May 2014. In April 2015, the parties voluntarily dismissed the appeal, and the case is now closed.

See DOJ Digest Number B-150.
See SEC Digest Number D-125.
See Parallel Litigation Digest Numbers H-E6, H-F23, and H-F7.

[246] *Aluminum Bahrain B.S.C. v. Alcoa, Inc.*, No. 2:08-cv-00299 (W.D. Pa. 2008).

3. DOMINICAN REPUBLIC V. AES CORP. (E.D. VA. 2006)[247]

Background. On March 3, 2006, the Dominican Republic filed a lawsuit against AES Corporation, a U.S. corporation, alleging that the company dumped 82,000 tons of the pollutant rock ash on the country between October 2003 and March 2004, sickening islanders and damaging the environment. The Dominican Republic also claimed that AES violated the RICO and the FCPA because of the company's payments to Dominican environmental officials to obtain licenses for disposal of the waste.

Status. On February 28, 2007, the court dismissed the Dominican Republic's claims against AES with prejudice pursuant to the parties' stipulation.

[247] *Gov't of the Dominican Republic and Secretariat of State of the Env't & Natural Res. of the Dominican Republic* (E.D. Va. 2006).

H. PARALLEL LITIGATION

E. CASES INVOLVING FOREIGN SOVEREIGNS

2. WORLD DUTY FREE CO. V. THE REPUBLIC OF KENYA[248]

Background. The contract was signed between Kenya and a company called "the House of Perfume" in April 1989 and amended in May 1990 to substitute World Duty Free Company Limited, a U.K. corporation that operates duty free shops in international airports.

Status. In the arbitral decision, the tribunal found that a bribe had been paid to the former Kenyan President Daniel arap Moi and that a contract secured by bribery is not enforceable as it violates international public policy. The tribunal found that Nasir Ibrahim Ali, former Chief Executive Officer of the House of Perfume had wired $2 million in cash as a "personal donation" for President arap Moi to obtain a contract to build duty free shops in Kenya. Of the $2 million, $500,000 cash was brought in a suitcase to the President's residence and left in a corner of the meeting room. During meetings, the money was removed and replaced with fresh corn. In 1992, World Duty Free was implicated in the Goldenberg International scandal in Kenya, in which money was illegally channeled into arap Moi's re-election campaign. World Duty Free claimed it was unwittingly used in the fraud and that the government then undertook a process of expropriating World Duty Free's assets to stop it from cooperating in the prosecution of the case. World Duty Free raised the issue of the bribe and Kenya conceded this fact as a complete defense to enforcing the contract. The tribunal found that even though corruption may be widespread in a country and business may be impossible without paying bribes, a tribunal will not condone such behavior. The tribunal found that a bribe is not a transaction severable from the contract . According to the tribunal, the fact that Kenya had not prosecuted its former President was discouraging but irrelevant.

1. ADLER, ET AL. V. FEDERAL REPUBLIC OF NIGERIA, ET AL. (9TH CIR. 2000)[249]

Background. In May 1994, James E. Adler and El Surtidor Del Hogar, S.A. de C.V., a Mexican corporation controlled by Adler, filed a complaint against the Federal Republic of Nigeria, the Central Bank of Nigeria ("CBN"), the Nigerian National Petroleum Corporation, and seventeen Nigerian government officials. The complaint alleged fraud, conspiracy to commit fraud, and negligence, and sought the recovery of money paid by plaintiffs to bribe Nigerian officials.

In August 1992, Adler was solicited by Nigerian government officials to engage in a scheme to have stolen government funds secretly paid to the officials. The Nigerian counterparty requested that Adler, among other things, send signed and stamped copies of El Surtidor letterhead and pro forma invoices and the number to a foreign bank account where $130 million could be deposited. Adler was informed that in exchange for these services, he would earn a 40% commission. When defendants failed to pay Adler, he paid a total of $5,180,000 in bribes to Nigerian government officials to induce performance of the agreement.

The defendants argued that their activities were protected by the Foreign Sovereign Immunities Act ("FSIA"), but the district court ruled that these activities were within the commercial activity exception to the FSIA. After a bench trial, the district court found, among other things, that Adler paid bribes to Nigerian officials in violation of California bribery law and the FCPA and that the unclean hands doctrine barred Adler from recovering under the agreement.

Status. In 2000, the Ninth Circuit upheld the lower court's determination.

[248] *World Duty Free Co. v. The Republic of Kenya* (ICSID Case No. Arb/00/7, Oct. 4, 2006).

[249] *Adler, et al. v. Fed. Republic of Nigeria, et al.*, 219 F.3d 869 (9th Cir. 2000).

H. PARALLEL LITIGATION

F. DERIVATIVE CASES

32. HUELLEMEIER V. TEVA PHARM. INDUS. LTD., ET AL. (D. CONN. 2017)[250]

Background. On July 17, 2017, plaintiff Robert Huellemeier filed a derivative complaint on behalf of the Employee Stock Purchase Plan against Teva Pharmaceutical Industries, a global pharmaceutical company, alleging violations of the Securities Act of 1933, breach of fiduciary duty, misrepresentation and non-disclosure, and breach of contract. The complaint alleges that Teva made improper payments in three different countries, and cites to the company's DPA it entered into with the DOJ in December 2016. The complaint alleges that Teva made materially false or misleading statements in its Registration Statement, which resulted in injury to plaintiffs.

Status. The complaint was initially filed in the Southern District of Ohio on July 17, 2017. The case was transferred to the District of Connecticut on November 17, 2017. On February 12, 2018, the court ordered a stay of the proceedings.

See DOJ Digest Number B-179
See DOJ Digest Number B-165.
See Parallel Litigation Number H-D14.

31. IN RE QUALCOMM, INC. FCPA STOCKHOLDER DERIVATIVE LITIG. (DEL. CH. 2015)[251]

Background. On June 16, 2015, plaintiff shareholders, on the behalf of Qualcomm, Inc., filed a derivative action against officers and directors of Qualcomm for breach of fiduciary duty, corporate waste, and unjust enrichment. Qualcomm is a semiconductor company that designs and markets wireless telecommunications products and services in forty countries outside the United States. The complaint alleges that Qualcomm lacked sufficient internal controls to prevent FCPA violations. Specifically, Qualcomm disclosed in its Form 10-Q, filed with the SEC on February 1, 2012, that the SEC and the Department of Justice began investigations into potential FCPA violations. Plaintiffs allege that they were injured by the failure of Qualcomm's directors and senior officers to ensure compliance with the FCPA.

Status. On September 19, 2016, defendants moved to dismiss the complaint, to which plaintiffs responded on November 29, 2016. On April 18, 2017, the court heard oral argument on the motion to dismiss. One June 16, 2017, the complaint against the defendants was dismissed.

See SEC Digest Number D-147.

[250] *Huellemeier v. Teva Pharm. Indus., LTD, et al.*, No. 3:17-cv-01938 (D. Conn. 2017).

[251] *In re Qualcomm, Inc. FCPA Stockholder Derivative Litig*, No. 11152-VCMR (Del. Ch. 2017).

H. PARALLEL LITIGATION

F. DERIVATIVE CASES

30. REESE V. ANDREOTTI (N.Y. SUP. CT. 2016)[252]

Background. In this derivative suit, an investor in the biopharmaceutical corporation Bristol-Meyers Squibb Co. alleged that several directors of the company failed to respond to warning signs that its representatives in China were bribing employees at state-owned and state-controlled hospitals to boost prescription sales. The complaint alleged that "[d]efendants utterly failed to institute an effective internal controls system and to respond promptly to indications of significant compliance gaps."

In October of 2015, the SEC filed and settled an administrative proceeding against Bristol-Meyers Squibb Co. for violating internal controls and record-keeping provisions of the FCPA. Pursuant to this settlement, the company disgorged $11.4 million in profits and paid a $2.75 million penalty and $500,000 in interest.

Status. Reese filed an amended complaint in February 2017 after the Board of Directors informed him that it did not intend to bring an action against any person involved in the alleged wrongdoing. Defendants moved to dismiss the action in March 2017. After oral argument in the Supreme Court of New York County, Justice Shirley Kornreich granted defendant's motion to dismiss the amended complaint in its entirety, and entered a judgment to dismiss with prejudice on October 25, 2017.

See SEC Digest Number D-141.

29. LOUISIANA MUNICIPAL POLICE EMPLOYEES' RETIREMENT SYSTEM V. WYNN ET AL (D. NEV. 2012)[253]

Background. This derivative action was brought against certain directors and officers of Wynn Resorts for breaches of fiduciary duty relating to a potentially illegal $135 million "donation" to the University of Macau Development Foundation, allegedly made with the purpose of causing influential members of the University of Macau's board to grant Wynn favorable business conditions with respect to its resort operations in China. The complaint alleged that defendants knew or consciously disregarded that the donation would violate the FCPA, and that they exposed the company to reputational harm and financial liability by making the donation despite this knowledge.

While the SEC did investigate Wynn resorts in connection with this donation, it granted a declination to the company in July 2013.

Status. In March of 2014, the district court granted defendants' motion to dismiss the case holding that plaintiffs' pleadings did not give rise to a reasonable inference that defendants intended or knew that the Macau donation would violate the FCPA. This finding was upheld by the U.S. Court of Appeals for the Ninth Circuit on July 18, 2016.[254]

See Ongoing Investigation Number F-27.
See Parallel Litigation Digest Number H-C28.

[252] *Reese v. Andreotti*, No. 654132/2016 (N.Y. Sup. Ct. 2016).

[253] *Louisiana Municipal Police Employees' Retirement System v. Wynn*., No. 2:12-cv-00509 (D. Nev. 2012).

[254] *Louisiana Municipal Police Employees' Retirement System v. Wynn*, No. 14-15695 (9th Cir. 2016).

H. PARALLEL LITIGATION

F. DERIVATIVE CASES

28. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 38 PENSION FUND V. BIO-RAD LABORATORIES, INC. (DEL. CH. 2015)[255] IN RE BIO-RAD LABORATORIES, INC. STOCKHOLDER LITIGATION (DEL. CH. 2015)[256]

Background. In 2014, California-based life sciences company Bio-Rad Laboratories ("Bio-Rad") paid $55 million to settle DOJ and SEC investigations into improper payments allegedly made by its subsidiaries to foreign officials in Russia, Thailand, and Vietnam. In connection with the resolution of these investigations, Bio-Rad admitted that it failed to devise and maintain adequate internal accounting controls.

Following the penalties paid in 2014, Bio-Rad shareholders demanded to inspect the company's books and records to investigate potential breaches of fiduciary duty by members of the board. When this request was ignored, shareholders filed multiple complaints in the Delaware Court of Chancery invoking the statutory right to inspect and make copies of the company's books and records. On May 26, 2015, these complaints were consolidated into the case titled *International Brotherhood of Electrical Workers Local 38 Pension Fund v. Bio-Rad Laboratories.* Later, this case was consolidated under the case entitled *In re Bio-Rad Laboratories, Inc. Stockholder Litigation*, a derivative action for breach of fiduciary duties filed on August 13, 2015.

Status. In May 2017, Vice Chancellor Joseph Slights granted plaintiffs' motion to dismiss with prejudice. Plaintiffs moved for dismissal after a California Superior Court case, involving claims that arose out of the same facts and circumstances as this case, was dismissed with prejudice pursuant to a final approval of settlement. Based on estoppel grounds, the case in Delaware Chancery Court was dismissed. The case is now closed.

See DOJ Digest Number B-154.
See SEC Digest Number D-129.
See Parallel Litigation Digest Number H-D13 and H-F17.

27. COPELAND V. APOTHEKER, ET AL. (N.D. CAL. 2014)[257]

Background. On February 10, 2014, Plaintiff, a shareholder of Hewlett-Packard Company ("HP"), filed a complaint against HP's board of directors. The plaintiff claims that the defendants breached their fiduciary duties by failing to appropriately disclose and manage an investigation into potential violations of the FCPA by HP's Russian and German offices. The complaint argues that the defendants were aware of the potential violations of the FCPA but engaged in an effort to cover up the bribery scheme, forcing the company to spend hundreds of millions of dollars to resolve the investigations.

Status. On April 8, 2014, the court granted a motion to stay the proceedings pending a decision from the Ninth Circuit Federal Court of Appeals concerning a separate shareholder derivative action against HP, *Copeland v. Apotehker*, 13-16251 (9th Cir. 2013). On October 26, 2015, the Ninth Circuit issued its decision confirming a motion to dismiss in the separate shareholder derivative action. Following the Ninth Circuit's decision, the parties filed a joint stipulation for voluntary dismissal of the case, which was granted in March 2016. The case is now closed.

See DOJ Digest Number B-153.
See SEC Digest Number D-126.
See Parallel Litigation Digest Number H-C30.

[255] *Int'l Brotherhood of Elec. Workers Local 38 Pension Fund v. Bio-Rad Labs., Inc*., No. 10930 (Del. Ch. 2015).

[256] *In re Bio-Rad Labs., Inc. Stockholder Litig.*, No. 11387 (Del. Ch. 2015).

[257] *Copeland v. Apotheker, et al.*, 5:14-cv-00622 (N.D. Cal. 2014).

H. PARALLEL LITIGATION

F. DERIVATIVE CASES

26. JHA V. OCH, ET AL. (S.D.N.Y. 2014)[258]
MENALDI V. OCH-ZIFF CAPITAL MANAGEMENT, ET AL. (S.D.N.Y. 2014)[259]
STOKES V. OCH, ET AL. (SUP. CT., N.Y. CNTY. 2014)[260]

KUMARI V. OCH, ET AL. (N.Y. SUP. CT. 2015)[261]

Background. In February 2014, the Wall Street Journal reported that the DOJ initiated an investigation into a group of banks, private-equity firms, and hedge funds for potential violations of the FCPA flowing from those companies' dealings with the Libyan government-run investment fund. The DOJ's announcement also referenced a parallel SEC investigation dating back to 2011. Among the targets of the DOJ's and SEC's investigation into the Libyan government-run investment fund was the hedge fund, Och-Ziff Capital Management ("OZM").

Later, in April 2014, the *Wall Street Journal* published a separate article detailing another set of FCPA investigations into OZM's investments in Africa.

The investigations led a group OZM shareholders to file lawsuits against the company and its board of directors claiming various securities law violations and breaches of fiduciary duty.

Status. On November 11, 2014, the plaintiffs in *Jha* agreed to have their case voluntarily dismissed without prejudice. The case is now closed. Similarly, the defendants in *Stokes* filed a motion to dismiss plaintiffs' amended complaint on October 30, 2014. The motion was granted on August 10, 2015 and the case is now closed.

On March 16, 2015, Defendants filed a motion to dismiss the amended class action complaint, which the court ganted on February 17, 2016. On March 23, 2016, defendants answered the surviving claims in plaintiffs' amended complaint. On August 9, 2016, plaintiffs moved for class certification. Plaintiffs filed a second amended class action complaint on November 18, 2016, and defendants moved to dismiss the second amended complaint on January 11, 2017. On September 29, 2017, the court granted defendants' motion to dismiss with respect to the new or renewed claims in plaintiffs' second amended complaint, while the claims that remained after the court's earlier February 2016 order also survived this motion to dismiss. On November 10, 2017, defendants answered the second amended complaint and filed a memorandum opposing plaintiffs' motion for class ceritfication. The court granted class certification on September 14, 2018, and the case was subsequently stayed on September 18, pending settlement proceedings. On October 2, 2018, plaintiffs filed an unopposed motion for preliminary approval of the proposed settlement, and the court granted preliminary approval the following day. As of October 5, 2018, the court granted an adjournment of the settlement approval hearing to January 16, 2019.

The defendants in *Kumari* filed a motion to dismiss on October 23, 2015, which was granted on September 23, 2016. The case is now closed.

See DOJ Digest Number B-173.
See SEC Digest Number D-160.
See Ongoing Investigation Number F-43.

[258] *Jha v. Och, et al.*, No. 1:14-cv-06332 (S.D.N.Y. 2014).

[259] *Menaldi v. Och-Ziff Capital Mgmt., et al.*, No. 1:14-cv-03251 (S.D.N.Y. 2014).

[260] *Stokes v. Och, et al.*, No. 651663/2014 (Sup. Ct., N.Y. Cnty. 2014).

[261] *Kumari v. Och, et al.*, No. 653016/2015 (N.Y. Sup. Ct. 2015).

H. PARALLEL LITIGATION

F. DERIVATIVE CASES

25. WILLIAMS V. NUTI ET AL. (N.D. GA. 2013)[262]

Background. On April 26, 2013, plaintiff Sharon Williams filed a shareholder derivative suit on behalf of nominal defendant NCR Corporation against defendant William Nuti and other members of the NCR Board of Directors and executive officers asserting breach of fiduciary duty. Among other allegations, Williams claimed that the defendants knowingly violated the FCPA in China, condoning gift arrangements to officials at state-controlled Chinese banks to obtain and retain business in China. In addition, NCR allegedly hired the sister of a key Omani governmental decision-maker in 2004 to acquire a $17.3 million contract with the state-controlled telecommunications company, Omantel. Further, NCR allegedly paid for trips for government officials of various Middle East countries and provided gifts to Omantel officials. The allegations are based on statements and documents presented by a whistleblower to the *Wall Street Journal*, following which NCR engaged in an internal investigation and cooperated with the DOJ and SEC's requests and subpoenas regarding the whistleblower's FCPA allegations. Pointing to NCR's disclosure that it has spent $4 million in connection with the FCPA and other internal investigations, Williams demanded that the court award NCR the amount of damages sustained by NCR as a result of the defendants' breaches of fiduciary duties, as well as reimbursement of costs involved in the derivative suit.

Status. On April 8, 2014 the court approved a settlement and dismissed the action with prejudice.

See Ongoing Investigation Number F-16.

[262] *Williams v. Nuti, et al.*, No. 1:13-cv-01400 (N.D. Ga. 2013).

24. THE GEORGE LEON FAMILY TRUST V. COLEMAN, ET AL. (D.N.J. 2012)[263]

Background. On July 13, 2012, plaintiff the George Leon Family Trust ("the Trust") filed a shareholder derivative suit against nominal defendant Johnson & Johnson, Inc., its Board of Directors, and several of its senior executives for breach of fiduciary duty, corporate waste, unjust enrichment, and violations of federal securities laws.

Plaintiffs alleged, *inter alia*, that the Board had knowledge of actual or potential violations of the FCPA, including that J&J paid kickbacks to the government of Iraq; and that J&J employees and agents routinely paid bribes to public doctors in Greece who selected J&J surgical implants for their patients.

Plaintiffs' allegations were partially based on J&J's settlements with the DOJ and SEC relating to FCPA allegations. In April of 2011, J&J settled with the SEC to resolve charges that the company violated the FCPA when its subsidiaries bribed public doctors in several European countries (including Greece) and paid kickbacks to Iraq to illegally obtain business. Johnson & Johnson consented to the entry of a court order permanently enjoining it from future violations of Sections 30A, 13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934, ordering it to pay $38,227,826 in disgorgement and $10,438,490 in prejudgment interest, and ordering it to comply with certain FCPA compliance program. That same month, a parallel criminal case was brought by the Department of Justice in which the company acknowledged wrongdoing and agreed to pay a $21,400,000 criminal penalty as part of a deferred prosecution agreement.

Status. The case had been stayed pending resolution of an internal investigation pursuant to a shareholder demand plaintiff made on the Board of Directors. On August 15, 2013, the Court ordered that J&J had thirty days to respond to the complaint. J&J filed a motion to dismiss or, in the alternative, a motion for summary judgment on August 16, 2013 which was joined by the individual defendants. Plaintiffs filed an amended complaint on October 7, 2013 that reflected a report made by independent counsel retained by the J&J Board of Directors and the Board's refusal of the Plaintiffs' demand to pursue the claims. J&J filed a motion to dismiss or, in the alternative, a motion for summary judgment, joined by the individual defendants, on November 15, 2013. Following an exchange of briefs, the court issued an order granting the defendants' motion for summary judgment on June 25, 2014 and dismissed the case with prejudice.

See DOJ Digest Number B-120.
See SEC Digest Number D-96.
See Ongoing Investigations Number F-2.
See Parallel Litigation Digest Number H-F21.

[263] *George Leon Family Trust v. Coleman*, No. 3:12-cv-04491 (D.N.J. 2012).

H. PARALLEL LITIGATION

F. DERIVATIVE CASES

23. RUBERY V. KLEINFELD, ET AL. (W.D. PA. 2012)[264]

Background. On June 20, 2012, plaintiff Catherine Rubery filed a shareholder derivative suit against nominal defendant Alcoa Inc. against certain of its officers and directors, seeking to remedy defendants' alleged breach of fiduciary duty and waste of corporate assets.

In February 2008, Aluminium Bahrain, B.S.C. ("Alba," owned by the Government of Bahrain) sued Alcoa for violations of RICO, conspiracy to violate RICO, civil conspiracy, and fraud. The complaint in that case alleged that Alcoa and its employees and agents illegally bribed officers of Alba and government officials in Bahrain to force Alba to obtain various business advantages. Soon after Alba filed its complaint, the DOJ began its own criminal investigation into whether Alcoa violated the FCPA.

Plaintiff alleges that in March 2008, she demanded that the company conduct an investigation into Alba's allegations to determine which employees, officers, or directors were responsible for the illegal bribery scheme. However, the Board allegedly told Plaintiff that it would only consider her demand after the DOJ and Alcoa finished their own investigations.

Status. On January 20, 2015, the court approved a proposed settlement between the parties. The case is now closed.

See DOJ Digest Number B-150.
See SEC Digest Number D-125.
See Parallel Litigation Digest Numbers H-E6, H-E4, and H-F7.

[264] *Rubery v. Kleinfeld*, No. 2:12-cv-00844 (W.D. Pa. 2012).

22. COTTRELL V. DUKE (W.D. ARK 2012)[265]
EMORY V. DUKE (W.D. ARK 2012)[266]
RICHMAN V. ALVAREZ (W.D. ARK 2012)[267]
BRAZIN V. WAL-MART STORES INC. (DEL. CH. 2012)[268]
COHEN V. ALVAREZ (DEL. CH. 2012)[269]
KNOWLES V. ALVAREZ (DEL. CH. 2012)[270]
CALIFORNIA STATE TEACHERS RETIREMENT SYSTEM V. ALVAREZ (DEL. CH. 2012)[271]
KLEIN V. ROBSON (DEL. CH. 2012)[272]
AUSTIN V. WALTON, ET AL., (ARK. CIR. CT., POPE CNTY. 2014)[273]

Background. Wal-Mart is currently subject to an FCPA investigation after an exposé was published in the *New York* Times on April 21, 2012 regarding alleged foreign bribery by senior Wal-Mart managers in Mexico. Several lawsuits have been filed in the following jurisdictions: Western District of Arkansas (filed 2012), Eastern District of Arkansas (filed 2012), Delaware Court of Chancery (filed 2012), Circuit Court of Pope County, Arkansas (filed 2014). The lawsuits allege that the officers and directors of Wal-Mart were intentionally derelict and/or consciously disregarded their fiduciary duties of loyalty, good faith, candor and good trust to the company by (1) permitting the operation of a widespread scheme to bribe Mexican officials, and (2) by failing to adequately and properly investigate such bribery following its disclosure. The lawsuits also allege that the directors and officers violated Sections 14(a) and 29(b) of the Securities Exchange Act of 1934. The plaintiffs seek to recover for Wal-Mart and its shareholders hundreds of millions of dollars of financial and reputational damages caused by the defendants' breach of their fiduciary duties and violations of the Securities Exchange Act.

Status. On March 17, 2014, both *Emory v. Duke* and *Richman v. Alvarez* were consolidated into the case *Cottrell v. Duke*. In November 2014, *Austin v. Walton* was transferred from state court in Arkansas to federal court in the Western District of Arkansas and joined with *Cottrell v. Duke*. On April 3, 2015, the *Cottrell* court granted the defendants' motion to dismiss. The defendants then appealed their claim before the Eighth Circuit Court of Appeals, which affirmed the dismissal on July 22, 2016.

[265] *Cottrell v. Duke,* No 4:12-cv-04041 (W.D. Ark 2012).

[266] *Emory v. Duke*, No. 5:12-cv-05171 (W.D. Ark 2012).

[267] *Richman v. Alvarez*, No. 4:12-cv-04069 (W.D. Ark 2012).

[268] *Brazin v. Wal-Mart Stores*, No. 7489 (Del. Ch. 2012).

[269] *Cohen v. Alvarez*, No. 7470 (Del. Ch. 2012).

[270] *Knowles v. Alvarez*, No. 7630 (Del. Ch. 2012).

[271] Cal. State Teachers Ret. Sys. v. Alvarez, No. 7490 (Del. Ch. 2012).

[272] *Klein v. Robson*, No. 7455 (Del. Ch. 2012).

[273] *Austin v. Walton*, No. CV-2012-201 (Ark. Cir. Ct., Pope Cnty. 2014).

H. PARALLEL LITIGATION

F. DERIVATIVE CASES

Brazin, *Cohen*, *Knowles*, *California State Teachers*, and *Klein* have been consolidated into *In re Walmart Stores, Inc. Delaware Derivative Litigation*, for which a verified consolidated amended stockholder derivative complaint was filed on May 1, 2015.[274] On June 1, 2015, defendants filed a motion to dismiss the verified consolidated complaint on the grounds of collateral estoppel and lack of demand futility. Co-lead plaintiffs filed their reply brief in opposition to the motion to dismiss on July 2, 2015. On May 13, 2016, the Delaware Chancery Court held that, because plaintiffs in *Cottrell v. Duke* in the Western District of Arkansas were adequate class representatives, and because that case had been dismissed, plaintiffs in Delaware were barred from re-litigating the issue of demand futility. Accordingly, Vice Chancellor Bouchard granted the defendants' motion to dismiss.

On June 13, 2016, the *California State Teachers Retirement System* plaintiffs appealed this dismissal to the Surpreme Court of the State of Delaware, challenging the preclusive effect of the *Cottrell* dismissal. In its January 18, 2017 order, the Supreme Court of Delaware remanded the case to the Court of Chancery for the limited purpose of ruling further on specified preclusion issues. The Court of Chancery issued its Supplemental Opinion on July 25, 2017, and the Supreme Court of Delaware ultimately affirmed the Chancery Court's dismissal of plaintiffs' complaint on January 25, 2018. The case is now closed.

See Ongoing Investigation Number F-12.
See Parallel Litigation Digest Number H-A14.

21. COPELAND V. PRINCE, ET AL. (D.N.J. 2011)[275] KATZ V. WELDON, ET AL. (D.N.J. 2011)[276]

Background. On August 29, 2011, plaintiffs M.J. Copeland and Leslie Katz filed separate shareholder derivative suits against nominal defendant Johnson & Johnson, Inc., its Executive Committee, and several of its senior executives for breach of fiduciary duties and violations of federal laws and regulations. The two cases were consolidated under the *Copeland* heading on November 21, 2011. Plaintiffs' claims arise from alleged systemic failures of corporate governance and illegal conduct on the part of current and former senior officers and directors that stems from violations of the FCPA, violations of the federal False Claims Act, and violations of federal regulations, as well as the filing of false and misleading information with the SEC. Plaintiffs cited damage to the company's reputation and large financial losses caused by the Company's investigations of its violations, defense of lawsuits, and payment of large fines. In April of 2011, Johnson & Johnson settled with the SEC to resolve charges that the company violated the FCPA when its subsidiaries bribed public doctors in several European countries and paid kickbacks to Iraq to illegally obtain business. Johnson & Johnson consented to the entry of a court order permanently enjoining it from future violations of Sections 30A, 13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934, ordering it to pay $38,227,826 in disgorgement and $10,438,490 in prejudgment interest, and ordering it to comply with certain FCPA compliance program. That same month, a parallel criminal case was brought by the Department of Justice in which the company acknowledged wrongdoing and agreed to pay a $21,400,000 criminal penalty as part of a deferred prosecution agreement.

Status. On October 26, 2012, the Court approved a settlement and dismissed the action with prejudice.

See DOJ Digest Number B-120.
See SEC Digest Number D-96.
See Ongoing Investigations Numbers F-2.
See Parallel Litigation Digest Number H-F24.

[274] *In re Wal-Mart Stores,* No. 7445 (Del. Ch. 2012).

[275] *Copeland v. Prince*, No. 3:11-cv-04993 (D.N.J. 2011).

[276] *Katz v. Weldon*, No. 3:11-cv-04994 (D.N.J. 2011).

H. PARALLEL LITIGATION

F. DERIVATIVE CASES

20. IRON WORKERS MID-SOUTH PENSION FUND V. KEITH RUPERT MURDOCH, ET AL. (S.D.N.Y. 2011)[277]

Background. On August 10, 2011, Iron Workers' Mid-South Pension Fund ("the Pension Fund") filed a shareholder derivative complaint on behalf of News Corporation ("News Corp."), against Rupert Murdoch and other current and former officers and directors of News Corp., alleging violations of federal securities law and state law, including breach of fiduciary duty, waste of corporate assets, and unjust enrichment. The lawsuit grew from allegations of the use of illegal information-gathering methods and bribes to British police officers by employees of *News of the World*, a newspaper published by News International Limited, News Corp.'s U.K. publishing division. The Pension Fund alleges that the defendants breached their fiduciary duties by causing or allowing News Corp. to engage in this unlawful conduct and that News Corp. has suffered, and will continue to suffer, damages due to the legal proceedings and investigations begun as a result of it.

Status. Defendants filed a motion to stay this action (as well as two related actions) pending resolution of a related action in Delaware Chancery Court. On September 18, 2012, the Court denied defendants' motion to stay. On May 3, 2013, the parties in the Delaware action filed a stipulation of settlement and the Chancery Court issued an order and final judgment approving the stipulation of settlement on June 26, 2013. The Pension Fund consented to the dismissal and on July, 16, 2013, the Court ordered the actions be consolidated and dismissed the consolidated action with prejudice.

See Ongoing Investigation Numbers F-21.

19. HOLT V. GOLDEN, ET AL. (D. MASS. 2011)[278]

Background. On July 20, 2011 plaintiffs Frank Holt and Norman Hart filed a shareholder derivative complaint on behalf of Smith & Wesson Holding Corp. against Michael Golden and other current and former Smith & Wesson officers and directors, asserting breach of fiduciary duty, abuse of control, gross mismanagement, waste of corporate assets, and unjust enrichment. The complaint points to the 2009 indictment of defendant Amaro Goncalves, Smith & Wesson's former Vice President of Law Enforcement, International and U.S. Government Sales, for alleged FCPA violations related to bribes of an unnamed Defense Minister in Africa (known as the "SHOT-Show" case), and related DOJ and SEC investigations of Smith & Wesson. The complaint alleges that Smith & Wesson had incurred approximately $11.6 million in related legal fees to that date.

Status. Defendants filed a motion to dismiss the action on September 30, 2011. On July 25, 2012, the court granted defendants' motion to dismiss, and the case was terminated the same day.

See DOJ Digest Numbers B-94.
See SEC Digest Number D-127.

[277] *Iron Workers Mid-South Pension Fund v. Murdoch et al.*, No. 1:11-cv-05556 (S.D.N.Y. 2011).

[278] *Holt v. Golden, et al*, No. 3:11-cv-30200 (D. Mass. 2011).

H. PARALLEL LITIGATION

F. DERIVATIVE CASES

18. WALBRUN V. BATES, ET AL. (TEX. DIST. CT., HARRIS CNTY. 2011)[279]

Background. On April 27, 2011, plaintiff Roger Walbrun filed a shareholder's derivative action on behalf of nominal defendant Hercules Offshore, Inc., against directors and officers of the company for breach of fiduciary duty, abuse of control, waste of corporate assets, and unjust enrichment. Hercules Offshore is a global provider of offshore contract drilling, liftboat, and inland barge services. Walbrun alleges that Hercules Offshore conducted business in foreign countries, including countries perceived as having less-developed legal and regulatory frameworks, without implementing the internal controls and accounting systems necessary to comply with the FCPA. Hercules Offshore disclosed in its SEC filings that it had received a subpoena from the SEC relating to the SEC's investigation into possible violations of the securities laws, including violations of the FCPA, and that certain of Hercules Offshore's activities were under review by the DOJ. According to the plaintiff, Hercules Offshore's stock price dropped as a result of the defendants' actions, and it will incur further costs related to ongoing investigations into the alleged FCPA violations.

Status. Defendant's motion to dismiss was granted on February 10, 2012.

17. CITY OF RIVIERA BEACH ET AL. V. SCHWARTZ ET AL. (CAL. SUPER. CT. 2011)[280]

Background. On April 13, 2011, plaintiff City of Riviera Beach filed a shareholder's derivative action on behalf of nominal defendant Bio-Rad Laboratories, Inc. against its directors and officers for breach of fiduciary duty of loyalty and good faith, and unjust enrichment. Plaintiff alleges Bio-Rad, a manufacturer and seller of products for the life science research and clinical diagnostics markets, conducted business in foreign countries without implementing the internal controls and systems necessary to comply with the FCPA. Bio-Rad disclosed in its 2010 SEC filings that it was likely to have violated the FCPA's books and records and internal controls provisions.

Status. On July 1, 2011, defendants filed a demurrer. On September 30, 2011, the Court sustained defendants' demurrer to both causes of action, and granted plaintiff leave to amend its complaint by February 19, 2012. In May 2012, the parties agreed to a stipulated dismissal of the case.

See DOJ Digest Number B-154.
See SEC Digest Number D-129.
See Parallel Litigation Digest Number H-D13 and H-F28.

[279] *Walbrun v. Bates, et al.*, No. 2011-25582 (Tex. Dist. Ct., Harris Cnty., 2011).

[280] *City of Riviera Beach, et al., v. Schwartz, et al.*, No. CIVMSC11-00854 (Cal. Super. Ct. 2011).

H. PARALLEL LITIGATION

F. DERIVATIVE CASES

16. KOHANIM, ET AL. V. ADELSON, ET AL. (NEV. DIST. CT., CLARK CNTY. 2011)[281] MORADI, ET AL. V. ADELSON, ET AL. (D. NEV. 2011)[282]

Background. On March 9, 2011, and April 18, 2011, plaintiffs Benjamin Kohanim, Ira J. Gaines, Sunshine Wire and Cable Defined Benefit Pension Plan Trust and Peachtree Mortgage Ltd. filed two complaints on behalf of nominal defendant Las Vegas Sands ("LVS") against its current board of directors ("Board"), alleging breach of fiduciary duty, abuse of control, gross mismanagement, and aiding abetting breaches of fiduciary duty. In a separate action, plaintiffs Nasser Moradi, Richard Buckman, Douglas Tomlinson, and Matt Abbeduto, filed a shareholder derivative complaint in the U.S. District Court for the District of Nevada against LVS and the Board.

The allegations, in both the state court and federal court proceedings, were in connection with LVS's operations in the Chinese administrative region of Macau. Specifically, plaintiffs alleged that Chairman and CEO, Sheldon Adelson, directed LVS employees to engage in practices that violated the FCPA, including the employment of a foreign government official. LVS disclosed in its 2011 SEC filings that it had been subpoenaed to produce documents relating to its compliance with the FCPA and that the DOJ had notified LVS that it was conducting a similar investigation.

In the state court proceedings, plaintiffs alleged its claims derived from conduct forming the basis of a breach of contract claim filed against LVS on October 10, 2010 by its former head of Macau operations, Steven Jacobs. Plaintiffs alleged the Board failed to take steps to ensure that Macao operations were conducted in accordance with all relevant regulations, causing the SEC, DOJ, and FBI to conduct investigations into LVS. Plaintiffs further alleged that the Hong Kong Securities and Futures Commission was conducting an investigation into LVS's Chinese subsidiary, Sands China Ltd. On similar facts in the federal court proceedings, plaintiffs argued that the defendants' conduct amounted to breaches of fiduciary duty, abuse of control, and waste of corporate assets along with related conspiracy charges.

Status. . Following a series of procedural motions and orders, on October 31, 2012 the defendants in the state court action filed a motion to dismiss. On January 10, 2013 the court denied the motion to dismiss in part and stayed the action pending the outcome of an ongoing investigation by a special litigation committee and a separate state-court employment action filed against the defendants. A hearing on the motion was held on November 9, 2017, and the court entered an order granting the defendants' motion to dismiss on November 28, 2017.

In the federal court action, defendants filed a motion to dismiss on November 21, 2012. For similar reasons discussed in the state court action, the court also stayed this litigation and denied defendants' the motion to dismiss without prejudice on April 11, 2014. On April 11, 2018, defendants filed a motion to lift the stay and a renewed motion to dismiss. The court lifted the stay on April 26, 2018. The case was closed on May 23, 2018, following plaintiffs' filing of a stipulation of dismissal."

See SEC Digest Number D-150.
See Parallel Litigation Digest Number H-D16.

[281] *Kohanim v. Adelson*, No. 11-636656 (Nev. Dist. Ct., Clark Cnty. 2011).

[282] *Moradi v. Adelson*, No. 2:11-cv-00490 (D. Nev. 2011).

H. PARALLEL LITIGATION

F. DERIVATIVE CASES

15. STRONG V. TAYLOR, ET AL. (E.D. LA. 2011)[283]

Background. On February 16, 2011, plaintiff Jonathan Strong filed a shareholder derivative action on behalf of nominal defendant Tidewater Inc. against its officers and directors. The complaint alleged that the defendants knew or recklessly disregarded the fact that its employees, representatives, agents, and contractors were paying, had paid, or had offered to pay bribes to Azerbaijani and Nigerian government officials, in exchange for obtaining favorable treatment for Tidewater. Specifically, Strong alleged that the defendants authorized improper payments to Tidewater employees, representatives, agents, and contractors or allowed them to proceed with the transactions on Tidewater's behalf.

Status. On August 31, 2011, the defendants filed a motion to dismiss in the United States District Court, Eastern District of Louisiana. On October 11, 2011, the plaintiff filed a memorandum in opposition to defendants' motion to dismiss. Subsequently, on October 13, 2011, the defendants submitted a reply memorandum of law in support of their motion to dismiss.

The motion to dismiss was granted on July 2, 2012 and after denying a motion to stay the proceedings on March 5, 2013, the court dismissed the case with prejudice.

See DOJ Digest Number B-109.
See SEC Digest Number D-83.

14. FREULER V. PARKER, ET AL. (S.D. TEX. 2010)[284]

Background. On August 31, 2010, Douglas Freuler brought a derivative shareholder action against officers and members of the Board of Directors of Parker Drilling Company for breach of fiduciary duty, abuse of control, gross mismanagement, waste of corporate assets, and unjust enrichment. Parker, a provider of on-land and offshore drilling services, has disclosed in its SEC filings that the DOJ and SEC identified issues relating to potential non-compliance with laws and regulations, including the FCPA, with respect to Parker's operations in Kazakhstan and Nigeria. Freuler alleges that the defendants allowed Parker to operate in Nigeria and Kazakhstan without an adequate system of internal controls and caused or allowed Parker to pay bribes and kickbacks in violation of the FCPA. According to Freuler, Parker has incurred over $20 million in investigation-related expenses and that amount is expected to increase substantially.

Status. On June 30, 2011, the court granted the defendants' motions to dismiss without prejudice, and the plaintiff was granted leave to file an amended complaint. On July 20, 2011, the plaintiff filed a second amended complaint against all defendants. On August 31, 2011, defendants moved to dismiss plaintiff's second amended complaint. On March 14, 2012, the motion was granted and the action was dismissed. On April 12, 2012, plaintiff filed a notice of appeal to the U.S. Court of Appeals for the Fifth Circuit. On March 11, 2013, the U.S. Court of Appeals for the Fifth Circuit affirmed the dismissal.

See DOJ Digest Number B-139.
See SEC Digest Number D-117.

[283] *Strong v. Taylor, et al*, No. 2:11-cv-392 (E.D. La. 2011).

[284] *Freuler v. Parker, et al.*, No. 4:10-cv-03148 (S.D. Tex. 2010).

H. PARALLEL LITIGATION

F. DERIVATIVE CASES

13. COUNTY OF YORK EMPLOYEES RETIREMENT PLAN V. CORNWELL, ET AL. (S.D.N.Y. 2010)[285] IBEW LOCAL 1919 PENSION FUND V. CORNWELL, ET AL. (S.D.N.Y 2010)[286] MURRAY C. WHITE V. ANDREA JUNG, ET AL. (S.D.N.Y. 2010)[287]

Background. In August 2010, plaintiffs filed related derivative shareholder actions on behalf of Avon Products, Inc. against all current and members of the Board of Directors for violations of fiduciary duty and waste of corporate assets. Plaintiffs allege the defendants failed to implement and oversee Avon's compliance with the FCPA and caused substantial losses beginning no later than February 2006 and continuing to the present. According to plaintiffs, Avon's FCPA problems stem from travel, entertainment, and other benefits to a Chinese government official in connection with the granting of a license to permit direct selling in China.

Status. On April 12, 2011, the three cases were consolidated, and on June 13, 2011, the defendants filed a motion to dismiss the consolidated complaint. On November 7, 2011, the case was reassigned from Judge Richard Berman to Judge Katherine B. Forest. On February 13, 2012, plaintiffs filed a motion to voluntarily dismiss the complaint. The dismissal was ordered the next day.

See DOJ Digest Number B-156.
See SEC Digest Number D-132.
See Parallel Litigation Digest Numbers H-A13 and H-B2.

[285] *Cnty. of York Emps. Ret. Plan v. Cornwell et al.*, No. 1:10-cv-05933 (S.D.N.Y. 2010).

[286] *IBEW Local 1919 Pension Fund v. Cornwell et al.*, No. 1:10-cv-06256 (S.D.N.Y. 2010).

[287] *White v. Jung, et al.*, 1:10-cv-05560 (S.D.N.Y. 2010).

12. ROSNER V. BRADY, ET AL. (TEX. DIST. CT., HARRIS CNTY. 2010)[288] NEFF V. BRADY, ET AL. (TEX. DIST. CT., HARRIS CNTY. 2010)[289] HESS V. DUROC-DANNER, ET AL. (TEX. DIST. CT., HARRIS CNTY. 2010)[290] ERSTE-SPARINVEST KAG V. DUROC-DANNER, ET AL. (TEX. DIST. CT., HARRIS CNTY. 2014)[291]

Background. On July 30, 2010, three plaintiffs-shareholders filed separate derivative actions on behalf of nominal defendant Weatherford International Ltd. against its directors and officers for breach of fiduciary duty, abuse of control, and waste of corporate assets. The plaintiffs alleged that Weatherford, a provider of equipment and services for the drilling, completion, and production of oil and natural gas wells, conducted business in foreign countries without implementing the internal controls necessary to comply with the FCPA. Weatherford disclosed in its SEC filings that the DOJ and SEC will likely seek to impose penalties against Weatherford for past conduct. According to the plaintiff, Weatherford has incurred over $105 million in costs and expenditure related to ongoing investigations into FCPA violations.

In November 2013, a wholly owned subsidiary of Weatherford pleaded guilty to violations of the FCPA and agreed to pay a fine of $420,000. In a separate SEC action, Weatherford settled FCPA charges by agreeing to pay disgorgement and prejudgment interest of approximately $95.4 million along with a $1.85 million civil penalty.

Following Weatherford's guilty plea and settlement with the SEC, a fourth plaintiff shareholder, Erste-Sparinvest KAG, an Austrian asset management firm, filed another derivative action against the company alleging similar breaches of fiduciary duty, abuse of control, and waste of corporate assets.

Status. *Rosner, Neff*, and *Hess* were consolidated into a single case, *Neff v. Brady,* in 2010. This case and *Erste-Sparinvest* were consolidated on September 3, 2014 and terminated by an order of non-suit signed by the judge on June 25, 2015.

See DOJ Digest Number B-146.
See SEC Digest Number D-123.

[288] *Rosner v. Brady*, No. 2010-47343 (Tex. Dist. Ct., Harris Cnty., 2010).

[289] *Neff v. Brady*, No. 2010-40764 (Tex. Dist. Ct., Harris Cnty., 2010).

[290] *Hess v. Duroc-Danner*, No. 2010-40765 (Tex. Dist. Ct., Harris Cnty., 2010).

[291] *Erste-Sparinvest KAG v. Duroc-Danner*, No. 2014-20933 (Tex. Dist. Ct., Harris Cnty., 2010).

H. PARALLEL LITIGATION

F. DERIVATIVE CASES

11. ARNOLD V. BRAGG, ET AL. (TEXAS DISTRICT COURT, HARRIS COUNTY 2009)[292]

Background. On October 14, 2009, Kyle Arnold brought a derivative shareholder action against eight former and current directors and officers of Pride International, Inc. for breach of fiduciary duty. Pride, a Houston-based offshore drilling operator, had disclosed in its SEC filings that possible violations of the FCPA were found in its operations in several countries in Latin America and Africa, as well as in Saudi Arabia and Kazakhstan. Arnold alleged that defendants breached their fiduciary duties by knowingly causing or allowing Pride to violate the FCPA and for failing to make a good faith effort to correct or prevent the misconduct when they first became aware of such misconduct. Arnold further alleged that the breaches resulted in significant damages in excess of millions of dollars. This action followed a demand Arnold made on Pride's Board of Directors on June 15, 2009. According to Arnold, there is no indication that Pride intended to take any action to review the issues raised in the demand.

Status. On October 16, 2009, the court dismissed the action pursuant to Arnold's notice of non-suit dismissing the action.

See SEC Digest Number D-67.

10. POLICEMEN AND FIREMEN RETIREMENT SYSTEM OF THE CITY OF DETROIT V. HALLIBURTON COMPANY AND KBR, INC. (S.D. TEX. 2009)[293]

Background. In May 2009, the Policemen and Firemen Retirement System of the City of Detroit filed a shareholder derivative suit in Texas state court against Halliburton and KBR, Inc. and directors of those companies. The case was removed to federal court in the Southern District of Texas. The plaintiff alleges that Halliburton and its former subsidiary KBR have "operated as a criminal enterprise for the better part of decade," and that the failure to establish proper internal controls at KBR enabled KBR and its employees to engage in grave illegal conduct including "bribery, gang rape, human trafficking, illegal operations in Iran, mishandling of toxic materials, and systematic overbilling." With respect to bribery, the complaint references KBR's February 2009 guilty plea to FCPA charges stemming from the bribery of Nigerian officials, as well as a series of other incidents in which KBR employees were either confirmed or alleged to have been involved in kickback schemes. KBR has admitted to bribing Nigerian officials to obtain contracts worth $6 billion to build liquefied natural gas facilities at Bonny Island, Nigeria. As part of its FCPA plea agreement, KBR agreed to pay $402 million in fines and to implement a compliance program. The complaint alleges that the FCPA violations are evidence of lack of proper corporate oversight subjecting defendants to derivative liability.

Status. The action was removed by defendants from the District Court of Harris County, Texas to the United State District Court for the Southern District of Texas. The defendants then filed a motion to dismiss while the plaintiff filed a motion to remand back to state court. Plaintiff's motion to remand was granted on September 8, 2009 and the action was remanded to the District Court of Harris County, Texas.

On May 14, 2012, the parties reached a settlement, which was approved preliminarily by the District Court of Harris County, Texas, on July 9, 2012.

See DOJ Digest Numbers B-118, B-101, B-100, B-82, B-80, and B-70.
See SEC Digest Numbers D-74, D-72, D-57, and D-54.

[292] *Arnold v. Bragg, et al.*, No. 2009-66082 (Tex. Dist. Ct., Harris County, 2009).

[293] *Policemen & Firemen Ret. Sys. of the City of Detroit v. Halliburton Co. & KBR, Inc.*, No. 4:09-cv-01918 (S.D. Tex. 2009).

H. PARALLEL LITIGATION

F. DERIVATIVE CASES

9. MIDWESTERN TEAMSTERS PENSION TRUST FUND, ET AL. V. CHAD C. DEATON, ET AL. (S.D. TEX. 2009)[294]

Background. Plaintiffs filed a derivative shareholder action on behalf of nominal defendant Baker Hughes Incorporated alleging breaches of fiduciary duties against certain of its directors and officers, including several members of the Company's Audit & Ethics Committee, Governance Committee, and Finance Committee. The plaintiffs alleged that the Baker Hughes failed to implement policies and controls to ensure the Baker Hughes' compliance with the FCPA following a 2001 Cease and Desist Order agreed to between the SEC and the Company, which ultimately resulted in $44 million being paid by Baker Hughes to settle charges with the SEC.

Status. Final judgment was issued on May 26, 2009, dismissing the action based on the plaintiffs' failure to make demand on the Baker Hughes' board of directors prior to filing an action court. Plaintiffs failed to show that a majority of the then current board could not impartially determine whether to bring an action.

See DOJ Digest Number B-48.
See SEC Digest Numbers D-34 and D-11.
See Parallel Litigation Digest Number H-F4.

[294] *Midwestern Teamsters Pension Trust Fund, Oppenheim Kapitalanlagegesellschaft MBH, Derivatively on Behalf of Baker Hughes Incorporated v. Chad C. Deaton; Larry D. Brady; Clarence P. Cazalot, Jr.; Edward P. Djerejian; Anthony G. Fernandes; Claire W. Gargalli; Pierre H. Junges; James A. Lash; James F. McCall; J. Larry Nichols; H. John Riley, Jr.; Charles L. Watson; Michael E. Wiley; Richard D. Kinder; Victor G. Beghini; Joseph T. Casey; Eunice M. Filter; James R. Clark; Alan R. Crain, Jr.; G. Stephen Finley; Joe B. Foster; Jay G. Martin; Eric L. Mattson; Lawrence O'Donnell III; Peter A. Ragauss; Andrew J. Szescila, and Baker Hughes Incorporated, A Delaware corporation*, No. 4:08-01809 (S.D. Tex. 2009).

8. BEZIRDJIAN V. O'REILLY, ET AL. (CA. SUPER. CT. 2007)[295]

Background. On May 22, 2007, Lawrence Bezirdjian brought a shareholder derivative action, for the benefit of Chevron Corporation, against current and certain former members of Chevron's Board of Directors alleging breach of fiduciary duties, abuse of control, constructive fraud, gross mismanagement and waste of corporate assets in connection with purchases of Iraqi oil under the U.N. Oil-for-Food Program. Plaintiff alleges the defendants knew or should have known the surcharges the company paid to obtain Iraqi oil were illegal, and their failure to exercise oversight damaged Chevron. Relief sought includes money damages against the directors, reform and improvement of Chevron's corporate governance and internal controls and punitive damages.

Status. On March 11, 2009, the trial court dismissed the action. The Court of Appeal of California, First District affirmed the dismissal on March 30, 2010, noting that the business judgment rule protected Chevron's refusal to undertake a lawsuit against its directors.

See DOJ Digest Number B-59.
See SEC Digest Number D-42.
See Ongoing Investigation Number F-1.

[295] *Bezirdjian v. O'Reilly, et al.*, CIVMSC07-01144 (Ca. Super. Ct. 2007); *Bezirdjian v. O'Reilly, et al.*, 183 Cal.App.4th 316 (Ca. Ct. App. 2010).

H. PARALLEL LITIGATION

F. DERIVATIVE CASES

7. HAWAII STRUCTURAL IRONWORKERS PENSION TRUST FUND EX REL. ALCOA, INC. V. BELDA (W.D. PA. 2007)[296]

Background. On May 6, 2008, plaintiffs filed a shareholder derivative action, along with a motion for a temporary restraining order and preliminary injunction, alleging a breach of fiduciary duty, abuse of control, corporate waste, unjust enrichment, and gross mismanagement. The case was filed against the entire Alcoa Board of Directors as well as certain senior executives and agents, alleging that the defendants breached their fiduciary duties by participating in or failing to prevent the misconduct alleged in the main Alba case (*Aluminum Bahrain B.S.C. v. Alcoa, Inc., Alcoa World Alumina LLC, William Rice, and Victor Dahdaleh*). Plaintiffs did not make a demand on Alcoa's Board of Directors prior to commencing the action. After it had filed suit, plaintiffs notified Alcoa and in turn Alcoa sent a letter to plaintiffs indicating that an independent investigation was already being conducted by Baker & McKenzie, in coordination with a DOJ investigation.

Status. On May 27, 2008, the court denied the plaintiffs' motion for a temporary restraining order on the grounds that plaintiffs had failed to establish irreparable harm. On July 9, 2008, the court denied a preliminary injunction and granted defendant's motion to dismiss based on the failure of plaintiffs to make a pre-suit demand.

See DOJ Digest Number B-150.
See SEC Digest Number D-125.
See Parallel Litigation Digest Numbers H-E6, H-E4, and H-F23.

[296] *Hawaii Structural Ironworkers Pension Trust Fund ex rel. Alcoa, Inc. v. Belda*, No. 4:07-cv-01517, 2008 WL 2705548 (W.D. Pa. May 4, 2007).

6. ALVERSON V. CALDWELL, ET AL. (M.D. FLA. 2008)[297]

Background. On January 10, 2008, David Alverson brought a shareholder derivative action for the benefit of FARO Technologies, Inc., a U.S. corporation, against certain corporate officers and members of FARO's Board of Directors for alleged breaches of their fiduciary duties and for unjust enrichment. The complaint alleges that defendants failed to ensure that FARO maintained adequate internal controls to prevent FARO from materially overstating its financial results by improperly valuing its inventory, recording S&A expenses related to sales commissions, and booking revenue derived from improper payments under the FCPA. In addition, plaintiff alleges that defendants were aware of FARO's unlawful payments regarding foreign sales activities in China, which plaintiff claims caused FARO to inflate its financial results in 2004 and 2005, and that they failed to make a good faith effort to correct the company's "improper business practices," including FCPA violations, or to prevent their recurrence. Plaintiff claims that the defendants sold substantial portions of their common stock when they knew that FARO's financial statements were materially inflated.

Status. On January 22, 2008, the court transferred this case to Judge Conway, who is presiding over the related securities class action. On September 15, 2008 the plaintiffs and defendants filed a Joint Motion to Stay the proceedings after having reached a settlement agreement. On April 24, 2009, the court issued an order of final judgment and dismissal of the case.

See DOJ Digest Number B-69.
See SEC Digest Numbers D-65 and D-52.
See Parallel Litigation Digest Number H-A4.

[297] *Alverson v. Caldwell, et al.*, No. 6:08-cv-00045 (M.D. Fla. 2008).

H. PARALLEL LITIGATION

F. DERIVATIVE CASES

5. CITY OF HARPER WOODS EMPLOYEES' RETIREMENT SYSTEM V. OLVER, ET AL. (D.D.C. 2007)[298]

Background. On September 19, 2007, Plaintiff, a shareholder of BAE Systems plc filed a complaint against BAE and individual directors of BAE. Plaintiff alleges that current and former directors of BAE breached their fiduciary duty and committed waste of corporate assets. The complaint alleges that the defendants paid improper bribes to a Saudi Arabian prince in connection with the Al-Yamamah military program, by which the United Kingdom sold war planes to Saudi Arabia. Plaintiff alleges that the payments were designed to secure BAE's role in the military program. The payments were allegedly made to a bank account in Washington, D.C. Plaintiff alleges that by paying the bribes, defendants violated the FCPA and therefore breached their fiduciary duty to shareholders and committed a waste of corporate assets.

Status. On September 11, 2008 the court granted defendants' Motion to Dismiss on the grounds that United Kingdom ("U.K.") law applies and under U.K. law, plaintiff lacks standing to bring a derivative action. On December 29, 2009, the D.C. Circuit Court of Appeals affirmed the dismissal.

See DOJ Digest Number B-97.

[298] *City of Harper Woods Employees' Retirement Sys.v. Olver*, No. 07-cv-1646 (D.D.C. 2008).

4. SHEETMETAL WORKERS' NATIONAL PENSION FUND, ET AL. V. DEATON, ET AL. (S.D. TEX. 2007)[299]

Background. Plaintiffs filed a shareholders derivative action alleging breaches of fiduciary duty by Baker Hughes Incorporated and certain directors and officers of the Company, including several members of the Baker Hughes' Audit & Ethics Committee. The Plaintiffs alleged that Baker Hughes failed to implement policies and controls to ensure the company's compliance with the FCPA following a 2001 Cease and Desist Order agreed to between the SEC and the company, which ultimately resulted in $44 million being paid by Baker Hughes to settle charges with the SEC and the DOJ.

Status. Final judgment was issued on May 15, 2008, dismissing the action based on the court not having proper jurisdiction as the Plaintiffs failed to show that complete diversity existed between the parties.

See DOJ Digest Number B-48.
See SEC Digest Numbers D-34 and D-11.
See Parallel Litigation Digest Number H-F9.

[299] *Sheetmetal Workers' National Pension Fund and Alaska Plumbing and Pipefitting Industry Pension Trust ex rel. Baker Hughes Incorporated v. Chad C. Deaton, Larry D. Brady, Clarence P. Cazalot, Jr., Edward P. Djerejian, Anthony G. Fernandes, Claire W. Gargalli, Pierre H. Jungels, James A. Lash, James F. McCall, J. Larry Nichols, H. John Riley, Jr., Charles L. Watson, Michael E. Wiley, Richard D. Kinder, Joe B. Foster, Lester M. Alberthal, Jr., Victor G. Beghini, Eunice M. Filter, Max P. Watson, Jr., Joseph T. Casey, Alton J. Brann, Jack S. Blanton, John F. Maher, Max L. Lukens, Donald C. Trauscht, John R. Russell, and Baker Hughes Incorporated*, No. 4:07-cv-01517 (S.D. Tex. 2007).

H. PARALLEL LITIGATION

F. DERIVATIVE CASES

3. SHIELDS V. ERICKSON (N.D. ILL. 1989)[300]

Background. On September 20, 1988, shareholders of Sundstrand Corporation brought a derivative action against its officers and directors to recover for, *inter alia*, violations of the books and records provision of the FCPA, based upon the defendants' failure to provide Sundstrand with adequate financial and accounting controls and allegations that defendants misrepresented, concealed and falsified information.

Status. The District Court granted Defendants' motion to dismiss on the grounds that the books and records provision of the FCPA does not create a private right of action.

2. HOWES V. ATKINS (E.D. KY. 1987)[301]

Background. On December 13, 1983, C.W. Howes brought a shareholder derivative action for the benefit of Ashland Oil, Inc., a U.S. corporation, against certain officers and directors of Ashland Oil alleging FCPA and RICO violations and waste and mismanagement of Ashland Oil's funds. In particular, plaintiff alleged that bribes and other payments were made by Ashland Oil for the benefit of officials of the Omani and Abu Dhabi governments to secure crude oil contracts.

Status. On July 3, 1986, plaintiff and all of the defendants except Bill McKay, a former Ashland Oil vice president, entered into a settlement agreement providing for payments of $1 million to Ashland Oil as damages for the alleged illegal activity and $2 million in legal fees. Ashland Oil and Orin Atkins, Chairman of its Board of directors and its Chief Executive Officer, agreed to consent to a final order, without admitting or denying any of the SEC's allegations, enjoining them from future violations of the FCPA. On August 13, 1986, plaintiff entered into a settlement with McKay. In 1987, the court approved the settlements.

See SEC Digest Number D-6.
See Parallel Litigation Digest Number H-D2.

[300] *Shields, derivatively and on Behalf of Sundstrand Corporation v. Erickson*, 710 F. Supp. 686 (N.D. Ill. 1989).

[301] *Howes v. Atkins*, 668 F. Supp. 1021 (E.D. Ky. 1987).

H. PARALLEL LITIGATION

F. DERIVATIVE CASES

1. LEWIS V. SPORCK, ET AL. (N.D. CAL. 1985)[302]

Background. Plaintiff shareholder brought a derivative action in the United States District Court for the Northern District of California on behalf of National Semiconductor Corporation ("NSC") to recover damages the corporation suffered because of allegedly unlawful activities on the part of its directors, officers, and employees, including former president and CEO Charles E. Sporck. The unlawful acts complained of stemmed from alleged falsification of testing data on the part of NSC in connection with the sale of electronic components to the Department of Defense as well as NSC's alleged theft of trade secrets from IBM. Plaintiffs alleged that, *inter alia*, defendants violated the books and records provisions of the FCPA.

Status. The court dismissed the FCPA claim on the basis that no private right of action could be implied under the books and records provisions and that those provisions were intended to provide recordkeeping obligations for regulated corporations. The court held that the language, legislative history, and purposes of the FCPA, as well as the availability of traditional state court remedies, combined to demonstrate that Congress did not intend for such a private right of action.

[302] *Lewis v. Sporck, et al.*, 612 F. Supp. 1316 (N.D. Cal. 1985).

H. PARALLEL LITIGATION

G. BANKRUPTCY CASES

1. IN RE MARK ALLEN KALISCH (BKRTCY. S.D.N.Y. 2006)[303] IN RE MAYRA DIAZ KALISCH (BKRTCY. S.D.N.Y. 2006)[304]

Background. On September 6, 2006, a complaint was filed in bankruptcy court by Mark Allen Kalisch, the debtor, against Maple Trade Finance Corporation, the creditor. The complaint states that the debtor received a loan from the creditor to finance diamond mining in Brazil, and that the venture involved the payment of bribes in violation of the FCPA. The scheme to secure government cooperation was ultimately unsuccessful, the diamond mining venture failed, and debtor defaulted on the loan. Debtor sought a declaration that would bar the creditor from enforcing a security interest in apartments owned by the debtor because the creditor was complicit in the illegal diamond mining venture. On February 15, 2007, Mayra Diaz Kalisch, the wife of Mark Allen Kalisch, filed a complaint seeking a declaration that she owned the apartments with her husband and requesting that the court impose a constructive trust. Additionally, Mayra Diaz Kalisch claimed that Maple Trade's security interest, encumbrance, or lien on the apartments should be voided because, *inter alia*, the loan agreement between Mark Allen Kalisch and Maple Trade had an illegal or unlawful purpose and thus Maple Trade had unclean hands. The two proceedings were consolidated.

Status. The creditor filed a motion to dismiss on October 10, 2006 based on the theory that if debtor's contentions were all true, his own misconduct would bar relief. On May 30, 2007, the court denied the creditor's motion to dismiss. A trial was held from July 28, 2008 to August 6, 2008 in front of a Bankruptcy Judge in the Southern District of New York. The Judge ordered post-trial briefing on issues including the corporate structure of the debtor and creditor, the existence of additional creditors, and whether the creditor became part of an illegal enterprise. On December 31, 2008, the court granted judgment in favor of Maple Trade. On January 26, 2009, Mayra Kalisch appealed the Bankruptcy Court's December 31, 2008 decision to the U.S. District Court for the Southern District of New York. On September 9, 2009, that court entered an order affirming the Bankruptcy Court's judgment.

[303] *In re Kalisch* (06-10706) (Bkrtcy. S.D.N.Y. 2006).

[304] *In re Kalisch* (07-01484) (Bkrtcy. S.D.N.Y. 2007).

H. PARALLEL LITIGATION

H. FORFEITURE CASES

6. UNITED STATES V. $37,564,565.25 IN ACCOUNT NUMBER XXXXXXXX9515 AT MORGAN STANLEY, IN THE NAME OF ANICORN LLC, ET AL. (D.D.C. 2018)[305]

Background. On November 30, 2018, the Department of Justice filed a civil forfeiture action in the U.S. District Court for the District of Columbia to recover more than $73 million in funds allegedly connected to the embezzlement of the 1Malaysia Development Berhad (1MDB), Malaysia's investment development fund, by Malaysian businessman Low Taek Jho ("Jho Low"). On October 3, 2018, the Justice Department indicted Jho Low for conspiracy to violate the FCPA by paying bribes to foreign public officials and launder billions of dollars embezzled from 1MDB. According to the DOJ, Jho Low funneled millions of dollars through Prakazrel Michel and George Higginbotham to influence the DOJ's investigation into the embezzlement. The DOJ's suit claims Michel and Higginbotham opened multiple bank accounts at U.S. financial institutions, where they made false and misleading statements to conceal the source of the funds. Furthermore, the DOJ alleges that Michel and Higginbotham disbursed these funds to various individuals and entities to engage a lobbying campaign in the interests of Jho Low. The DOJ brought this lawsuit for forfeiture of the funds.

Status. The United States filed its complaint in federal district court on November 30, 2018. The litigation is ongoing.

5. UNITED STATES V. THE M/Y GALACTICA STAR, ET AL., (S.D. TEX 2016)[306]

Background. On July 14, 2017, attorneys for the Department of Justice filed suit in the Southern District of Texas to recover certain property in the name of Diezani Alison-Madueke, the former Nigerian Minister of Petroleum Resources. The Justice Department's suit claimed that the property identified was allegedly purchased with proceeds derived from foreign corruption offenses and were laundered in and through the United States. According to the DOJ, two Nigerian businessmen conspired to pay bribes to Alison-Madueke, who in return steered lucrative oil contracts to the companies owned by the two businessmen. The proceeds of these oil contracts were then laundered into the United States to purchase various assets for Alison-Madueke, including houses, yachts, and expensive furniture. The DOJ brought claims for forfeiture of these illicitly purchased assets.

Status. Following the DOJ's complaint, various entities have filed verified statements of interest claiming a financial interest in the property, including the Government of Nigeria, one of the Nigerian individuals, as well as various creditors of the disputed property. On October 20, 2017, the DOJ filed its first amended verified complaint, and the attached Warrants of Arrest in Rem were issued by the court ten days later. On March 9, 2018, the DOJ filed a motion for a partial stay pending the resolution of a criminal investigation into the underlying conduct that gave rise to this action. The court granted the partial stay on May 4, 2018. On November 19, 2018, the court entered a final judgment granting the DOJ's motion for judgment on the pleadings to strike the claims of claimant Lightray Capital, LLC. On November 23, 2018, LightRay appealed the court's judgment to the Fifth Circuit. As of December 2018, that appeal is currently in its preliminary stages, and litigation remains ongoing.

[305] *United States v. $37,564,565.25 in Account Number XXXXXXXX9515 at Morgan Stanley, in the Name of Anicorn LLC, et. al.*, No. 1:18-cv-02795 (D.D.C. 2018).

[306] *United States v. The M/Y Galactica Star, et al.*, No. 4:17-cv-02166 (S.D. Tex. 2016).

H. PARALLEL LITIGATION

H. FORFEITURE CASES

4. UNITED STATES V. APPROXIMATELY 22 MILLION IN BRITISH POUNDS REPRESENTING THE VALUE OF 4,000,000 SHARES OF COMMON STOCK IN CARACAL ENERGY, INC. (D.D.C. 2015)[307]

Background. On June 29, 2015, the U.S. government filed an *in rem* action seeking the forfeiture of approximately £22 million—an amount equivalent to the value of four million shares of common stock in Caracal Energy Inc. (formerly Griffith's Energy International, Inc.). The four million shares represent the value of the stock owned by the founders of Griffith's Energy and, according to the Department of Justice, are traceable to, and involved in the laundering of, bribe payments allegedly made to Chadian diplomats while stationed in Washington, D.C. Federal law authorizes the forfeiture of property that is "involved in" violations of the federal money laundering statutes.

The complaint in this case alleges that the property subject to *in rem* jurisdiction was paid by Griffiths Energy to Mahamoud Adam Bechir, Chad's ambassador to the U.S. and Canada from 2004 to 2012, in exchange for his influence over the award to the company of oil development rights in Chad. Some of the shares were purportedly transported to a company owned by Bechir's wife, Nouracham Niam.

Status. Counsel for Bechir's wife Nouracham Niam and for the Republic of Chad filed answers to the complaint on October 26, 2015. These parties also filed a joint motion to dismiss for lack of jurisdiction on October 26, 2015. The U.S. government filed a motion for discovery regarding claimants' motion to dismiss on February 8, 2016, which claimants subsequently opposed. The motion remains pending as of December 2018.

3. UNITED STATES V. ANY AND ALL ASSETS HELD IN ACCOUNT NUMBERS 102162418400, 102162418260, AND 102162419780 AT BANK OF NEW YORK MELLON S.A./N.V.[308]

Background. On June 6, 2015, the U.S. government filed this *in rem* civil forfeiture case seeking the forfeiture of approximately $300 million in assets and property traceable to an international conspiracy to launder corrupt payments made to a government official who is a relative of the President of Uzbekistan. The complaint alleges that these payments, made through a system of shell companies beneficially owned by the government official, consisted of property criminally derived from unlawful activity, in violation of the FCPA, among other federal laws.

Status. The U.S. government filed for default judgment pursuant to Federal Rule of Civil Procedure 55 on November 16, 2015. On January 11, 2016, default judgment was entered against all defendants except for the Republic of Uzbekistan. For its part, the Republic of Uzbekistan stipulated with the U.S. government to a stay of proceedings. A number of stays of proceedings have since been ordered. The most recent stay, entered on November 2, 2018, remains in effect through February 1, 2019.

See DOJ Digest Number B-166.
See SEC Digest Number D-146.
See Ongoing Investigation Number F-44.

[307] *U.S. v. Approximately £22 Million in British Pounds Representing the Value of 4,000,000 Shares of Common Stock in Caracal Energy, Inc.*, No. 15-cv-1018-RJL (D.D.C. 2015).

[308] *U.S. v. Any and All Assets Held in Account Numbers 102162418400, 102162418260, and 102162419780 at Bank of New York Mellon S.A./N.V.*, No. 1:15-cv-05063 (S.D.N.Y. 2015).

H. PARALLEL LITIGATION

H. FORFEITURE CASES

2. UNITED STATES V. APPROXIMATELY $84 MILLION ON DEPOSIT IN ACCOUNT NO. 4025 IN THE NAME OF THE TREASURY OF FINANCE OF THE REPUBLIC OF KAZAKHSTAN (S.D.N.Y. 2007)[309]

Background. In 2007, the U.S. Attorney's Office of the Southern District of New York and the DOJ Criminal Division's Asset Forfeiture and Money Laundering Section ("AFMLS") filed a forfeiture action against funds restrained in Switzerland in 1999 related to the prosecution of James H. Giffen and his company, Mercator. These funds allegedly constituted bribe payments made to government officials in Kazakhstan in exchange for oil transactions and property. At the same time as the forfeiture action, the United States and Kazakhstan filed a settlement agreement authorizing the release of the funds to the BOTA Foundation, an independent non-governmental organization in Kazakhstan that supports social services programs in Kazakhstan including assistance for families with disabled children and young people seeking higher education.

Status. After the final payments were made under the settlement agreement, the Department of Justice filed a motion to dismiss, which was granted on February 10, 2016.

See DOJ Digest Number B-48.

1. UNITED STATES V. ALL ASSETS HELD IN THE NAME OF ZASZ TRADING AND CONSULTING PTE LTD. (D.D.C. 2009)[310]

Background. On January 8, 2009, the U.S. government filed a civil forfeiture action seeking the forfeiture of approximately $2,988,249 in assets, which represent illicit proceeds derived or traceable to corruption offenses involving the bribery of Bangladeshi government officials and their family members. The assets include bank accounts in Singapore controlled by two business consultants who were hired by Siemens AG to facilitate bribes in Bangladesh. Siemens has admitted participating in a bribery scheme in Bangladesh to secure a government contract to provide digital cellular phone service. According to the complaint, Siemens would transfer money to the business consultants' accounts via intermediaries, and the consultants would then use the accounts to make payments to Bangladeshi officials at the direction of Siemens personnel. An amended complaint was filed in July 2009 to reflect updated information regarding the relevant bank accounts and account numbers.

Status. On April 7, 2010, the court granted default judgment against the defendants and ordered forfeiture of the assets to the United States.

See DOJ Digest Numbers B-123 and B-78.
See SEC Digest Numbers D-99 and D-56.
See Parallel Litigation Digest Numbers H-A11, H-C27, H-C24, and H-D12.

[309] *U.S. v. Approximately $84 Million on deposit in account No. 4025 in the name of The Treasury of The Republic of Kazakhstan*, No. 1:07-cv-03559 (S.D.N.Y. 2015).

[310] *U.S. v. All Assets Held in the Name of Zasz Trading & Consulting PTE Ltd.*, No. 1:09-cv-00021 (D.D.C. 2009).

H. PARALLEL LITIGATION

I. OTHER CASES

3. ATCHLEY V. ASTRAZENECA U.K. LTD., ET AL. (D.D.C. 2017)[311]

Background. On October 17, 2017, various American service members and their families filed a lawsuit against multiple corporations involved in the medical-supply industry, including AstraZeneca UK Ltd., General Electric, Johnson & Johnson, Pfizer, and Hoffmann-La Roche, Inc., for alleged violations of the Anti-Terrorism Act. The complaint alleges that these corporations aided and abetted terrorism in Iraq by making corrupt payments to the Iraqi Ministry of Health and Kimidia, the state-owned company in charge of imports for the Ministry of Health, in exchange for lucrative government contracts. The complaint alleges that these corporations paid bribes to Iraqi officials before the fall of Saddam Hussein, and that after the collapse of Hussein's government, Jaysh al-Mahdi, a terrorist group, assumed control over the Ministry of Health. Plaintiffs allege that these corporations continued to make corrupt payments to the Ministry of Health, whose local agents would then pass on funds to the Jaysh al-Mahdi. Plaintiffs claim that these payments helped finance terrorist activity within Iraq.

Status. Defendants filed a motion to dismiss on February 5, 2018. Plaintiffs amended their complaint on March 12, 2018. On April 26, 2018, defendants filed a new motion to dismiss, to which plaintiffs responded on June 25, 2018. That motion is still pending before the district court.

2. U.S. V. RINCON-FERNANDEZ, ET AL. (S.D. TEX. 2015)[312]

Background. In late 2015, the U.S. government arrested two Venezuelan businessmen living in Florida and Texas in connection with a bribery scheme involving former officials of Venezuelan state-owned oil company Petroleos de Venezuela SA ("PDVSA"). According to the indictment, the two men arranged several schemes to obtain contracts with PDVSA including paying bribes to PDVSA officials to have their companies placed on the short list of companies entitled to bid for PDVSA contracts. In some cases, according to the complaint, only companies affiliated with the defendants were allowed to bid on PDVSA contracts, allowing them to manipulate the prices. Both defendants pleaded guilty to conspiracy to violate the FCPA, among other offenses.

After the defendants plead guilty, Bariven, SA—a unit of PDVSA—intervened in the criminal case asserting that the defendants' conduct victimized the company and demanding that they pay restitution for the losses they caused.

Status. Both defendants have plead guilty and been subject to criminal forfeitures. In February 2017, Bariven's November 30, 2016 motions for Recognition of Its Rights as a Victim and Entitlement to Restitution were denied without prejudice as premature. The court noted in its order that Bariven could renew its motions at the time of defendants' sentencing. As sentencing of defendants neared, Bariven filed an Interim Brief alleging violations of its due process rights in June 2017. In August 2017, the court denied Bariven's requests for relief set forth in its Interim Brief . As of December 2018, Bariven's initial motions for Recognition of its Rights as a Victim and Entitlement to Restitution remain pending, and defendants are scheduled to be sentenced in February 2019.

See DOJ Digest Number B-164.

[311] *Atchley v. AstraZeneca U.K. Ltd.*, No. 1:17-cv-2136 (D.D.C. 2017).

[312] *U.S. v. Rincon-Fernandez*, *et al.*, 15-cr-00654 (S.D. Tex. 2015).

H. PARALLEL LITIGATION

I. OTHER CASES

1. WATTS WATER TECHNOLOGIES, INC. V. SIDLEY AUSTIN, LLP (D.C. SUPER. CT. 2012)[313]

Background. In October 2011, Watts Water Technologies, Inc. agreed to disgorgement, prejudgment interest, and fines of nearly $3.8 million to settle a civil enforcement action brought by the SEC, regarding allegedly corrupt conduct by its Chinese subsidiary, Watts Valve Changsha Co. Ltd.

Sidley Austin, LLP, a New York law firm, vetted Watts Water's acquisition of its Chinese subsidiary in 2005. However, according to the malpractice action filed by Watts Water on June 6, 2012, Sidley Austin failed to inform the company about potential corruption issues even though their review had uncovered a suspicious document detailing the company's written policy of paying kickbacks to Chinese government officials to secure government contracts. In its complaint, Watts Waters alleged professional negligence, breach of contract, and negligent misrepresentation.

Status. Sidley Austin filed a motion for summary judgment, which was denied in August 2012. Sidley then filed a motion to dismiss later that month, saying that dismissal was warranted because Watts Water's claims "depend on a defective legal theory and because multiple bars appear on the face of the Complaint and in the documents on which the Watts' claims depend."

On November 5, 2012, the parties filed a joint stipulation for dismissal with prejudice, giving no explanation as to why the suit was dismissed. It is unclear if the parties reached any resolution not disclosed in court.

See SEC Digest Number D-101.

[313] *Watts Water Techs. Inc. v. Sidley Austin, LLP*, Case No. 4847-12 (D.C. Super. Ct. 2012).

I. INDEX OF MATTERS

I. INDEX OF MATTERS

Alphabetical Listing of Parties

I. INDEX OF MATTERS

B

I. INDEX OF MATTERS

C

I. INDEX OF MATTERS

I. INDEX OF MATTERS

I. INDEX OF MATTERS

F

G

I. INDEX OF MATTERS

H

I. INDEX OF MATTERS

I

I. INDEX OF MATTERS

J

K

I. INDEX OF MATTERS

I. INDEX OF MATTERS

M

I. INDEX OF MATTERS

I. INDEX OF MATTERS

I. INDEX OF MATTERS

I. INDEX OF MATTERS

I. INDEX OF MATTERS

I. INDEX OF MATTERS

I. INDEX OF MATTERS

X

Y

Z

I. INDEX OF MATTERS

Chronological Listing of Parties

I. INDEX OF MATTERS

1983

1984

1985

1986

1987

1988

I. INDEX OF MATTERS

I. INDEX OF MATTERS

I. INDEX OF MATTERS

2002

2003

2004

2005

I. INDEX OF MATTERS

2006

2007

I. INDEX OF MATTERS

2008

I. INDEX OF MATTERS

I. INDEX OF MATTERS

2009

I. INDEX OF MATTERS

2010

I. INDEX OF MATTERS

2011

I. INDEX OF MATTERS

I. INDEX OF MATTERS

2012

I. INDEX OF MATTERS

2013

I. INDEX OF MATTERS

2014

I. INDEX OF MATTERS

2015

I. INDEX OF MATTERS

I. INDEX OF MATTERS

2016

I. INDEX OF MATTERS

2017

I. INDEX OF MATTERS

I. INDEX OF MATTERS

2018

I. INDEX OF MATTERS

CONTACTS

IF YOU WISH TO RECEIVE MORE INFORMATION ON THE TOPICS COVERED IN THIS PUBLICATION, YOU MAY CONTACT YOUR REGULAR SHEARMAN & STERLING CONTACT OR ANY OF THE FOLLOWING PEOPLE.

PHILIP UROFSKY
Washington, D.C.
T: +1 202 508 8060
philip.urofsky
@shearman.com

DANFORTH NEWCOMB
New York
T: +1 212 848 4184
dnewcomb
@shearman.com

STEPHEN FISHBEIN
New York
T: +1 212 848 4424
sfishbein
@shearman.com

PATRICK D. ROBBINS
San Francisco
T: +1 415 616 1210
probbins
@shearman.com

BRIAN G. BURKE
New York
T: +1 212 848 7140
brian.burke
@shearman.com

PAULA HOWELL ANDERSON
New York
T: +1 212 848 7727
paula.anderson
@shearman.com

SUSANNA CHARLWOOD
London
T: +44 20 7655 5907
susanna.charlwood
@shearman.com

MARK D. LANPHER
Washington, D.C.
T: +1 202 508 8120
mark.lanpher
@shearman.com

CHRISTOPHER L. LAVIGNE
New York
T: +1 212 848 4432
christopher.lavigne
@shearman.com

MASAHISA IKEDA
Tokyo
T: +03 5251 1601
mikeda
@shearman.com

ABU DHABI
AUSTIN
BEIJING
BRUSSELS
DUBAI
FRANKFURT
HONG KONG
HOUSTON
LONDON
MENLO PARK
MILAN
NEW YORK
PARIS
RIYADH
ROME
SAN FRANCISCO
SÃO PAULO
SAUDI ARABIA*
SHANGHAI
SINGAPORE
TOKYO
TORONTO
WASHINGTON, DC


Shearman
SHEARMAN & STERLING