

SHEARMAN & STERLING_{LLP}

FCPA

Digest

Cases and Review Release Relating to Bribes
to Foreign Officials Under the Foreign Corrupt
Practices Act of 1977

January 2017



SHEARMAN & STERLING^{LLP}

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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.

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A. Recent Trends and Patterns in FCPA Enforcement

The 2016 FCPA enforcement year has left us no shortage of topics to discuss. By nearly any measure, 2016 has been a banner year for FCPA enforcement. The DOJ's and SEC's combined twenty-seven corporate enforcement actions and \$6 billion in total corporate sanctions are the highest since the statute's enactment. That said, it is important to put these figures into context. While the 2016 enforcement year has seen a series of blockbuster FCPA enforcement actions (*VimpelCom*, *Och-Ziff*, *Embraer*, *JPMorgan*, *Odebrecht/Braskem*, and *Teva*), by and large, the remainder of the 2016 FCPA cases have involved relatively small-to-medium-sized penalties over relatively run-of-the-mill bribery schemes.

As we explain in this year-end *Trends & Patterns*, among the highlights from 2016 were:

- Twenty-seven corporate enforcement actions with total sanctions of \$6 billion, due in large part to the sanctions levied against Odebrecht, makes 2016 the busiest and highest value FCPA enforcement year on record;
- The *Odebrecht*, *VimpelCom*, *Teva*, *Och-Ziff*, *JPMorgan*, and *Embraer* enforcement actions have distorted the average corporate sanctions for 2016, raising the figure to \$223.4 million, while the median corporate sanction of \$14.4 million is comparable to past years;
- China and the healthcare/life science industries dominated the headlines for the 2016 FCPA enforcement actions;
- The cases of *Qualcomm*, *JPMorgan*, and *VimpelCom* reflect new expansions of regulators' views as to the scope of the term "anything of value" in FCPA bribery cases;
- A ruling in the SEC's ongoing case against the Magyar executives upheld a novel theory on the Commission's jurisdiction to enforce the FCPA;
- The DOJ has generally continued its practice of declining to bring charges where the SEC successfully forced a company to disgorge the illicit profits, reserving criminal charges for the most part—as it should in all cases—for only instances in which the company's conduct was sufficiently egregious;
- In April 2016, the DOJ announced the FCPA Pilot Program, which, although flawed in some respects, represented an effort to increase transparency and efficiency in the Department's enforcement practices; and
- The incoming Trump administration raises new questions over the future of enforcement policies and priorities both at the DOJ and the SEC in relation to the FCPA.

Enforcement Actions and Strategies

Statistics

In 2016, the DOJ and SEC resolved twenty-seven¹ corporate enforcement actions: SAP, LATAM, SciClone, PTC, VimpelCom, Olympus, Qualcomm, Nordion, Novartis, Las Vegas Sands, Akamai, Nortek, Analogic, Johnson Controls, Key Energy, AstraZeneca, Nu Skin, AB InBev, HMT, NCH, Och-Ziff, GlaxoSmithKline ("GSK"), Embraer, JPMorgan, Odebrecht/Braskem, Teva, and General Cable.

Consistent with past years, the DOJ exhibited a degree of restraint, apparently deferring to the SEC to bring civil enforcement cases in the less egregious matters. As a result, the SEC has been the more active of the two agencies, initiating charges in twenty-four of the twenty-seven FCPA enforcement actions from 2016—fourteen of which were raised only by the SEC. For its part, the DOJ was responsible for thirteen of the twenty-seven FCPA enforcement actions from 2016 and independently brought charges in only three of those cases.

¹ This count includes public declinations issued by the DOJ under the FCPA Pilot Program, discussed below in further detail.

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Separately, the DOJ and SEC brought FCPA-related charges against twenty-seven individuals in 2016 (*Cueto, Frost, Yuan, Gourevitch, Millan, Ramos, Maldonado, Gravina*,² *Mebiame, Och, Frank, Ping, Ashe*,³ *Lorenzo, Ng, Yin, Yan, Piao, Wang, Thiam, Ray*,⁴ *Valdez, Ramnarine, Perez, Hernandez-Montemayor, Nevarez, and Zimmer*). The cases are noteworthy because they include a set of C-suite executives (*Cueto, Frost, Och, Frank, Ping, Ng, Ray, Ramnarine, Perez, and Zimmer*) as well as a series of foreign officials (*Ramos, Maldonado, Gravina, Ashe, Lorenzo, Thiam, Hernandez-Montemayor, and Nevarez*).

We discuss the 2016 corporate enforcement actions followed by the individual enforcement actions in greater detail below.

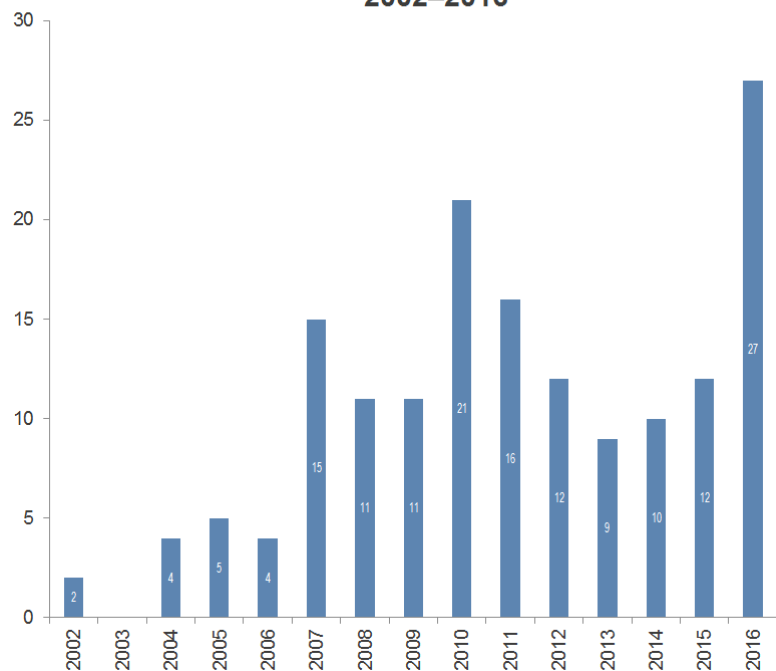
Corporate Enforcement Actions

The 2016 corporate FCPA enforcement actions, while similar in a number of ways, encompass a wide variety of alleged bribery schemes ranging from the novel to the mundane. The most significant have been *VimpelCom, Och-Ziff, Embraer, JPMorgan, Odebrecht/Braskem, and Teva* because of the size of the associated sanctions as well as the breadth of the alleged bribery schemes.

In the case of *VimpelCom*, the DOJ, SEC, and Dutch prosecutor's office announced in February 2016 that *VimpelCom* agreed to pay a \$795 million sanction as a result of an alleged decade-long bribery scheme. Specifically, according to the authorities, *VimpelCom* paid an Uzbek official and close family member to the former president of Uzbekistan millions of dollars to facilitate the company's entrance into and continued operation within the Uzbek telecommunications market. The total sanction of \$795 million was comprised of a \$230.1 million criminal penalty for the DOJ, \$167.5 million in disgorgement for the SEC, and a \$397.5 million sanction for the Dutch prosecutor's office. In addition, the DOJ filed a civil forfeiture action against the Swiss bank account of the foreign official involved in the scheme seeking to recover over \$550 million. This civil forfeiture suit, combined with a separate \$300 million forfeiture action filed in 2015 that related to the same official's accounts, highlights the DOJ's ongoing interest in advancing its Kleptocracy Asset Recovery Initiative.

In *Och-Ziff*, the DOJ and SEC jointly initiated an FCPA enforcement action in September 2016 against (i) the New York-based hedge fund *Och-Ziff Capital Management Group LLC*; (ii) a pair of *Och-Ziff* subsidiaries; and (iii) two *Och-Ziff* executives. According to the agencies, between 2007 and 2011, *Och-Ziff* engaged in a series of bribery schemes in multiple African countries in exchange for various lucrative investment opportunities. As a result of the charges, *Och-Ziff* agreed to pay a total sanction of \$412 million—\$213 million of

Total Aggregate Corporate Cases: 2002–2016



² The cases of *Millan, Ramos, Maldonado, and Gravina* (collectively *Millan, et al.*) are outgrowths of the 2015 FCPA enforcement actions against Roberto Enrique Rincon Fernandez and Abraham Jose Shiera Bastidas. The cases of *Ramos, Maldonado, and Gravina* were each filed in 2015 under seal and were only announced in 2016 after the cases were unsealed. As a result, we count these cases as part of our 2016 FCPA statistics.

³ The cases of *Ashe, Lorenzo, Ng, Yin, Yan, Piao, and Wang* are all part of a single enforcement action. For purposes of this note, we will use the title *Ashe, et al.*, to refer to the larger enforcement action and the italicized names of the defendants to refer to the Department's case against each individual.

⁴ The cases of *Ray, Valdez, Ramnarine, Perez, Hernandez-Montemayor, and Nevarez*, are all part of a single enforcement action. For purposes of this note, we will use the title *Ray, et al.*, to refer to the larger enforcement action and the italicized names of the defendants to refer to the Department's case against each individual.

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which went to the DOJ and \$199 million of which went to the SEC. *Och-Ziff* marked the first time a hedge fund was prosecuted for violating the FCPA and is one of only a handful of FCPA cases involving the financial industry (*see also JPMorgan*).

In *Embraer*, the enforcement agencies accused the Brazilian aircraft manufacturer of bribing various foreign officials in the Dominican Republic, Saudi Arabia, Mozambique, and India in exchange for aircraft sales contracts. As part of the resolution, Embraer agreed to pay the DOJ \$107.3 million and the SEC \$98.2 million. The DOJ also offered to credit the company for up to \$20 million depending on the amount of disgorgement paid to Brazilian authorities.

In November 2016, the DOJ, SEC, and, in a new twist, the Federal Reserve, announced the resolution of an FCPA enforcement action against JPMorgan for its alleged improper hiring practices in China.⁵ According to all three agencies, JPMorgan's Chinese subsidiary engaged in the practice—between 2006 and 2013—of providing valuable jobs and internships to the relatives and friends of foreign officials to obtain or retain business for the firm. JPMorgan agreed to collectively pay the DOJ, SEC, and Federal Reserve \$264.5 million, making the enforcement action the largest of the “princeling” cases to date (*see also BNYM* and *Qualcomm*).

In December, U.S., Brazilian, and Swiss authorities announced that they had resolved an enforcement action against the Brazilian conglomerate Odebrecht S.A. and its partially-owned subsidiary, Braskem S.A. In the case of *Odebrecht*, the DOJ accused the company of engaging in systematic acts of bribery, going so far as to set up an internal division in the company solely dedicated to the bribery of foreign officials. As a result, Odebrecht allegedly bribed government officials in twelve different countries in exchange for various forms of benefits. Braskem was charged separately by the DOJ and SEC, in connection with a slightly more discrete but no less significant bribery scheme involving Brazilian officials. According to the DOJ and SEC, Braskem, with the assistance/at the behest of Odebrecht, bribed an official at Brazil's state-owned oil company, Petrobras, and various Brazilian government officials in exchange for (i) the continuation of a joint-venture contract with Petrobras; (ii) advantageous supply contracts; and (iii) tax advantages from the Brazilian government. The resolution required Odebrecht and Braskem to pay a total sanction of \$3.55 billion (split between U.S., Swiss, and Brazilian authorities)—dwarfing the \$1.6 billion sanction lodged against Siemens in 2010—and, according to the DOJ's pleadings, the penalty could have been almost \$2 billion more but was reduced to account for Odebrecht's inability to pay anything greater.

Wasting no time, the day after announcing the historic case against Odebrecht and Braskem, the DOJ and SEC announced that they had resolved an enforcement action against the Israeli pharmaceutical company, Teva. According to the enforcement agencies, Teva made improper payments to various officials in Russia, Ukraine, and Mexico to secure the sale of certain pharmaceutical products. As part of the resolution, the company agreed to pay a total of \$519.2 million in sanctions to the DOJ and SEC.

The remaining twenty-one enforcement actions range in penalties worth between \$335,000 (*NCH*) and \$28 million (*PTC*) and, as discussed below, are best divided into three categories: (i) schemes involving gifts, travel, and entertainment; (ii) schemes involving local consultants or agents; and (iii) miscellaneous acts of bribery.

First, the cases of *SciClone*, *PTC*, *Olympus*, *Novartis*, *Akamai*, *Nortek*, *Johnson Controls*, *AstraZeneca*, *NCH*, and *GSK* each illustrate essentially the same fact pattern; namely, the companies (frequently corporate subsidiaries) allegedly offered or provided gifts, travel, and entertainment, which served no legitimate business purpose, to acquire some form of business advantage. The frequency of this specific type of fact pattern among the 2016 FCPA enforcement actions may show that the DOJ and SEC view these “gifts, travel, and entertainment” schemes as low-hanging fruit.

Second, the cases of *Nordion*, *Key Energy*, *Las Vegas Sands*, *HMT*, and *General Cable* are each examples of companies who engaged local consultants/sales agents to allegedly funnel improper payments to foreign officials in exchange for a business advantage. For example, in *Nordion*, the SEC accused the pharmaceutical company of engaging a sham consultant to bribe Russian officials in exchange for regulatory approvals needed to distribute the company's cancer treatment drugs in Russia. Similarly, in *Key Energy*, the SEC concluded that Key Energy's Mexican subsidiary made payments to an official at the Mexican state-owned oil company, Pemex, through a consultant. The facts of *LATAM* similarly involved the engagement of local consultants/sales agents to allegedly funnel improper payments; in that case, though, the alleged bribes were paid to union officials, rather than foreign officials.

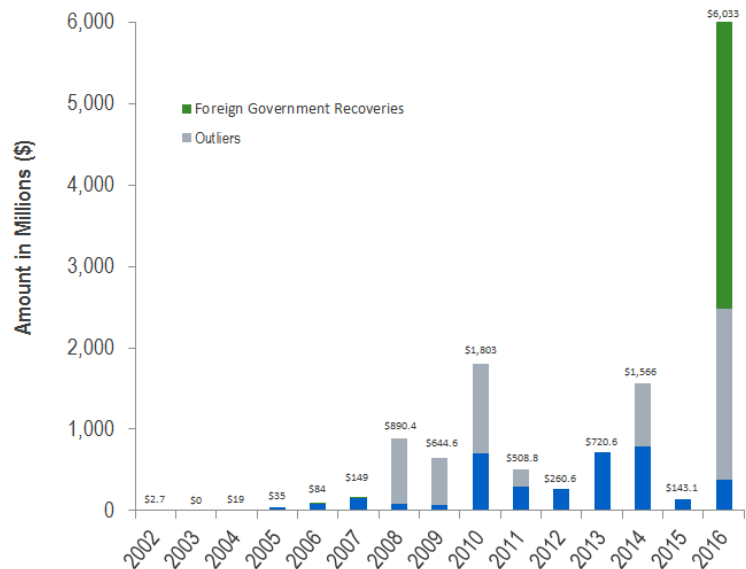
⁵ To our knowledge, *JPMorgan* marks the first time the Fed has brought charges in connection with an FCPA enforcement action.

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Third, the remaining cases are a set of miscellaneous types of bribery schemes briefly described below.

- *SAP* stems from the conduct described in the 2015 enforcement action against Vicente Garcia, wherein Garcia allegedly bribed Panamanian officials through a third-party partner to win lucrative sales contracts for the company.⁶
- In *Qualcomm*, much like *JPMorgan* and the 2015 case, *BNYM*, the SEC accused Qualcomm of violating the FCPA by improperly offering job positions within the company to curry favor with Chinese officials.
- In *Analogic*, a Danish subsidiary of the U.S.-based medical device company was accused of engaging in a scheme, mostly in Russia, to create hundreds of sham contracts to generate kickbacks in exchange for securing sales of the company's products.
- In *Nu Skin*, the Utah-based personal care products company was accused of violating the FCPA after allegedly making a donation of approximately \$154,000 (RMB 1 million) to a local charity with the intention of influencing a high-ranking Chinese Communist party official to impact an ongoing investigation into Nu Skin by a provincial regulatory agency.
- In *AB InBev*, an Indian subsidiary of the global brewer allegedly bribed Indian officials through third-party sales promoters in exchange for increased sales and permission to increase brewery hours in contravention of local laws.

Total Criminal and Civil Fines Imposed on Corporations: 2002-2016

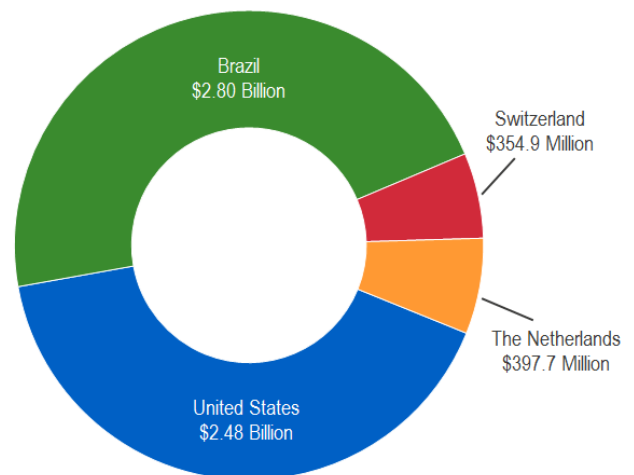


Upshot

As mentioned above, the 2016 FCPA corporate enforcement actions netted sanctions totaling \$6 billion—the highest since the FCPA’s enactment in 1977.⁷ Although the majority of the 2016 corporate FCPA enforcement actions are small-to-medium value cases, the record-breaking sanction total was buoyed by *Odebrecht/Braskem*, *VimpelCom*, *Teva*, *Och-Ziff*, *Embraer*, and *JPMorgan*. Indeed, these six cases make up approximately 95% of the \$6 billion in sanctions from the 2016 FCPA enforcement actions.

Furthermore, while the total \$6 billion figure represents the total sanctions assessed by U.S. authorities, a substantial portion of those sanctions will be paid to foreign governments rather than the U.S. Treasury. Specifically, in the cases of *VimpelCom*,

2016 U.S. and Foreign Government Recoveries



⁶ Shearman & Sterling LLP represented SAP in the resolution of this matter with the SEC and DOJ.

⁷ The “Outliers” included in the “Total Criminal and Civil Fines Imposed on Corporations: 2002-2016” are as follows: Siemens (2008); KBR (2009); BAE, Snamprogetti, and Technip (2010); JGC (2011); Alstom (2014); Odebrecht/Braskem, Teva, VimpelCom, Och-Ziff, JP Morgan, Embraer (2016).

A. Recent Trends and Patterns in FCPA Enforcement

Odebrecht/Braskem, and *Embraer*, the DOJ and SEC agreed to a total sanction amount that the defendant would have to pay and then divided the sum between U.S. and foreign enforcement authorities. According to the FCPA resolution agreements, if the corporate defendant failed to pay the sums due to the foreign enforcement authorities, it would have to pay the balance to U.S. Treasury—ensuring that, regardless of which government the money went to, the company still paid the total sanction.

The result has been that the corporate penalties associated with *Odebrecht/Braskem*, *VimpelCom*, *Teva*, *Och-Ziff*, *Embraer*, and *JPMorgan* skewed the average penalties upward. Thus, for 2016, while the pure average penalty is \$223.4 million and the average penalty excluding any outliers⁸ is \$73 million, the median penalty is \$14.4 million. In 2015, the pure average corporate penalty was \$11.9 million, the average penalty excluding outliers was \$11.8 million, and the median was \$13.3 million. In our opinion, the 2016 median is the most representative of the actual size of 2016 corporate penalties and reflects a general trend that FCPA enforcement actions generally range between \$10 million and \$30 million (excluding the median from 2014, which appears to be an outlier). Indeed, setting aside *Odebrecht/Braskem*, *VimpelCom*, *Teva*, *Och-Ziff*, *Embraer*, and *JPMorgan*, the pure average and average excluding outliers are \$13.2 million and \$9.9 million, respectively.



The takeaway from the figures above is that while 2016 will be remembered as one of the most active years for FCPA enforcement in the past decade, the headlines may be somewhat misleading; cases involving systematic payments or significant profits will generate extraordinary penalties, but the average FCPA case—the bread and butter for FCPA prosecutors—remains the smaller, opportunistic bribery scheme.

What remains to be seen is whether the current pace will continue in the next year. There are certainly some large cases in the pipeline that have not yet been resolved. Moreover, DOJ and SEC officials have stated that they have an active docket of other cases and have substantially increased the investigative and prosecutorial resources dedicated to FCPA enforcement at the FBI, DOJ, and SEC. Further, through the Pilot Program and other initiatives, the current leadership of the Fraud Section has sought both to encourage and reward companies for making voluntary disclosures and to streamline the resolution process. On the other hand, many of the larger cases from 2016 had been kicking around for some time, and it is not clear how many of the pipeline cases are ripe for settlement in the near term. It is also worth noting that the increased activity could be the product of an election year effort by the DOJ and SEC to clear the books before new officials are appointed.

⁸ For purposes of our statistics, the “average excluding outliers” refers to the pure average sanction excluding the top and bottom 10% of the sanctions.

A. Recent Trends and Patterns in FCPA Enforcement

Overall, the message from the DOJ and SEC remains: the more you profit and the less you cooperate, the more you pay. Indeed, for a large number of the 2016 FCPA enforcement actions, the single largest component of the total sanction was the disgorgement of profits. Such disgorgement-centric sanctions show that the DOJ's and SEC's principal concern is to ensure that companies do not profit from illicit schemes, with criminal and civil penalties, although still relevant, having taken a back seat to ensuring adequate deterrence.

Individual Enforcement Actions

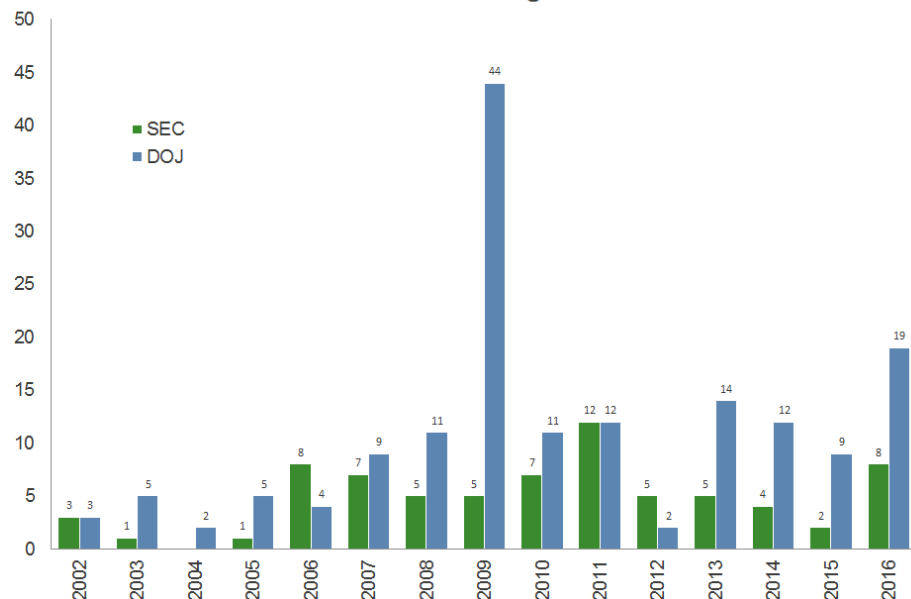
On the individual side of the 2016 FCPA enforcement year, the defendants have been a mix of individuals serving varying roles in multiple alleged bribery schemes. Of the twenty-seven different defendants, the DOJ brought charges against nineteen as part of five separate enforcement actions: (i) *Millan, Ramos, Maldonado, Gravina*; (ii) *Mebiame*; (iii) *Ashe, Lorenzo, Seng, Yin, Yan, Piao, and Wang*; (iv) *Thiam*, and (v) *Ray, Valdez, Ramnarine, Perez, Hernandez-Montemayor, and Nevarez*. The SEC separately brought charges against eight individual defendants in seven separate enforcement actions: (i) *Cueto*; (ii) *Yuan*; (iii) *Gourevitch*; (iv) *Frost*; (v) *Ping*; (vi) *Och* and *Frank*, and (vii) *Zimmer*. As discussed below, those individuals have included (i) C-suite executives; (ii) foreign officials; (iii) corporate managers; and (iv) middlemen/fixers.

C-Suite Executives

The cases of *Cueto, Frost, Ping, Och, Frank, Ng, Ray, Ramnarine, Perez, and Zimmer* are significant because they mark the enforcement agencies' increasing interest in pursuing charges against high-ranking executives.

In *Cueto*, LAN Airlines' current CEO was accused of violating the FCPA's books-and-records and internal controls provisions for engaging the services of a local Argentine consultant to allegedly bribe Argentine union officials. As part of the resolution, the SEC ordered *Cueto* to pay a \$75,000 civil penalty. Notably, as discussed below, it appears that LATAM's decision not to discipline *Cueto* for the alleged improper payments played a role in the DOJ's decision to impose a relatively significant criminal penalty on the company.

Individuals Charged: 2002–2016



In *Frost*, the former CFO of Analogic's Danish subsidiary was charged by the SEC with having allegedly approved hundreds of improper kickback payments, which he knew were based on fictitious invoices and were later improperly recorded on the company's books and records. As part of the resolution, *Frost*, while neither admitting nor denying the charges, agreed to pay a \$20,000 civil penalty.

In *Ping*, the SEC accused the former Chairman and CEO of Harris Corporation's Chinese subsidiary, Hunan CareFx Information Technology, LLC, of overseeing and promoting a practice within the subsidiary of providing Chinese officials improper gifts. The money used to provide the gifts was generated by false sales receipts, which were misreported in CareFx's books and records. As part of the enforcement action, *Ping* was required to pay a civil penalty of \$46,000.

In the SEC's enforcement action against Och-Ziff, Daniel Och, the sitting CEO, founder, and board chairman of the New York hedge fund, was charged with violating the FCPA's books-and-records provisions for approving and misreporting multiple transactions with an allegedly corrupt business partner located in the Democratic Republic of the Congo. As a result of the SEC's charges, Och was ordered to pay a total sanction of \$2,173,718. Och-Ziff's CFO, officer, and partner, Joel Frank, was also charged with violating the FCPA's

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books-and-records and internal controls provisions for his involvement and tacit approval of alleged bribery schemes in the Democratic Republic of the Congo and Libya. At the time of the enforcement action, the Commission stated that the penalty against Frank would be determined at a later date.

In *Ashe, et al.*, although initially charged with multiple non-FCPA charges, in November 2016 the U.S. Attorney's Office for the Southern District of New York filed a superseding indictment against Ng Lap Seng and his subordinate, Jeff Yin (detailed below), that accused the individuals of violating the FCPA. According to the DOJ, Ng, a Macau-based real estate executive, paid former U.N. officials John Ashe and Francis Lorenzo hundreds of thousands of dollars to obtain formal U.N. support for the construction of a multi-billion dollar conference center in Macau to host the annual UNOSSC Expo and other U.N.-sponsored events. The charges against Ng are not only noteworthy for Ng's status as a wealthy Chinese real estate tycoon but also because Ng had been previously accused of improperly funneling hundreds of thousands of dollars to the Democratic National Committee in the mid-1990s. Ng has pleaded not guilty to the charges.

In *Ray, et al.*, the U.S. Attorney for the Southern District of Texas charged three officials (presidents, directors, and owners) from a group of aviation maintenance, repair, and overhaul companies located in Texas: Douglas Ray, Kamta Ramnarine, and Daniel Perez. According to the charges that were unsealed in December 2016, Ray, Ramnarine, and Perez, along with others, conspired to bribe foreign officials in Mexico in exchange for securing business for their companies. Each of the defendants pleaded guilty to conspiracy to violate the FCPA and Ray also pleaded guilty to one count of conspiracy to commit wire fraud.

Finally, as part of the SEC's enforcement action against General Cable, the Commission charged a Senior Vice President, Karl J. Zimmer, with causing General Cable to violate the FCPA and circumventing internal accounting controls by approving improper commissions to a third-party agent in Angola. As part of the enforcement action, Zimmer was ordered to pay a \$20,000 civil penalty.

We note that in the majority of corporate cases brought by the DOJ this year, there have been no apparent charges against individuals. That may be because of jurisdictional or evidentiary issues and the differing incentives to settle between corporations and individuals, but we also note that the DOJ has in the past obtained indictments under seal and only announced the charges after an arrest or extradition request was filed. It is, therefore, possible that there are, indeed, additional individual cases out there of which we are not yet aware.

Foreign Officials

The 2016 FCPA enforcement actions against individual defendants include four groups of foreign officials: (i) Alfonzo Gravina, Jose Ramos, and Christian Maldonado, which stem from the 2015 FCPA enforcement action against Abraham Jose Shiera Bastidas and Roberto Enrique Rincon Fernandez; (ii) John Ashe and Francis Lorenzo, stemming from the FCPA charges against Ng Lap Seng and Jeff Yin; and (iii) Mahmoud Thiam, stemming from a separate bribery scheme involving a group of unnamed Chinese companies; and (iv) Ernesto Hernandez-Montemayor and Ramiro Ascencio Nevarez, stemming from the FCPA enforcement action, *Ray et al.* The FCPA, of course, does not apply to the recipients of bribes, and thus foreign officials cannot be charged with either the substantive offense or conspiracy. However, as these cases remind us, the DOJ has many other statutes, including the mail and wire fraud, tax fraud, and money laundering statutes, with which it can go after corrupt officials.

In the cases of *Gravina, Maldonado, and Ramos*, three former officials of the Venezuelan state-owned oil company, PDVSA, allegedly accepted bribes from Rincon and Shiera (as well as Millan, as discussed below) in exchange for rigging PDVSA's bidding process in Rincon's and Shiera's favor. Gravina, Maldonado, and Ramos each pleaded guilty to one count of conspiracy to commit money laundering (and, in the case of Gravina, also tax fraud). Sentencing for Gravina, Maldonado, and Ramos is scheduled for July 2017.

In the DOJ's case against former U.N. officials John Ashe and Francis Lorenzo (*Ashe, et al.*), the Department alleged that Ashe, at times with the assistance of Lorenzo, coordinated three separate bribery schemes through which he received hundreds of thousands of dollars in improper benefits. According to the DOJ, Ashe used his position as U.N. General Assembly President and U.N. Ambassador for Antigua and Barbuda to promote the business interests of the bribe payors. In the case against Lorenzo, the DOJ claims that Lorenzo accepted bribes from two individuals, Ng Lap Seng and Jeff Yin, for his assistance in funneling additional payments to Ashe. Ashe pleaded not guilty to the charges of tax fraud but passed away in June 2016 before his case could go to trial. Lorenzo separately pleaded guilty to multiple counts of *inter alia* conspiracy, bribery, money laundering, and tax fraud.

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On December 13, 2016, U.S. authorities arrested the former Guinean Minister of Mines, Mahmoud Thiam, in New York and charged him with money laundering. According to the DOJ, Thiam had attempted to conceal approximately \$8.5 million in bribes from two unnamed Chinese companies in exchange for “official actions” he took to secure the companies valuable mining rights in Guinea. As of December 2016, Thiam had yet to enter a plea. Thiam’s arrest, although not related to any current FCPA enforcement action, is noteworthy for Thiam’s relationship to the corruption scandal and litigation involving BSGR and Rio Tinto in the Simandou region of Guinea—Thiam was a named defendant in Rio Tinto’s lawsuit against BSGR in 2014.

Finally, in *Ray, et al*, two Mexican officials were charged with and pleaded guilty to one count of conspiracy to commit money laundering. According to the charges, Ernesto Hernandez-Montemayor, an employee of the government of the Mexican state, Tamaulipas, and Ramiro Ascencio Nevarez, an employee of a public state university in Mexico, allegedly received bribes in exchange for diverting business to a group of aviation companies based in Texas.

Corporate Managers

The 2016 FCPA enforcement actions also included two cases against corporate managers (*Gourevitch* and *Yuan*). Each of these cases is an example of how mid-level managers, often operating in foreign subsidiaries, were allegedly able to engage in sometimes extensive acts of bribery in exchange for sales contracts and other business advantages.

In *Gourevitch*, an engineer at the global health science company Nordion allegedly caused the company to engage the services of a Russian consultant to funnel bribes to Russian officials in exchange for certain regulatory approvals that would allow Nordion to sell its cancer treatment drug, TheraSphere, in the Russian market. The engineer, Mikhail Gourevitch, agreed to pay a total penalty of \$178,950 as part of the SEC’s action against him.

In *Yuan*, the SEC vaguely alleged that the PTC sales executive facilitated the improper use of gifts, travel, and entertainment to obtain sales contracts for PTC. We use the word “vaguely” because the allegations contained in the SEC’s deferred prosecution agreement with Yuan fail to actually state what Yuan did to violate the FCPA. Although the implication of the SEC’s enforcement action is that Yuan engaged in some form of improper conduct, the SEC’s statement of facts only provides details of what the company, PTC, not Yuan, did. Possibly as a result, the SEC agreed to settle its case against Yuan without requiring him to pay any form of monetary penalty.

Middlemen/Fixers

Among the twenty-seven individual defendants charged in connection with an FCPA enforcement action, several served as middlemen who funneled bribes from another individual/entity to a foreign official (*Millan, Yin, Mebiame, Yan, Wang, Piao, and Valdez*).

In *Millan*, the DOJ accused Moises Millan—an employee of Abraham Jose Shiera Bastidas—of facilitating the payment of bribes to Gravina, Ramos, and Maldonado. Millan pleaded guilty to the charges, was ordered to forfeit \$533,578, and is scheduled to be sentenced in July 2017.

The cases of *Yin, Yan, Piao, and Wang* all involve the corruption scandal involving John Ashe and Francis Lorenzo. Of the four, Jeff Yin is the only individual specifically charged with an FCPA violation. Sheri Yan, Heidi Piao, and Julia Wang were each charged with multiple crimes including conspiracy, money laundering, and bribery. The allegations against each individual are described below.

- *Yin*. According to prosecutors, Yin served as the middleman who facilitated the payment of hundreds of thousands of dollars from Ng to Ashe and Lorenzo. Yin has pleaded not guilty to the charges.
- *Yan and Piao*. In a second scheme involving Ashe, Yan and Piao allegedly funneled hundreds of thousands of dollars to Ashe on behalf of a series of unnamed Chinese businessmen in exchange for Ashe’s willingness to grant the businessmen access to lucrative investment opportunities and government contracts. Both Yan and Piao pleaded guilty to the charges.
- *Wang*. Finally, in a third scheme involving Ashe, Julia Wang allegedly paid the U.N. official at least \$500,000 to purchase Antiguan diplomatic positions for her late husband and another Chinese businessman. Wang has pleaded not guilty to the charges.

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The case of *Mebiame* involves charges against the Gabonese national, Samuel Mebiame, for his alleged involvement in the *Och-Ziff* enforcement action. According to court documents, Mebiame was a “fixer” who allegedly helped funnel bribes, including cash and gifts, to various African officials to obtain valuable mining concessions for Och-Ziff. Mebiame pleaded guilty to the charges in December 2016.

Finally, in the case of *Ray, et al.*, Victor Hugo Valdez Pinon was charged with and pleaded guilty to one count of conspiracy to violate the FCPA and one count of conspiracy to commit wire fraud. Valdez was a sales agent for an unnamed aviation company who was allegedly responsible for bringing the company Mexican customers in need of parts and aircraft maintenance services. According to the charges, the aviation company used Valdez to funnel bribes to foreign officials in Mexico.

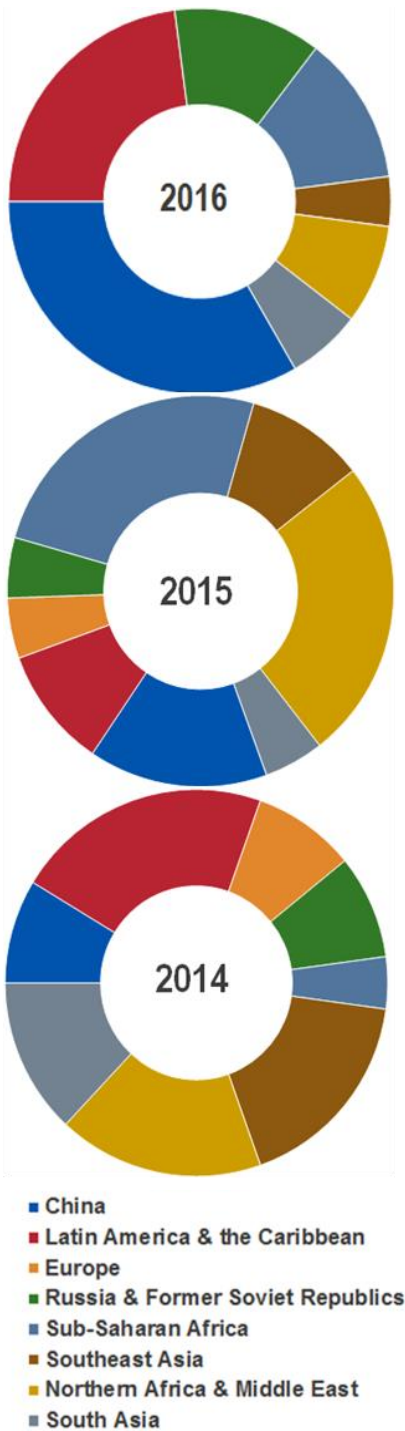
Upshot

Though the total number of individuals charged in connection with an FCPA enforcement action in 2016 is an increase from 2015 (up to twenty-seven from ten), we’re not certain that the uptick should be viewed as a fundamental shift in FCPA enforcement and is not proof that enforcement agencies are having any more or less success pursuing charges against individuals. Instead, the 2016 totals are only slightly above what we have seen in past years. For example, with a few outliers (2009, 2012, and 2015), 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, 2016 is interesting for the number of high-ranking executives against whom the SEC successfully pursued charges. The SEC’s enforcement actions appear to be, at least in part, the product of the SEC’s lower burden of proof when compared to the DOJ’s, proof beyond a reasonable doubt standard. In addition, as the SEC has continued to settle cases on a “neither admit nor deny” basis, the executives who have settled FCPA charges with the SEC have been able to do so without admitting to any personal culpability or, of course, being exposed to jail time, a factor which may not have helped their reputation in the short term but may have benefits in the longer term with respect to future employment, particularly in regulated industries, and the ability to conduct business with U.S., state, and foreign governments.

Second, although we have credited the DOJ with bringing charges against nineteen individuals in 2016, several of the cases stem from charges that were either filed in 2015 (and only unsealed in 2016) or only include non-FCPA offenses (although part of a broader FCPA enforcement action). As a result, *Mebiame*, *Ng*, *Yin*, *Ray*, *Valdez*, *Ramnarine*, and *Perez* are the only new FCPA enforcement actions against individuals in 2016. This is not to say that the DOJ hasn’t been actively pursuing FCPA-related charges against individuals, we only note that (especially when compared to the SEC), the DOJ has yet to secure that elusive marquee conviction. Indeed, despite bringing some of the largest FCPA corporate enforcement actions in history, the DOJ did not charge a single individual in connection with those cases (though as we note above it is possible that the DOJ has charged some individuals under seal). Instead, maybe with the exception of *Ng* (who appears prepared to put the Department to its burden), the DOJ is electing to pursue charges against low-level individuals or officials at relatively small privately-held companies. We suspect that the DOJ’s current tact is out of an abundance of caution and that the DOJ is spending greater time and resources to ensure that the cases it does elect to bring are successful. As we have mentioned in the past, the DOJ has struggled to successfully secure convictions of individual defendants while at trial (*e.g.*, *Sigelman*) and, with the heightened burden of proof that the DOJ must satisfy to bring criminal charges, the Department may be picking its battles carefully.

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Third, the DOJ may actually be achieving the deterrent effect it has sought to promote through its focus on individual prosecutions (per the Yates Memo) by way of the remediation requirements it has imposed on corporate defendants. Specifically, as discussed below, the DOJ has conspicuously decided to bring charges against companies that have actively failed to discipline the wrongdoers (*LATAM, Och-Ziff, and Embraer*). Conversely, in a large number of corporate enforcement actions from 2016 brought only by the SEC, the Commission reported that the companies either terminated or disciplined the culpable employees (*SAP, SciClone, Nordion, Akamai, Nortek, Johnson Controls, HMT, and General Cable*). Moreover, in several cases where the DOJ decided to get involved, the Department gave the company credit for adequately disciplining the malleasant employees (*Odebrecht, VimpelCom, Teva, JPMorgan, Olympus, and General Cable*). Indeed, the FCPA Pilot Program expressly sets out that one of the ways in which a company can receive remediation credit is: “Appropriate discipline of employees, including those identified by the corporation as responsible for the misconduct, and a system that provides for the possibility of disciplining others with oversight of the responsible individuals”

Geography & Industries

Unlike past years, where enforcement actions have involved a relatively diverse group of countries and industries, 2016 can be defined in large part by one country and one industry: China and healthcare/life sciences. The charts to the left show the geographic breakdown of the FCPA enforcement actions from 2016, 2015, and 2014 (corporate and individual).

Of the total thirty-one enforcement actions (corporate and individual combined), sixteen involved alleged acts of bribery in China (*SciClone, PTC/Yuan, Qualcomm, Novartis, Las Vegas Sands, Nortek, Akamai, Johnson Controls, AstraZeneca, Ping, Nu Skin, HMT, NCH, GSK, JPMorgan, and General Cable*). While China has featured prominently in past FCPA enforcement years, 2016 is unique because we have never seen such a significant portion of FCPA enforcement actions arising from a single country in a single year. For example, of the sixteen FCPA enforcement actions in 2015 (corporate and individual combined), only two involved the bribery of Chinese officials (*Bristol-Myers and Mead Johnson*). Similarly, in 2014, only two of the twelve enforcement actions (corporate and individual) concerned Chinese officials (*Bruker and Avon*). Ironically, three of those four cases (*Bruker, Bristol-Myers, and Mead Johnson*) were near-carbon copies of several of the 2016 cases involving the improper transfer of gifts, travel, and entertainment to Chinese officials (*SciClone, PTC, Novartis, Nortek, Akamai, Johnson Controls, AstraZeneca, Ping, NCH, and GSK*). The rise in China-related FCPA enforcement actions in 2016 appears to be due to (i) China’s size (both as a matter of geography and population); (ii) China’s role in the global economy; (iii) the similarity between bribery schemes arising out of China (*i.e.*, gifts, travel, and entertainment); and (iv) the fact that many of the China-related bribery schemes involved the same industry (*i.e.*, the healthcare and life science sectors).

Of additional note is that eleven of the 2016 FCPA enforcement actions (including several of the largest actions) involved Latin America (*SAP, LATAM, Olympus, Millan, et al., Key Energy, HMT, Embraer, Ashe, et al.*,⁹ *Odebrecht/Braskem, Teva, and Ray, et al.*). This trend is noteworthy because enforcement agency officials have publicly stated that they

⁹ We have treated *Ashe* as an FCPA enforcement action arising out of Latin America and the Caribbean because the officials involved in the scheme were from Antigua and Barbuda and the Dominican Republic. Notably, however, many of the individuals who allegedly paid bribes to *Ashe* and *Lorenzo* were based in China.

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expect an increase in the number of FCPA enforcement actions coming out of the region. We suspect that the officials' statements are probably based on the significant number of entities in the region currently under investigation (e.g., Petrobras and Wal-Mart), additional cases likely arising from the 2014 World Cup and 2016 Olympics in Brazil, and ongoing cooperation between U.S. and Latin American enforcement agencies.

Finally, six of the 2016 FCPA enforcement actions have involved officials from sub-Saharan Africa (*Analogic, Och-Ziff, Embraer, Odebrecht, Thiam, and General Cable*); five have involved officials in Russia and the former Soviet republics (*Nordion/Gourevitch, VimpelCom, Analogic, AstraZeneca, and Teva*); four have included officials from the Middle East and Northern Africa (*Analogic, Och-Ziff, Embraer, and General Cable*); three have centered on bribery schemes in South Asia (*AB InBev, Embraer, and General Cable*); and two have involved improper conduct in Southeast Asia (*Analogic and General Cable*).

With regard to industries, the DOJ and SEC have shown a specific interest in the healthcare and life sciences industries (*SciClone, Nordion/Gourevitch, Novartis, Olympus, Analogic, AstraZeneca, Nu Skin, GSK, and Teva*)—particularly in the first six months of the year. Indeed, as we have mentioned in the past, the DOJ's and SEC's focus on the healthcare industry in 2016 is part of a much longer trend. Since 2011, either the DOJ or SEC has brought an FCPA enforcement action against at least one company in the healthcare sector: 2011—*Johnson & Johnson*; 2012—*Biomet, Pfizer, Eli Lilly, Orthofix*; 2013—*Stryker*; 2014—*Bio-Rad, Bruker*; 2015—*Bristol-Myers, Mead Johnson*. With several investigations into various other pharmaceutical and medical technology companies still ongoing, we expect this pattern to continue into the foreseeable future.

However, while the healthcare and life science industries have been the most prominent sector in 2016, in truth, the 2016 FCPA enforcement actions have encompassed a broad array of additional industries including:

- Aerospace & Airlines – *LATAM, Embraer, Ray, et al.*
- Technology – *SAP, PTC, Qualcomm, Akamai, Nortek, and Ping*
- Telecommunications – *VimpelCom*
- Oil & Gas – *Millan, et al. and Key Energy*
- Petrochemicals – *Braskem*
- Engineering & Construction – *Odebrecht*¹⁰
- Entertainment – *Las Vegas Sands*
- Industrial Manufacturing and Maintenance – *Johnson Controls, HMT, NCH, and General Cable*
- Beverage – *AB InBev*
- Finance – *Och-Ziff and JPMorgan*
- Real Estate – *Ashe*

Of these remaining industries, the aerospace and airlines as well as the finance industries are of note.

First, much like the healthcare and life science industries, the DOJ and SEC have historically paid close attention to the aerospace and airlines industries. With *LATAM, Embraer, and Ray, et al.*, the agencies have raised enforcement actions against the aerospace and airlines industries six times since 2012 (*LATAM, Embraer, Ray, et al. Dallas Airmotive, NORDAM, and BizJet/Lufthansa*). Indeed, the

¹⁰ Odebrecht is a Brazilian conglomerate that owns interests in a variety of companies operating in the engineering, construction, chemicals, and petrochemical industries. Because the bulk of alleged bribery schemes described in the DOJ's plea agreement with Odebrecht involved engineering and construction contracts, we have categorized the enforcement action as such in our list.

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agencies' interest in the aerospace and airlines industries dates as far back as 1978 and the SEC's very first FCPA enforcement action against Page Airways.

Second, the DOJ's and SEC's enforcement actions against *Och-Ziff* and *JPMorgan* are interesting because they may portend a future trend. Specifically, *Och-Ziff* and *JPMorgan* are just two of a handful of cases involving the financial industry (*DAP* and *BNYM*) after the SEC announced an "industry sweep" of the finance industry in 2011. More than five years later, the enforcement actions against the employees of the former broker-dealer *DAP*, *BNYM*, *Och-Ziff*, and *JPMorgan* all appear to be the products of the agencies' interest in scrutinizing the finance industry. With a number of investigations concerning various Wall Street banks still pending, it seems likely that we will see more FCPA enforcement actions involving the finance industry in the future.

Types of Settlements

While the agencies have continued the practice of resolving matters using a variety of settlement structures—with the choice of structure apparently related (albeit inconsistently) to the seriousness of the conduct or the timing and degree of disclosure and cooperation—the most noteworthy development in the types of settlement devices seen in 2016 has been the advent of the DOJ's public declinations (*Akamai*, *Nortek*, and *Johnson Controls*) and public declinations with disgorgement (*HMT* and *NCH*). We discuss the SEC's and DOJ's settlement devices below.

SEC

In 2016, the SEC continued to rely on administrative proceedings to resolve its FCPA enforcement actions, using the mechanism to settle eighteen of its twenty-four corporate enforcement actions (*SAP*, *LAN*, *SciClone*, *PTC*, *Qualcomm*, *Nordion*, *Novartis*, *Las Vegas Sands*, *Analogic*, *Johnson Controls*, *Key Energy*, *AstraZeneca*, *Nu Skin*, *AB InBev*, *Och-Ziff*, *GSK*, *JPMorgan*, and *General Cable*) and in the case of seven of the eight individuals against whom the Commission brought enforcement actions (*Cueto*, *Gourevitch*, *Frost*, *Ping*, *Och*, *Frank*, and *Zimmer*). That said, while the D.C. Circuit's recent ruling in *Lucia v. SEC* upholding the constitutionality of the Commission's administrative proceedings came as a boon to the Commission's FCPA enforcement strategy, the looming threat of amendments to Dodd-Frank with the incoming presidential administration and a recent decision by the 10th Circuit that found the SEC's administrative proceedings unconstitutional, once again places the SEC's ongoing use of administrative proceedings at risk.

In its other cases, the SEC continued experimenting with deferred prosecution and non-prosecution agreements, which purportedly parallel their DOJ counterparts. Thus, in *Nortek* and *Akamai*, the SEC resolved its cases against these two companies through the use of NPAs. In the case of *Yuan*, the SEC, for the first time, entered into a DPA with an individual. The SEC's use of NPAs and DPAs in these cases is noteworthy for two reasons:

- First, while the Commission's use of DPAs and NPAs is somewhat novel, as we have noted before, it is unclear what benefit, apart from the cosmetics of nomenclature, result from a DPA or NPA with the SEC. Given that the SEC has almost uniformly continued to settle civil and administrative matters on a "neither admit nor deny" basis, the DPAs and NPAs appear effectively identical to SEC enforcement actions involving complaints and administrative actions, absent, of course, the formal order, as all involve detailed allegations of wrongdoings, continuing oversight, and the payment of sometimes substantial penalties.
- Second, though not earthshattering, the SEC's decision to utilize a DPA in *Yuan* is interesting. According to Dodd-Frank, the SEC has the authority to use an administrative proceeding against any individual associated with an entity that violated U.S. securities laws—such as the FCPA. Thus, in theory, the SEC could have raised an administrative proceeding against *Yuan*. The use of a DPA coupled with the fact that the SEC settled its case without leveling a monetary penalty on *Yuan* may represent a new approach by the SEC to give low-level employees incentives to cooperate with authorities.

In each of *VimpelCom*, *Embraer*, *Braskem*, and *Teva*, the SEC opted to file a formal complaint in the U.S. courts followed by a consent order within which the company formally agreed to the Commission's sanctions. Again, it is unclear what precisely motivated the SEC to file a complaint over any of the other settlement devices it has used before; however, given that *Braskem*, *Teva*, *VimpelCom*, and *Embraer* were subject to among the highest sanctions of 2016, the Commission likely views the use of civil complaints as a means of publicly shaming the company further. In this way, the SEC's use of civil complaints is reserved for the most severe of bribery schemes and serves as an analogue to the DOJ's use of corporate plea agreements.

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Finally, in its only public declination of the year, the SEC declined to bring charges against Harris Corporation in connection with the FCPA enforcement action against a former executive of the company, Jun Ping Zhang. In a public speech, SEC Enforcement Director Andrew Ceresney stated that following Harris Corporation's acquisition of CareFx, the subsidiary that Ping managed, Harris Corporation took:

Significant steps . . . to train staff in China and integrate the subsidiary into Harris's system of internal accounting controls. As a result of these measures, including the implementation of an anonymous complaint hotline, Harris discovered and reported the misconduct within five months of the acquisition. The SEC determined not to bring charges against Harris, taking into consideration the company's efforts at self-policing that led to the discovery of the misconduct, prompt self-reporting, thorough remediation, and exemplary cooperation with the SEC's investigation.

DOJ

For its part, while the DOJ continues to use a combination of NPAs, DPAs, and Plea Agreements to resolve its FCPA enforcement actions, its recent decision to issue public declination letters and public declinations with disgorgement shows that the Department's enforcement practices are continuing to evolve. However, even these new settlement devices fit within the Department's practice of using settlement devices to reflect the severity of the underlying crime. The list below sets out the various settlement devices the DOJ has used in its 2016 FCPA enforcement actions against corporate entities:

- Plea Agreements – *Unitel* (VimpelCom's Uzbek subsidiary), *OZ Africa Management* (Och-Ziff's holding company of certain business interests in Africa), *Odebrecht S.A.*, *Braskem S.A.*, and *Teva LLC* (Teva's Russian subsidiary)
- Deferred Prosecution Agreements – *VimpelCom*, *Olympus*, *LATAM*, *Och-Ziff*, *Embraer*, and *Teva*
- Non-Prosecution Agreements – *PTC* (specifically PTC's Hong Kong and Shanghai subsidiaries), *BK Medical ApS* (Analogic's Danish subsidiary), and *JPMorgan Securities (Asia Pacific) Limited* (JPMorgan's Chinese subsidiary)
- Public Declinations with Disgorgement – *HMT* and *NCH*
- Public Declinations – *Akamai*, *Nortek*, and *Johnson Controls*

There are a number of items of note about the DOJ's use of settlement devices in the 2016 FCPA enforcement actions.

First, the D.C. Circuit's reversal of U.S. District Court Judge Richard J. Leon's refusal to approve a DPA between Fokker Services B.V. and the Department all but ensured that the DOJ's (and SEC's for that matter) use of pre-trial agreements like DPAs would be essentially free from judicial scrutiny. As the D.C. Circuit explained, the executive branch maintains the authority over the use of DPAs and the filing of a DPA did not provide the court any role in scrutinizing the agreement.

Second, as we highlighted in our mid-year update, the DOJ continued its past practice of requiring the subsidiary, at which much of the relevant misconduct took place, to enter a guilty plea, as it did in the *VimpelCom* case with *Unitel* and in the *Teva* case with *Teva LLC* (Russia). The Department's decision in both cases to award the parent companies a DPA, however, was somewhat surprising given the allegations that several high-ranking executives within the parent companies themselves were aware of (or at a minimum were willfully blind to) the alleged acts of bribery. Where the DOJ has concluded that the parent company's conduct was reprehensible enough, it has historically pursued plea agreements with the parent company—as was the case in *Alstom* as well as *Odebrecht/Braskem*. It is possible, however, that the DOJ declined to take the step of forcing a guilty plea from the company to avoid the collateral consequences (e.g., debarment in the United States and European Union, resulting from criminal charges).

Third, as discussed in greater detail below, the Fraud Section's FCPA Pilot Program was designed to provide incentives for companies to self-report and cooperate with the DOJ's investigation by specifying potential quantifiable benefits in terms of penalty discounts and holding out the promise of the holy grail of a declination. Over the course of 2016, the DOJ publicly announced five declination decisions in *Akamai*, *Nortek*, *Johnson Controls*, *HMT*, and *NCH* as part of the FCPA Pilot Program (although in the latter two declinations, *HMT* and *NCH*, the DOJ required the company to disgorge the profits of the alleged bribery scheme). It has become apparent, however, that the

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declinations afforded by the Pilot Program are of a different nature than the traditional declination, in which the government simply closes the matter without bringing charges. Here, the declinations are accompanied by a public statement from the DOJ that, notwithstanding the declination, the company had, in fact, engaged in acts of bribery and a requirement that the company agree to disgorgement (either by virtue of a separate SEC enforcement action or per the terms of the DOJ's declination letter). In light of these features, we wonder how substantial the difference is between a Pilot Program declination and an NPA, DPA, or Plea Agreement. At the present, it is difficult to say one way or another.

One critical distinction is whether the Department's declinations operate as an admission of guilt. If not, the Department's declination letters would help the company to avoid certain collateral consequences associated with FCPA enforcement actions such as civil litigation and debarment by U.S. and E.U. authorities. However, the declination letters' determination that the companies had in fact engaged in acts of bribery and the lack of details associated with the findings could still give rise to the collateral consequences that a company was hoping to avoid. For example, on the question of debarment, we suspect that procurement authorities would still have the discretion to consider the declinations when deciding whether to award a company future business.

On the other hand, while the government has suggested that the Pilot Program provides a financial incentive for companies that make voluntary disclosures and cooperate, that benefit is limited to companies that settle via a DPA or NPA, in which the financial penalty is calculated by reference to the Sentencing Guidelines with varying discounts coming off the bottom of the applicable Guidelines range. As such, the penalty may well ultimately be less than the gain. However, by focusing on disgorgement, in the case of public declinations, the Department has, in some ways, tied its hands (as is the case with the SEC) because the Department cannot give a discount off the disgorgement amount—it would be politically and philosophically difficult for prosecutors to take the position that they will permit any company to retain some of the illicit profits. (Interestingly, as a side note, that is exactly what was proposed by the Chamber of Commerce's proposed compliance defense and previously advocated by Andrew Weissmann, the current head of the Fraud Section. It will, of course, be interesting to see if that proposal makes any headway in the new administration.)

In our estimation, the Pilot Program declinations appear to be yet another point along a continuum of settlement, most of which is aimed at reflecting the DOJ's assessment of the company's culpability. Thus, while the Pilot Program declinations appear primarily cosmetic in nature, in an area of the law where appearance is everything and mitigating reputational harm is key, cosmetics must count for something.

Elements of Settlements

Within Guidelines Sanctions. In those cases in which the DOJ settled via a plea, DPA, or NPA, the financial penalty is set by reference to the Sentencing Guidelines. Notably, however, in only one of the Department's thirteen enforcement actions did the company receive a penalty within the applicable Guidelines ranges: *LATAM*. All others received below-Guidelines penalties. The fact that *LATAM* is an outlier is not surprising because the government's pleadings allege that the company failed to self-disclose, cooperate, and remediate, all of which are factors that were present in past cases in which a Guidelines penalty was imposed (e.g., *Marubeni* and *Alstom*). According to the DOJ, *LATAM* did not disclose the alleged violations or cooperate with the Department until after news reports surfaced that Argentine and Chilean law enforcement agencies were investigating the matter, resulting in the potential loss of relevant evidence. Furthermore, the Department stated that the “[c]ompany [] failed to remediate adequately, including significantly by failing to discipline in any way the employees responsible for the criminal conduct . . . including misconduct by at least one high-level [c]ompany executive.” Although neither the SEC nor the DOJ has confirmed, it is likely that the “high-level company executive” is Ignacio Cueto, *LAN* airlines' then and current CEO (Cueto settled FCPA charges with the SEC in February 2016).

Criminal Sanctions. Although *LATAM* was the only company to receive a within-the-Guidelines sanction, nearly all of the other DOJ actions included some of the elements that apparently led the DOJ to seek such a stiff penalty (namely, the failure to self-disclose, cooperate, and remediate). In the cases of *PTC*, *VimpelCom*, *Olympus*, *Och-Ziff*, *Embraer*, *Odebrecht/Braskem*, and *Teva* the companies failed to self-report. In the cases of *PTC*, *Analogic*, *Braskem*, *Teva*, and *Och-Ziff*, the companies failed to fully disclose all relevant facts to the Department when the company first learned the new information and made overbroad assertions of privilege. Finally, in the case of *Embraer*, the DOJ only gave the company partial remediation credit because it allegedly “did not discipline a senior executive who was (at the very least) aware of bribery discussions in emails in 2004 and had oversight responsibility for the employees engaged in those discussions.”

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The only exception to the rule above appears to have been *General Cable* where the DOJ decided to seek a criminal penalty from the company despite giving General Cable complete credit for voluntarily disclosing the improper payments, cooperating with the Department, and engaging in significant remedial efforts to enhance the company's compliance program and internal controls. The only factor apparently counting against General Cable was the "nature and seriousness of the offense"—suggesting that even if a company follows the Department's guidance, it may not be able to entirely avoid a criminal sanction (although the DOJ's total penalty was a 50% discount from the bottom of the Sentencing Guidelines).

Interestingly, based on the factors discussed above, AB InBev, a company charged only by the SEC, would have appeared to be a case for the DOJ. According to the SEC, AB InBev did not self-report the improper conduct, engaged in plans to destroy documents, did not respond to subpoenas in a timely manner, made broad assertions of privilege, and impeded the Commission's investigation by forcing a whistleblower to sign a confidentiality agreement that prevented the individual from speaking with the SEC. All other things being equal, however, the SEC papers did not disclose any acts within the United States to support a bribery charge, and the Department may have concluded that the conduct of the Indian subsidiary was not sufficient to support a willful books-and-records or internal controls charge against the parent.

Internationalization of Sentencing Guidelines. As mentioned above, several of this year's largest FCPA enforcement actions have seen various enforcement agencies, both U.S. and foreign, dividing a single total penalty among themselves (*Odebrecht/Braskem*, *VimpelCom*, *Embraer*). The total penalty in each case was calculated according to the U.S. Sentencing Guidelines, which the foreign authorities apparently accepted as a useful tool to fashion the sanction. As foreign enforcement authorities become more involved in FCPA enforcement actions, many, including ourselves, have wondered how the various agencies will calibrate the sanctions to avoid overpenalizing a company. If the 2016 enforcement actions are any indication, the apparent trend is for foreign authorities to accept the U.S. Sentencing Guidelines as a uniform standard. This obviously ensures coordination between the enforcement agencies, but it is also possible that the U.S. Sentencing Guidelines will result in a higher sanction than might otherwise be available under applicable foreign law.

Monitors. In February 2016, Andrew Weissmann stated that the DOJ would review its approach to the use of monitors. That renewed focus has seemingly resulted in an increase in the number of corporate monitors. Indeed, nine companies that were subject to FCPA enforcement actions in 2016 saw the DOJ or SEC impose a corporate monitor requirement as part of the sanction (*VimpelCom*, *Olympus*, *Las Vegas Sands*, *LATAM*, *Och-Ziff*, *Embraer*, *Odebrecht*, *Braskem*, and *Teva*). By way of comparison, 2014 and 2015 saw only one corporate compliance monitor in each year (*Avon* and *Louis Berger*). In the past, the monitors were routinely appointed, but over time the pendulum appeared to have swung towards self-monitoring or, in some cases, hybrids in which a monitor was appointed for only a portion of the DPA period. It appears now that the pendulum has swung back.

Recidivism. There is a rare and still relatively small group of recidivist FCPA violators (*e.g.*, *Marubeni*, *Vetco Gray*). The 2016 case against Johnson Controls both is and isn't such a case. The SEC charged Johnson Controls as the result of the conduct of its Chinese subsidiary, China Marine, which had been acquired by Johnson Controls in 2005 as part of its acquisition of York International. Significantly, in the midst of the acquisition, York International itself had been charged with FCPA violations in which some of the relevant conduct had involved China Marine. The DOJ settlement with York and the subsequent monitorship spanned the period in which York was integrated into Johnson Controls. Thus, Johnson Controls was aware of the problems concerning China Marine but was unable to remediate the improper conduct, a fact pattern similar to other recidivist cases. Nevertheless, although the SEC brought a books-and-records case against Johnson Controls, the DOJ publicly declined to bring charges through the FCPA Pilot Program.

Lengthy Investigations. A noteworthy feature of several of the 2016 FCPA enforcement actions is the length of the agencies' investigations into the companies' operations. According to the companies' public filings, the government's investigations into SciClone, PTC, Las Vegas Sands, AstraZeneca, Och-Ziff, and Embraer had lasted for five or more years. In the case of *AstraZeneca*, it was first reported that the SEC began investigating the company's European operations in October 2006, almost ten years before the settlement. The length of the Commission's investigation into AstraZeneca is all the more striking when one considers that the total sanction against the company was only \$5 million. It is worth noting in this respect that the Wal-Mart investigation has now been in progress since at least December 2011, with no sense of how or whether it will result in an enforcement action, and every year the company discloses yet more investigation fees and remediation costs. Although we doubt that the enforcement agencies place any weight on the length and cost of an investigation when determining the appropriate sanction, it is worth pointing out that, as was likely the case for AstraZeneca, the cost

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of the investigation itself may in some cases be more of a deterrent than the actual sanction. The simple truth is that investigations involving corporate acts of bribery are expensive and thus, the longer those investigations go on, the more costly they become. In addition, the longer an investigation lingers, the less deterrent effect an enforcement action might have as the conduct becomes old and can be blamed on former management and ex-employees. While the enforcement agencies (particularly the DOJ) have made concerted efforts to resolve enforcement actions in a more efficient and timely manner, the 2016 enforcement actions illustrate just how significant a problem lengthy investigations have become.

Case Developments

Direct Access Partners. In April 2016, seven individuals associated with the now defunct broker-dealer Direct Access Partners settled the SEC's charges against them for bribing a former official at the Venezuelan state development bank, Banco de Desarrollo Económico y Social de Venezuela ("BANDES"). Those individuals included: Iuri Rodolfo Bethancourt, Benito Chinaea, Tomas Alberto Clarke Bethancourt, Joseph DeMeneses, Jose Alejandro Hurtado, Ernesto Lujan, and Haydee Leticia Pabon. The settlement resulted in a permanent injunction against each of the defendants from violating U.S. securities laws and, collectively, Chinaea, Clarke, DeMeneses, and Lujan were ordered to pay \$42.5 million in disgorgement and prejudgment interest—a sanction that was deemed satisfied by the amounts already paid in connection with the criminal action against those four defendants.

Maria de los Angeles Gonzalez de Hernandez. In January 2016, the BANDES official, Maria de los Angeles Gonzalez de Hernandez, accused of receiving \$5 million in bribes in connection with the Direct Access Partners scheme, was sentenced to time served after she spent a little over a year in jail following her arrest in Miami in 2013. Gonzalez pleaded guilty to conspiracy to violate the Travel Act and conspiracy to commit money laundering as well as two substantive counts of the offenses. Gonzalez was also required to forfeit the \$5 million in ill-gotten gains.

Rincon & Shiera. Abraham Jose Shiera Bastidas pleaded guilty on March 22, 2016 to one count of conspiracy to violate the FCPA and commit wire fraud. Shiera has since been released on a \$1 million bond and has been placed under house arrest until his sentencing. Roberto Enrique Rincon Fernandez separately pleaded guilty on June 16, 2016 to one count of conspiracy to violate the FCPA, one substantive count of violating the FCPA, and one count of making false statements on his tax return. Both Shiera's and Rincon's sentencing is also scheduled for July 2017.

Harder. In late 2015, Dimitrij Harder, the former owner and president of Chestnut Consulting Group Inc. charged with bribing an official of the European Bank for Reconstruction and Development ("EBRD"), attempted to challenge the DOJ's case against him by arguing that the designation of the EBRD as a "public international organization" as defined by the FCPA was unconstitutional. Specifically, the FCPA includes officials of "public international organizations" within the definition of "foreign official" in the statute. In March 2016, Judge Diamond of the U.S. District Court for the Eastern District of Pennsylvania rejected Harder's argument, explaining that it would lead to an "absurd result." Following the court's decision, Harder pleaded guilty to two counts of violating the FCPA in April 2016. Sentencing is scheduled to take place in June 2017.

Hoskins. In 2015, Judge Arterton of the U.S. District Court for the District of Connecticut ruled that a non-resident foreign national cannot be charged with conspiracy to violate the FCPA or with aiding and abetting a violation of the FCPA without satisfying the jurisdictional requirements of the statute. As a result, portions of the DOJ's case against the former Alstom executive and U.K. national Lawrence Hoskins were placed in jeopardy (though other substantive charges against Hoskins remain intact). According to the DOJ's theory, prosecutors have the authority to charge non-resident nationals who never set foot in the United States with conspiracy to violate the FCPA, even if the agencies did not otherwise have jurisdiction to charge the defendant with a substantive violation of the FCPA. The DOJ subsequently petitioned the court to reconsider the decision, and in March 2016, the court affirmed its ruling. The DOJ has since appealed the decision to the Second Circuit Court of Appeals. The Second Circuit's ruling on this decision could have serious implications for the DOJ's approach to FCPA enforcement, as the DOJ frequently charges individuals with conspiracy to violate the FCPA to avoid some of the jurisdictional prerequisites in the law.

Magyar Executives. In December 2011, the SEC filed a civil complaint in the Southern District of New York against three former executives of the Hungarian telecommunications provider, Magyar Telekom Plc., for violations of the FCPA. The charges came alongside an FCPA enforcement action by both the DOJ and SEC against Magyar and its parent corporation, Deutsche Telekom AG.

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Since December 2011, the Commission's case against the three executives has lingered in the courts as the executives sought to challenge the SEC's charges on multiple grounds, including jurisdiction. As discussed in greater detail below, in September 2016, Judge Richard Sullivan ruled that the 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 is currently scheduled to begin in May 2017.

SBM Offshore. In February 2016, SBM Offshore announced that the DOJ had reopened its investigation into alleged acts of bribery concerning the company's operations in Angola, Brazil, and Equatorial Guinea. The announcement comes after the DOJ closed its probe without bringing charges and the company reached a \$240 million settlement with Dutch authorities over the very same allegations in November 2014. It is unclear what caused the DOJ to reopen its investigation into the company.

Alstom. In May 2016, a jury in the Bahamas convicted Fred Ramsey, a former board member of the Bahamas Electricity Corporation, of taking bribes from officials at Alstom. The charges underlying Ramsey's conviction were connected to the 2014 FCPA enforcement action against Alstom, where the French engineering firm pleaded guilty to multiple violations of the FCPA after the DOJ accused the company of bribing foreign officials in the Bahamas, Indonesia, Saudi Arabia, and Egypt. In July 2016, Ramsey was ordered to disgorge the illicit payments he received as part of the bribery scheme and pay a \$14,000 criminal fine. Ramsey was able to avoid jail time due to his poor health.

Sweett Group plc. In December 2015, the U.K.-based construction and management services company, Sweett Group plc, pleaded guilty to violating section 7 of the U.K. Bribery Act for allegedly bribing foreign officials in the Middle East. This was the first instance in which a company pleaded guilty to violating section 7—the section of the Bribery Act making companies strictly liable for failing to prevent acts of bribery by associated persons. Perhaps significantly, there was no mention in this matter of the company seeking to avail itself of the affirmative defense provided in section 7 to companies that have “adequate procedures” to prevent bribery. In February 2016, the Sweett Group was sentenced and was ordered to pay a £2.25 million sanction (approximately \$3.3 million).

Firtash. In 2014, U.S. prosecutors charged Dmytro Firtash, the politically-connected Ukrainian oligarch and former owner of the gas company RosUkrEnergo, with violating the FCPA, RICO, and the federal money laundering statute after he allegedly paid \$18.5 million to Indian officials in exchange for valuable mining rights in the country. Following his arrest in Vienna, Austria, the U.S. sought to extradite Firtash to the United States, but an Austrian court denied the request, finding it was “politically motivated.” Both Firtash and the U.S. appealed that decision, Firtash arguing that the extradition request should have been rejected on the grounds that the U.S.-Austrian extradition treaty was unconstitutional under Austrian law. In August 2016, Firtash's appeal was rejected. The appellate court's decision to reject Firtash's appeal now opens the door for the Austrian courts to consider the U.S.'s appeal of the lower court's initial denial of extradition.

Richard Hirsch & James McClung. In 2015, Richard Hirsch and James McClung, two former executives at the engineering and construction firm, Louis Berger, 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.

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Perennial Statutory Issues

Jurisdiction

The DOJ and SEC have historically interpreted the FCPA's jurisdictional requirements extremely broadly, claiming that such slight touches on U.S. territory such as 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. In 2016, the agencies doubled down on these expansive views, particularly in the *Teva* case.

Court Decisions

The *Magyar Telekom* case was the first to reveal the government's theory that an email not sent or received in the U.S., but passed through a U.S. server, was enough to satisfy FCPA jurisdictional requirements over foreign persons. More recently, in the same case, the SEC proposed—and, surprisingly, got the court to accept—an even more attenuated connection between foreign persons and the bribery provisions. In that case, *SEC v. Straub*, in September, Judge Richard Sullivan of the Southern District of New York upheld a novel jurisdictional theory from the SEC, holding that the SEC retained jurisdiction to pursue charges against three foreign defendants, who had never set foot in the United States during the period of the alleged bribery scheme, because the three defendants participated in the preparation of Magyar's SEC filings that were posted on the Commission's EDGAR website for public consumption. Although these acts clearly are relevant to books-and-records charges, it is far from clear how the filing of the reports somehow constituted an "act in furtherance" of the bribes using wires or instrumentalities of interstate commerce—the requirement for jurisdiction under the bribery provisions.

On the other hand, in *U.S. v. Hoskins*, U.S. District Court Judge Janet Arterton from the District of Connecticut issued a ruling that checked the DOJ's efforts to expand jurisdiction. The court there found that former Paris-based Alstom Executive Lawrence Hoskins, a British national, could not be charged with conspiracy to violate the FCPA or with aiding and abetting a violation of the FCPA absent a showing that he either (1) acted as the agent of a U.S. "domestic concern" or (2) committed acts in furtherance of the conspiracy while physically present in the territory of the United States. If affirmed on appeal by the U.S. Court of Appeals for the Second Circuit, where it is currently pending, this case would represent a significant limitation on the FCPA jurisdiction as to non-resident foreign nationals. Briefing for the appeal is ongoing as of December 2016.

Teva

The DOJ's and SEC's broad jurisdictional theories were on full display in their enforcement actions against Teva and its Russian subsidiary, Teva LLC.

In the DOJ's plea agreement with Teva Russia, the only jurisdictional ground alleged by the DOJ was that "employees and agents of Teva Russia sent emails through the United States." Although the plea agreement described various emails between employees and executives at Teva Russia and its parent—an Israeli company—there are no other allegations that the emails were sent to, received in, or even passed through the United States. Notably, the DOJ could not even come up with a single specific instance of an act within the territory of the United States to form the basis for a substantive count and charged only a vague conspiracy with overt acts consisting of emails that we assume are alleged, although no details are provided, to have somehow touched a server in the U.S.

Further, the SEC's allegations against the corporate parent were equally lacking details. While Teva is an issuer, because it is also a foreign person, the SEC still must establish *territorial* jurisdiction to charge the company with a violation of the anti-bribery provision of the FCPA. Though the SEC's complaint included allegations that Teva's Mexican subsidiary, which also allegedly made corrupt payments, was managed in Miami, its jurisdictional allegations concerning Teva's Russian and Ukrainian subsidiaries apparently rely on emails that "were sent through U.S. servers" or U.S. dollar payments that allegedly "were wired through U.S. correspondent banks."

Separately, in the SEC's complaint against Teva, the SEC's jurisdictional grounds state the following: "Teva, directly or indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of national securities exchange in connection with the transactions, acts, practices, and courses of business alleged in this Complaint." The SEC then, in the factual allegations with

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respect to payments by the subsidiaries in Russia, Ukraine, and Mexico, in traditional books-and-records language, recites either that the subsidiaries “mischaracterized the payments . . . in its books and records” (in the case of Russia and Ukraine) or that the subsidiaries’ “inaccurate books and records and financial statements were consolidated into Teva’s financial statements, which were filed with the Commission” (in the case of Mexico). The reference to “the facilities of national securities exchange” is a relatively new component of the SEC’s pleadings and is likely a nod to Judge Sullivan’s opinion in *SEC v. Straub* that the mere filing of reports with the SEC somehow qualifies as a territorial act in furtherance of an improper payment—though for the reasons above, we find the SEC’s reliance on such a theory dubious at best. Perhaps to cover all its bases, the SEC did not, in its first claim, which charges bribery under 15 U.S.C. § 78dd-1, allege any specific jurisdictional nexus for that count, but merely incorporated *all* of the preceding paragraphs.

Foreign Officials

The question of who constitutes a “foreign official” has been a long-debated issue, mostly focused on whether employees of state-owned entities qualified, an answer settled by the Eleventh Circuit in 2014 in the *Esquenazi* case. This year’s FCPA enforcement cases, however, saw new twists and new uses of the statute in cases where it is not even clear there is a foreign official involved.

The FCPA, of course, consists of two sets of provisions: the bribery prohibitions and the books-and-records/internal controls requirements. Only the first requires that there be payments to a foreign official; but in many instances, the government has used the books-and-records/internal provisions to prosecute cases that apparently began as bribery investigations but where it is unable to satisfy the bribery provision’s jurisdictional requirements or where it is less than certain whether the recipient of an improper payment is, in fact, a government official. In 2016, the government continued this approach, including in cases with somewhat fuzzy allegations concerning exactly how it viewed the recipients of unlawful payments or, in one case, without ever identifying those recipients at all.

Fuzzy Theories on Foreign Officials

In *LATAM*, the DOJ and SEC charged the company with books-and-records and internal controls violations after the current CEO of LATAM’s subsidiary, LAN Airlines S.A., allegedly approved \$1.15 million in payments to a local Argentine consultant with the understanding that some portion of those funds would be used to bribe Argentine union officials to resolve an ongoing labor dispute. While it is theoretically possible that union officials may somehow be considered “government officials” under Argentine law, it is unlikely that a union official would otherwise constitute a “foreign official” under the FCPA. As a result, the DOJ and SEC did not expressly argue that the company bribed “foreign officials” as defined by the FCPA, but nevertheless described the payments that resulted in the inaccurate books and records in terms that sound very much like FCPA bribery without actually charging it. Similarly, in *Analogic*, the SEC alleged that the company’s Danish subsidiary engaged in a kickback scheme with its third-party distributors, but did not state whether any of those kickbacks actually went into the pockets of foreign officials (although it alleged that such payments created a “risk” of bribery).

Anti-Bribery Charges Connected to Private Individuals and Entities

The *JPMorgan* case raises the converse problem seen in *LATAM* and *Analogic* (*i.e.*, cases where no “foreign official” was identified). In *JPMorgan*, while the SEC and DOJ alleged that foreign officials received improper benefits from the bank, the DOJ’s charges included extensive allegations concerning improper benefits made to private individuals. The focus of the *JPMorgan* case was on whether the bank had provided a corrupt benefit to foreign government officials by engaging in a practice of offering employment positions to their friends and relatives. However, of the multiple examples of allegedly corrupt hiring practices identified by the DOJ, two explicitly involved relatives of executives at *private* companies. Indeed, both the DOJ’s and SEC’s charges cast a wide net, broadly alleging that the practice of hiring employees based on their relationships to potential clients—foreign official or not—was improper. It is unclear why the DOJ and SEC decided to allege facts in their submissions concerning the hiring of friends and relatives of non-foreign officials. Certainly, such conduct does not trigger an FCPA violation. By all appearances, the DOJ and SEC used *JPMorgan* as an opportunity to publicly shame the company for a hiring practice that the agencies found unsavory.

Public International Organizations

The DOJ’s case against Ng Lap Seng and Jeff Yin involving the former U.N. officials, John Ashe and Francis Lorenzo, is the second time in recent years that the Department appears to have brought charges under the FCPA’s anti-bribery provisions in a case alleging that

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corrupt payments were made to an official at a “public international organization.” This follows *U.S. v. Harder*—discussed at length in last year’s *Trends & Patterns*—which involved payments to an official of the European Bank for Reconstruction and Development. As in *Harder*, Ng and Yin allegedly paid bribes to Ashe and Lorenzo, who served as U.N. ambassadors from Antigua and Barbuda and the Dominican Republic, respectively. While the facts concerning the Department’s case against Ng and Yin present a distinct fact pattern that most companies are unlikely to face, the case, much like *Harder*, is a reminder that business dealings with officials from public international organizations can give rise to FCPA violations.

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 commonly 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 cases of *PTC*, *SciClone*, *Analogic*, and *JPMorgan* suggest that the Commission’s position on this issue is evolving, but whether that holds true in the future is anyone’s guess.

The SEC’s first response to the criticism of its position appears to have been, in *PTC* and *SciClone*, to more specifically allege facts to establish the parent corporation’s general control of the subsidiary. For example, in *PTC*, the SEC explained that many of PTC-China’s officers and directors were also members of PTC’s legal and finance departments, PTC-China employees had global functional reporting lines to PTC that provided PTC with control over the subsidiary’s activities, and that PTC (not PTC-China) was the counterparty on most contracts with PTC-China’s customers. Similarly, in *SciClone*, the SEC highlighted the fact that the corporate parent controlled the subsidiary through the appointment of the subsidiary’s officers and directors, reviewed and approved the subsidiary’s annual budget, and oversaw the subsidiary’s legal, audit, and compliance functions. None of these allegations, however, established that the parent company directed, authorized, or controlled the alleged corrupt conduct of the subsidiary or that anyone in the parent, including the employees with roles in both companies, was even aware of it. These cases, therefore, represented the same *ipso facto* approach, just with more window dressing.

By contrast, the SEC’s allegations in *Analogic* reflected a more restrained approach. Specifically, in the *Analogic* matter, the SEC charged the parent company only with violations of the FCPA’s accounting provisions related to endemic falsification of books and records and questionable payments by its subsidiary, BK Medical ApS. Under the theory of liability seen in *PTC* and *SciClone*, the Commission could have chosen to charge Analogic with anti-bribery violations but apparently decided against it. Our hope was that *Analogic* was a harbinger of a new trend for the Commission.

Those hopes appear to have been premature, as the SEC’s allegations in *JPMorgan* show the Commission following the approach seen in *PTC* and *SciClone* and charging the parent with bribery even though there are no allegations the parent was involved in, knew about, directed, or authorized the unlawful conduct. Indeed, the allegations almost uniformly suggest that the bank’s Asian subsidiary, JPMorgan APAC, misled and concealed from its parent its allegedly improper hiring practices. Although there are some allegations that bankers from JPMorgan’s offices in New York acceded to JPMorgan APAC’s repeated requests to find positions for foreign officials’ sons in New York, it is unclear whether the positions that the individuals ultimately received were with JPMorgan APAC, JPMorgan (the parent), or another JPMorgan entity altogether. Furthermore, at least in one instance, the SEC’s allegations demonstrate that JPMorgan officials in New York were very resistant to hiring a foreign official’s son—demonstrating a clear separation between the parent and its subsidiary and making it difficult to argue that JPMorgan APAC was a mere alter-ego of JPMorgan. Thus, similar to other cases, it appears that the SEC, for whatever reason, is determined to charge bribery even when there is no evidence that the issuer participated in the scheme, and the Commission has, therefore, continued to follow the very problematic approach of deeming the issuer’s subsidiaries to be its agent solely as a result of the corporate organization.

We acknowledge that this debate is a bit academic because the parent corporations in *PTC*, *SciClone*, and *JPMorgan* were also charged with violations of the FCPA’s accounting provisions, which apply to their own books (consolidating the inaccurate books of the subsidiaries) and their own failure to implement effective internal controls. For that reason, the companies probably did not see any benefit to contesting the SEC’s charges, particularly when they were permitted to settle on a “neither admit nor deny” basis.

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Nevertheless, we respectfully submit that the SEC, like any other enforcement agency, ought not to charge an offense without the proper predicates, particularly one with the obviously greater negative connotations of “bribery” versus “books-and-records.”

Anything of Value

Several significant FCPA developments this year related to the DOJ’s and SEC’s definition of the phrase “anything of value.” Once more, these developments suggest that enforcement agencies are continuing to expand the scope of the FCPA.

Charitable Donations

In *VimpelCom*, the SEC alleged that VimpelCom violated the FCPA’s anti-bribery provisions by donating approximately \$500,000 to the foreign official’s charities, even if none of the money that VimpelCom donated reached—or was intended to reach—the pockets of the foreign official. This approach is in stark contrast to the DOJ’s, which did *not* charge bribery with respect to these particular payments, alleging only that the charitable contributions violated the FCPA’s accounting provisions—similar to the SEC’s own theory in past cases such as *Schering-Plough*, *Eli Lilly*, and *Stryker*. Although the improper payments described in *VimpelCom* were more than just a single charitable contribution, *VimpelCom* is the first instance in which either enforcement agency has alleged that the intangible benefit of donating money to a *bona fide* charity is sufficient to satisfy the “anything of value” element of the FCPA’s anti-bribery provision.

In contrast, in *Nu Skin*, the SEC returned to the prior approach and charged the company only with violating the books-and-records and internal controls provisions of the FCPA. Specifically, in *Nu Skin*, the Utah-based personal care company attempted to avoid sanctions from a provincial Chinese regulatory agency by seeking favors from a high-ranking Communist party official. Nu Skin allegedly made a significant monetary contribution to a charitable organization controlled by that official and assisted the official’s child to obtain college letters of recommendation from an “influential U.S. person.” In exchange, Nu Skin asked the official to persuade the Chinese authorities not to issue a fine, and, indeed, the provincial regulatory agency later dropped its investigation.

We will have to see if the DOJ or SEC will ever allege that a charitable contribution, in and of itself, is sufficient to trigger liability under the FCPA’s anti-bribery provision, but given the agencies’ expansive interpretation of the “anything of value” element, we doubt that the agencies would hesitate to pull the trigger if the appropriate case presented itself.

Family Members

With *Qualcomm* and *JPMorgan*, in addition to the 2015 case *BNYM*, the DOJ and SEC have clearly established their belief that the practice of hiring the friends and relatives of foreign officials to influence those foreign officials violates the FCPA’s anti-bribery provision, a proposition we view as questionable but that, because it has only been put forward in settled cases, has not been tested in court.

What we have found interesting about *BNYM*, *Qualcomm*, and *JPMorgan* is the enforcement agencies’ repeated emphasis on the fact that the friends and relatives of foreign officials who received jobs were largely unqualified for the positions they were offered. One of our concerns with the government’s approach—and there are many—is that it would prohibit companies from hiring qualified candidates simply because their parents were government officials, a prohibition that does not extend to the children of U.S. officials and that, in our view, is not supported by the language of the statute. It seems that the emphasis on “unqualified” may be the government’s response to these concerns by implying that these internships were more in the nature of “no-show jobs” that provided some sort tangible benefit to the official because he did not have to support his unqualified child. In fact, although we are concerned about the apparently limitless scope to the government’s approach, we are somewhat reassured by the fact that the three cases they have brought to fruition thus far all involved allegedly unqualified hires. This leaves, in our mind, the door open for hiring qualified relatives with, of course, appropriate controls.

We still have a second concern to the extent that the government’s enforcement policy encompasses payments meant to influence foreign officials without providing any tangible benefit to that official. The statute does not prohibit unseemly efforts to influence government officials, but rather prohibits efforts to bribe them—a *quid pro quo* agreement that involves the transfer of a tangible benefit (“money or other thing of value”). Again, the “unqualified” element may be a partial answer to that concern, as one could argue that if these children are truly unqualified their upkeep would be a financial burden on their parents if not for their employment by the defendants in these cases. Moreover, at least in the *JPMorgan* case, the government alleges that some of the hires of unqualified

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candidates were, in fact, part of a *quid pro quo* agreement with the related foreign official, which at least moves the ball somewhat from an amorphous intent to influence to a more obviously corrupt agreement.

Finally, we have to acknowledge that our last point above might be somewhat overly optimistic. While the *Qualcomm* case is most noteworthy for the SEC's theory on improper hiring practices, the case also suggests that the SEC believes the provision of gifts, travel, and entertainment to family members of foreign officials is sufficient to violate the anti-bribery provision of the FCPA—even if the SEC does not allege that the foreign official actually received any benefit. In *Qualcomm*, the SEC stated that “[m]any gifts—airplane tickets for children of government officials, event tickets for spouses of foreign officials, and luxury goods—had no valid purpose. Similarly, Qualcomm paid for sightseeing for spouses and children of foreign officials and arranged golf outings.” The provision of such benefits to family members without the allegation that those benefits were transferred to the foreign officials themselves is something of a new twist on the SEC's expanding definition of the phrase “anything of value” under the FCPA.

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Compliance Guidance

FCPA Pilot Program

As we noted in our mid-year update, one of the most noteworthy events in 2016 was the DOJ's announcement of a one-year FCPA Pilot Program that set out the DOJ's expectations for how a company should manage an FCPA investigation and the potential rewards—including significant reductions in criminal fines—if a company chose to follow the DOJ's guidance.¹¹ The DOJ's new framework is intended to complement the Yates Memo and the Principles of Federal Prosecution of Business Organizations (the "Filip Memo"), as well as improve the transparency of DOJ charging decisions.

In essence, the FCPA Pilot Program is divided into two components: (1) the DOJ's guidance on how a company should respond to an FCPA violation and (2) the potential benefits a company could receive if it follows the DOJ's recommendations. The guidance states that the DOJ expects companies to (i) voluntarily disclose the wrongful conduct to the DOJ in a timely manner; (ii) fully cooperate with the DOJ over the course of the investigation; and (iii) if necessary, make the appropriate remedial efforts to ensure that similar conduct is prevented from occurring again. If, over the course of the investigation, a company establishes that it has met the three requirements to the DOJ's satisfaction, it "may" receive a 50% reduction off the bottom of the Sentencing Guidelines fine range, will "generally" not be directed to appoint a monitor, and the DOJ will consider declining prosecution altogether (provided that the company disgorges all of the profits from the alleged scheme). The FCPA Pilot Program also states that if a company does not voluntarily disclose the wrongful conduct, it may still receive up to a 25% reduction from the bottom of the Sentencing Guidelines fine range in recognition of its cooperation.

With the FCPA Pilot Program now in place for approximately eight months, there are a few points worth mentioning as we take stock of the Program's impact on FCPA enforcement.

- *Voluntary Disclosure Credit.* Although the FCPA Pilot Program purports to move the ball somewhat by providing for specific maximum percentages in exchange for voluntary disclosure, complete cooperation, and appropriate remediation, these clear lines largely reflect—or even roll back—the DOJ's prior informal approach to FCPA enforcement. In pre-Program cases such as *VimpelCom*, the DOJ awarded a 45% reduction below the guidelines range even though the company had not voluntarily disclosed the improper conduct. The same is true for the 2014 cases of *Alcoa* and *HP*. It is curious, then, that the effect of the FCPA Pilot Program, which says that the Department will award "at most" a 25% reduction without a voluntary disclosure, actually reduces the incentives for cooperation to foster the goal of inducing more voluntary disclosures.
- *Cooperation Credit.* The Program also provides that, in the absence of a voluntary disclosure, a company may still receive up to 25% off the bottom of the Guidelines if it cooperates with the government's investigation. In several cases that were settled after the Pilot Program's announcement, the DOJ has granted slightly under a 25% reduction to companies that allegedly did not voluntarily disclose; for example, both *Och-Ziff* and *Embraer* received 20% discounts off the bottom of the fine range. We also can't help but note that all seems negotiable: in *Teva*, the DOJ awarded the company a 20% discount for cooperation, thus paying only a 5% penalty for having failed to cooperate in earlier stages of the investigation, including by making "vastly overbroad assertions of attorney-client privilege" and failing to provide documents on a timely basis. Even more glaring is the government's agreement in the *Odebrecht/Braskem* case to award the full 25% discount for cooperation even after including in the Statement of Facts an entire section entitled "Obstruction of Justice" (and including a three-point enhancement in the Guidelines calculation) that describes an organized effort, including the payment of additional bribes, to prevent the production of certain records and to destroy other records or to degrade certain data.
- *De-confliction.* One area of uncertainty has been the Pilot Program's statements on "de-confliction." Specifically, for full cooperation credit the DOJ's guidelines require: "[w]here requested, de-confliction of an internal investigation with the government investigation." The Pilot Program used the term without any real explanation as to its meaning or practical aspects, thus causing confusion among

¹¹ For further discussion of these issues, you may wish to refer to our prior client publication, Shearman & Sterling LLP, [To Self-Report or Not to Self-Report, That Remains the Question After the Justice Department's Latest Effort to Encourage Self-Reporting](#) (discussing how the guidance reduces the Justice Department's flexibility to reward cooperation, is vague on what sort of cooperation is required, and gives the DOJ significant latitude to deny cooperation credit to companies that self-report and cooperate).

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companies and defense counselors. As a result, the DOJ felt compelled to make public statements that confirmed that “de-confliction” means taking steps during an internal investigation to ensure that certain individuals are interviewed first by the DOJ, rather than the company’s counsel. Indeed, the DOJ cited Teva’s willingness to “defer[] witness interviews to de-conflict with the Fraud Section’s investigation” as a relevant consideration in Teva’s DPA. Although the DOJ’s demands for de-confliction are probably limited as a practical matter, they are nevertheless particularly invasive requests—even for a government authority investigating a crime. Companies, as much as investigators, have numerous good faith reasons to investigate an alleged impropriety (e.g., human resource management, accounting, financial disclosures, risk management) and an order to stop or delay such an investigation could impair a company’s ability to appropriately manage itself.

- *Declinations.* As discussed above, another consequence of the FCPA Pilot Program has been the advent of two novel settlement devices, namely (i) public declinations and (ii) public declinations with disgorgement. The first wave of these public declinations arrived in June, when the DOJ issued public declination letters to *Nortek*, *Akamai Technologies*, and *Johnson Controls* alongside separate settlements with the SEC that required the companies to disgorge the profits of the alleged illicit schemes. In late September, the DOJ issued another set of public declination letters for two companies (*HMT* and *NCH*) that required the companies to disgorge all profits that resulted from the bribery. Notably, these companies were not issuers and were thus outside the SEC’s jurisdiction—making it necessary for the DOJ under the terms of the Pilot Program to find an alternative mechanism to force the companies to disgorge the profits of the alleged schemes. As explained above, the benefits of these declination letters are muddled at best. Certainly, avoiding prosecution and receiving credit for cooperating with investigators is a reputational boon. However, the DOJ’s decision to include a finding that the company’s employees paid bribes, coupled with a somewhat questionable legal basis for demanding disgorgement, could present new problems for the companies and enforcement agencies.

We can only speculate as to whether the DOJ will seek to make the Pilot Program permanent after its one-year lifespan comes to a close in April 2017. Indeed, as we discuss below, its future will depend on the attitudes of the new administration.

Yates Memo – One Year Later

The Yates Memo, announced in September 2015, set out an ostensibly new policy at the DOJ that sought to improve the Department’s track record for securing the conviction of individual wrongdoers. Unsurprisingly, the Yates Memo drew an enormous amount of fanfare when it was initially announced, and commentators debated whether it would result in a meaningful difference in the way the DOJ conducts an FCPA investigation. From our perspective, the Yates Memo primarily served the purpose of memorializing what had been an informal, though widespread, expectation by prosecutors that corporations purporting to cooperate may not protect, and indeed must disclose, the identity of wrongdoing executives, employees, and individuals (sometimes referred to as “the open kimono” or more pejoratively as “throwing under the bus”). Thus, our expectations at the time of the Yates Memo’s announcement were that, as a practical matter, little would change. Now, more than a year after its release, those predictions appear to have been more or less correct.

If anything, the DOJ’s efforts to pursue charges against individuals, particularly those at the top of the corporate food chain, have actually slackened following the announcement of the Yates Memo. It may be surprising to some that the DOJ decided not to pursue charges against certain individuals given the facts underlying some of the 2016 FCPA enforcement actions. In *Och-Ziff*, for example, two of the employees alleged to be primarily involved in the conduct were the company’s Chief Executive Officer, Daniel Och, and the company’s Chief Financial Officer, Joel Frank. The SEC’s order made clear that, in its view at least, both of these individuals were aware of the high risk of corruption in transactions entered into with a partner in the Democratic Republic of the Congo, yet Frank approved these transactions and Och had final decision-making authority on all investments by the company. However, whether due to concerns over a lack of evidence, lack of resources, a general reluctance to bring charges after past setbacks, or a perception that the SEC’s sanctions were sufficient (or some combination thereof), the DOJ declined to bring charges. Moreover, as noted above, it is entirely possible that in some of the corporate cases from 2016, the government has obtained sealed indictments against individuals that will not become public until arrests are made or extradition requests are filed.

We don’t mean to say that the Yates Memo was all for naught. Indeed, it is not particularly surprising that the Yates Memo hasn’t yielded an instantaneous spike in individual criminal prosecutions by the DOJ, as any effect of the policy change will surely take time to work its way through the lengthy ongoing investigations that the DOJ is currently undertaking. Moreover, while we remain skeptical that the prosecutorial guidelines contained in the Yates Memo will result in increased numbers of convictions for the DOJ, we have discerned

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differences in how prosecutors deal with disclosures by cooperating companies, often now requiring that the traditional presentation on the so-called “Filip factors” now also includes a “Yates presentation.” Further, in some cases, as suggested by the Yates Memo itself, this presentation is demanded even earlier in the investigation, requiring companies to make delicate judgments about culpability and responsibility before they have completed their investigation.

Finding the Right Amount of Voluntary Disclosure

A theme that we have noticed in many of this year’s FCPA enforcement actions is that companies are struggling to find the correct balance between over-disclosing and under-disclosing potential FCPA violations. On the one hand, a number of companies failed to obtain full voluntary disclosure credit because they allegedly weren’t adequately forthcoming (e.g., *LATAM*, *PTC*, *Analogic*, *VimpelCom*, *Och-Ziff*, *Embraer*, *JPMorgan*, *Odebrecht/Braskem*, and *Teva*). On the other hand, we saw one of the potential negative side effects of the FCPA Pilot Program when we saw another company disclose a \$475 bribe in a Form 10-Q filing with the SEC. The theme that unites these cases is that companies still face great uncertainty when it comes to the level of disclosure that the DOJ and SEC expect from companies when self-policing.

In recent years, DOJ and SEC officials have consistently warned companies not to spend enormous amounts of time and money on internal FCPA investigations. Assistant Attorney General Leslie Caldwell, in particular, has on numerous occasions stated that the DOJ does not expect companies to “boil the ocean” in undertaking scorched-earth internal investigations of vast scope. At the same time, the DOJ, particularly following the Yates Memo and the initiation of the FCPA Pilot Program, has created heavy incentives for companies to self-report and fully cooperate during DOJ investigations. The practical consequence of the DOJ’s carrots-and-sticks approach is that there is now, maybe more than ever, an inclination for companies to over-disclose and over-investigate. Indeed, while the upside risk of ferreting out and disclosing information to the DOJ is a known quantity, the downside risk of saving time and money on investigations is a gray area.

Effective Internal Controls and Declinations

As we discussed in our mid-year update, the 2016 case of *SAP* is an important reminder of how an evasion of internal controls can still land a company in hot water even if the company itself shared very little of the blame for the underlying FCPA violations. Former *SAP* Vice President Vicente Garcia was separately charged by the DOJ and SEC in 2015 and received a twenty-two month prison sentence after pleading guilty to FCPA violations. Garcia was able to successfully evade *SAP*’s internal controls to funnel improper payments to Panamanian officials in exchange for lucrative sales contracts. Based on the SEC’s statement of facts, Garcia’s efforts triggered red flags within *SAP*’s compliance department, but Garcia was ultimately able to circumvent *SAP*’s controls to execute the alleged scheme. Garcia was, in many ways, the “rogue employee” that many companies fear, and for that reason the DOJ declined to prosecute *SAP* altogether and the SEC declined to seek any substantive bribery charges against, or penalty from, *SAP*. Nonetheless, the SEC did require *SAP* to disgorge its \$3.7 million in profits from the affected transaction in Panama. The SEC’s decision to do so is a reminder that even if companies have compliance programs in place, they can still be forced to surrender profits if those controls are too easily circumvented by employees.

The resolution of the *SAP* case, although not covered by the FCPA Pilot Program, is consistent with the Program in that the DOJ declination was implicitly tied to the SEC having required disgorgement. It raises the interesting question of how the FCPA Pilot Program would apply to cases in which the company failed to realize any profit as a result of corrupt payments. As a potential indication, we could compare *SAP* to the facts surrounding the 2012 *Peterson* case where the DOJ formally declined to pursue an enforcement action against *Peterson*’s former employer Morgan Stanley—a case that many regard as a significant win for Morgan Stanley. In *Peterson*, a former Morgan Stanley employee was able to circumvent the firm’s internal controls to organize a lucrative bribery scheme with Chinese officials. *Peterson*’s and Garcia’s conduct were similar and the only apparent reason that *SAP* faced an enforcement action was that Morgan Stanley did not profit from *Peterson*’s scheme while *SAP* earned \$3.7 million in revenues.

Confidentiality Clauses in Termination Agreements and Other Restrictions on Whistleblowers

The 2016 FCPA year reiterated that companies must pay careful attention to how they manage whistleblower allegations. In *AB InBev*, the SEC was highly critical of the company’s use of a restrictive separation agreement to hush an FCPA whistleblower. Specifically, the

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separation agreement drew the Commission's ire because it imposed strict non-disclosure terms on the whistleblower that would have prevented the individual from communicating with the SEC during the course of the Commission's investigation.

In fact, the Commission has brought at least six other actions in the past twenty months that penalized companies for impeding whistleblowers from reporting to the SEC by including certain language in confidentiality and severance agreements. In 2015, for example, the SEC brought an enforcement action against KBR, a Texas engineering company, for using improperly restrictive language in confidentiality agreements that had the potential to stifle whistleblowers. In June 2016, the SEC also filed an action against Merrill Lynch for "using language in severance agreements that operated to impede employees from voluntarily providing information to the SEC." Most recently, in December 2016, the SEC announced two enforcement actions against Neustar Inc. and SandRidge Energy, Inc. for *inter alia* allegedly employing separation agreements that prohibited former employees from cooperating with government agencies in any complaint or investigation concerning the company.

The number of recent enforcement actions involving whistleblowers over the course of the past two years reflects the SEC's vigorous monitoring of perceived corporate-sanctioned practices that could inhibit whistleblower reports to the SEC. Accordingly, companies should pay close heed to any of its practices—including provisions of employment or severance agreements—that could be perceived to impact the effectiveness of government whistleblower programs.

Slow Compliance Program Rollouts

As a final note in the Compliance Guidance section, the SEC's allegations in *Teva* indicate that the slow rollout of an FCPA compliance program can give rise to a violation of the FCPA's internal controls provision. Specifically, the SEC alleged that despite learning of the FCPA violations in 2007 and confirming the violations in 2008, Teva only rolled out an anti-corruption policy in Latin America in 2009 at the behest of Teva's Latin American Division. Further, according to the SEC, despite the anti-corruption risks presented in various other countries where the company operated, Teva did not roll out the anti-corruption policy worldwide until 2010. This all goes to show that U.S. enforcement agencies believe that companies must take immediate action to institute compliance programs across their entire operations.

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Unusual Developments

Trump's Impact on FCPA Enforcement

The election of Donald Trump as president of the United States has raised serious questions among bloggers and commentators over the future of the FCPA. Predictions on potential FCPA enforcement policy changes have ranged from “the sky is falling” to a continuance of the status quo. The reality is likely to fall somewhere in between the two extremes, but in truth, we find it more probable that little will change under the Trump administration.

Certainly, Trump's statement on CNBC that the FCPA was a “horrible law and it should be changed” may have raised some eyebrows, but such a passing comment on a television program from 2012 (especially for a politician that is known for bluster) doesn't necessarily signal a fundamental change in FCPA enforcement in the future. In fact, the discussion on the television program and Trump's comments appear to have been primarily aimed at the use of grease or facilitation payments to secure low-level regulatory permissions, such as building permits, in the context of the Wal-Mart Mexico investigation. If the 2016 FCPA enforcement actions are any indication, facilitation payments simply aren't a priority for the enforcement agencies. Instead, the DOJ and SEC are more interested in pursuing charges against companies and individuals for far more significant bribery schemes.

Ultimately, it is impossible to predict with certainty how the Trump administration will affect FCPA enforcement policy, but, there are a few areas of interest that we will be monitoring over the course of the next four years.

Enforcement Policy Changes at the DOJ and the SEC

The president himself does not change enforcement policy by instructing prosecutors which cases to pursue and which to drop—or, at least, he's not supposed to. His appointees, however, will set priorities and influence attitudes to some degree, thus potentially shifting enforcement policies at the DOJ and SEC.

At the DOJ, the most immediate policy adjustments that we might expect from Trump's appointees would be a decision on whether to continue the FCPA Pilot Program, which is set to expire in April 2017. If Trump's appointees agree with the Pilot Program's focus on incentivizing voluntary disclosure, cooperation, and remediation in exchange for discounted sanctions, they may extend the Pilot Program beyond its present expiration date. It is even possible that Trump's appointees could expand the program to include an informal compliance defense or push for statutory incorporation of this defense. Indeed, according to a November 2015 article in the Washington Post, it appears that an even more generous version of the FCPA Pilot Program had been rejected by the current leadership of the Department, and we wonder whether the drafters of the initial version might renew their efforts if they needed the new appointees to be a more receptive audience.

At the SEC, similar policy shifts are possible (per the potential reforms to Dodd-Frank discussed below), and the departure of Chair Mary Jo White and Enforcement Director Andrew Ceresney could also result in a lack of continuity in the SEC's enforcement strategies during a Trump administration. Ceresney, who has overseen a record increase in the number of FCPA enforcement actions by the SEC since his tenure began in 2013, has been among the individuals most responsible for shaping the SEC's current application and enforcement of the FCPA. It is entirely possible that the SEC's new Enforcement Director will not pursue an FCPA enforcement as aggressively as the SEC did under Ceresney—which, in our view, isn't necessarily a bad thing given the inherent unfairness in holding issuers twice liable for alleged misconduct, with concomitantly higher penalties, than similarly situated private companies.

Reform of the Dodd-Frank Act

During the course of the presidential election season, Trump repeatedly promised to repeal (or at minimum significantly amend) the Dodd-Frank Act. While we do not yet know how Trump will approach Dodd-Frank, a repeal of the statute could impact the SEC's current FCPA enforcement strategies in a number of ways.

First, and most significantly, a repeal of Dodd-Frank would limit the ability of the SEC to use administrative proceedings in future FCPA enforcement actions. The loss of the administrative proceeding mechanism would force the SEC to pursue its FCPA enforcement actions through the federal courts. Although we doubt that this would have a significant impact on the number of corporate enforcement

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actions brought by the SEC, particularly as most such actions are presented to the courts with consent orders and thus are usually not examined closely (unless the SEC has the misfortune of drawing certain inquisitive judges), the loss of administrative proceedings would almost undoubtedly make it more difficult to pursue charges against individuals willing to put the Commission to its burden.

Second, a repeal of Dodd-Frank would potentially do away with the SEC's Whistleblower Program (at least in the form that currently exists). Whether the Whistleblower Program has generated actual FCPA enforcement actions is a bit of a black box given the program's confidentiality requirements (although it has been reported that the 2015 enforcement action against BHP Billiton was the result of a whistleblower). According to the SEC's statistics, FCPA violations reported through the Whistleblower Program have made up a relatively small portion of the overall tips (approximately 4%–5% over the last three years). As a result, a loss of the SEC's Whistleblower Program, though significant for other areas of SEC enforcement, may not have that significant of an impact on the FCPA.

Chamber of Commerce Reforms

The U.S. Chamber of Commerce has been among the most vocal critics of the FCPA and has lobbied to reform the statute off and on for the past half-decade. Now, with a Republican Congress and president paired with DOJ Fraud Chief Andrew Weissmann, the author of the U.S. Chamber of Commerce's 2010 white paper "Restoring Balance," which called for dramatic changes to FCPA enforcement, there may be no better opportunity for the U.S. Chamber of Commerce to press for change.

We do not, however, want to overstate the scope of the U.S. Chamber of Commerce's influence. Certainly, while conservative politicians have criticized the law, their attention is more likely to be elsewhere during the initial phases of the Trump administration. Further, while Weissmann critiqued FCPA enforcement practices in 2010, he did so as an advocate for his client, the U.S. Chamber of Commerce. In his two years as DOJ Fraud Chief Weissmann has shown a demonstrated commitment to enforcing the FCPA while attempting to balance the need for robust enforcement against the need for transparency and efficiency.

In short, we expect to see a renewed effort by the U.S. Chamber of Commerce to alter the current enforcement environment, but what that will actually mean for the future of the statute is anybody's guess.

Biomet DPA Breach

Deferred prosecution agreements were designed as settlement devices that corporate defendants could enter into with the prosecuting authority to avoid a judgment of conviction. So long as the corporate defendant agreed to abide by the terms of the agreement, the government would defer prosecution for a specified term, at which point in time the charges would be dropped. If, however, the company failed to live up to its end of the bargain, the government always retained the authority to renew its enforcement efforts. Since the advent of FCPA DPAs, although some DPAs had been extended, no corporate defendant had been declared in breach of a DPA, until 2016, when the DOJ announced that Biomet had violated its agreement with the DOJ.

In March 2012, Biomet, Inc. entered into a three-year DPA with the DOJ to resolve an FCPA enforcement action where it agreed to pay a total sanction of \$22.7 million. A little over two years after the parties resolved the charges, in July 2014, Biomet reported that it had discovered additional potential misconduct at its operations in Brazil and Mexico, causing the DOJ to initiate a new investigation. In March 2015, the month the DPA was set to expire, the DOJ stated that the DPA would be extended for another year because the company's independent compliance monitor could not certify that Biomet's compliance and ethics program satisfied the terms of the DPA and the DOJ's investigation was ongoing. Approximately a year later, in April 2016, after the DPA was extended a second time, the DOJ informed Biomet that it determined the company had breached the terms of the DPA. According to a September 2016 SEC filing, Biomet reported that it was probable that the company would incur additional liabilities as a result of the alleged FCPA violations that occurred after Biomet's 2012 DPA and most recently, on December 8, 2016, the DOJ filed a status report with the court stating that settlement negotiations were ongoing and that the government expected to resolve the matter in the coming weeks.

While the final resolution of the DPA breach remains to be seen, the experience shows that DPAs are not merely lip service to ongoing compliance. We doubt that a DPA breach would ultimately cause the DOJ to carry through on its threat of a potential indictment and prosecution, but as Biomet's 10-Q indicates, failing to carefully abide by the terms of a pre-trial settlement device could have costly ramifications.

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DOJ Returns \$1.5 Million in Forfeited Proceeds

The DOJ announced on July 7, 2016 that it had succeeded in returning \$1.5 million in proceeds to Taiwan from the forfeiture of properties in New York and Virginia that had been purchased by the family of Taiwan's former president, Chen Shui-bian, with funds gained in a bribery scheme.

The DOJ obtained judgments in New York and Virginia against Shui-bian in 2012, after it determined that his wife accepted approximately \$6 million in bribes from a securities firm seeking to avoid opposition by Taiwanese authorities during a merger with a financial holding company. Shui-bian and his family then transferred the money through various bank accounts, trusts, and shell companies to ultimately purchase properties in the U.S. The DOJ seized these assets and collected the proceeds from the forfeiture, but rather than depositing the money in the U.S. Treasury, it returned the funds to the Taiwanese government.

The *Shui-bian* case represents one of about two dozen civil asset forfeiture cases pursued by the DOJ's Kleptocracy Asset Recovery Initiative, which then-Attorney General Eric Holder initiated in 2010. With the goal of preventing what Kendall Day, the Chief of Asset Forfeiture and Money Laundering at the DOJ, calls "grand foreign corruption" from finding sanctuary in the U.S., the Kleptocracy Initiative pursues illegally obtained property in the U.S. and then returns the property to the countries that initially suffered the harm from the corruption.

Although now five years old, the Kleptocracy Initiative has only returned the proceeds of a bribery scheme to the origin country in one other case involving a South Korean official in 2015.¹² Thus, while the DOJ has actively promoted the initiative in past years, it may be too early to say whether the Department's efforts are beginning to bear fruit.

Limits on SEC's Pursuit of Disgorgement and Declaratory Relief: *SEC v. Graham*

On May 26, 2016, the Eleventh Circuit issued its opinion in *SEC v. Graham*, becoming the first circuit court to hold that disgorgement and declaratory relief sought in enforcement actions by the SEC are subject to the five-year statute of limitations for claims brought by a government agency, as per 28 U.S.C. § 2462.

In *Graham*, the SEC brought charges against several defendants for allegedly selling condominiums in violation of securities laws from 2004 to 2008. The SEC sought injunctive and declaratory relief, as well as disgorgement of profits. The district court held that the entire action was time-barred by § 2462 since more than five years had passed since the alleged violations occurred. On appeal, the Eleventh Circuit affirmed the ruling pertaining to declaratory relief and disgorgement, but reversed the holding relating to injunctive relief.

Specifically, the court in *Graham* held that disgorgement was subject to the five-year limitation on the "enforcement of any civil fine, penalty, or forfeiture" in § 2462 because disgorgement is functionally the same as forfeiture. The Eleventh Circuit reached a similar conclusion in finding that declaratory relief represents a "penalty" under § 2562, in accordance with the definition used by the Supreme Court in *Gabelli v. SEC*. The court rested its decision on the finding that declaratory relief functions mainly to punish actors for past behavior, thus representing a form of penalty.

The court reached a different conclusion regarding the injunctive relief in *Graham*, reversing the district court and finding that § 2462 does not apply to equitable remedies that are forward-looking. Unlike declaratory relief, injunctions aim to prevent future behavior and thus are not subject to the statute of limitations in § 2462. Therefore, at least in the Eleventh Circuit, the SEC now faces restrictions on its ability to claim disgorgement and declaratory judgment, leaving only less attractive injunctive relief at its disposal after the five-year limitation in § 2462 has passed; and given the strong reasoning of the opinion, we expect that it may over time be accepted law throughout federal courts and its resonance with the Supreme Court's *Gabelli* decision. The practical effect may be limited, however, as the SEC, has accelerated enforcement actions in recent years, thus limiting the advantages of *Graham* for defendants.

¹² In an earlier matter, where the DOJ was able to freeze funds of senior Kazakh officials in Swiss bank accounts, it brokered an arrangement by which it forfeited the funds and then caused them to be deposited into a World Bank trust account for the benefit of projects in Kazakhstan.

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Disclosure of Compliance Monitor Reports: [100Reporters LLC v. DOJ & United States v. HSBC Bank United States, NA](#)

While the DOJ commonly requires FCPA violators to make regular monitoring reports as part of the requirements of deferred prosecution and non-prosecution agreements, those reports are generally treated as confidential. Recent developments in an ongoing case over the compliance monitor reports from the Siemens enforcement action threaten to expand the reports' readership.

In 2013, 100Reporters LLC, a nonprofit investigative news organization, filed an FOIA request for the compliance monitor reports prepared in connection with the 2008 FCPA enforcement action. The DOJ rejected the request because the DOJ claimed that the reports fell under an FOIA exemption that restricted the release of information compiled for law enforcement purposes that could reasonably be expected to interfere with proceedings. Upon receipt of the Department's rejection, 100Reporters filed a suit against the DOJ in the District Court for the District of Columbia. The case is still pending but the DOJ, now backed by Siemens and the compliance monitor, Theo Waigel, have vigorously objected to the FOIA request.

Relatedly, HSBC's monitor reports associated with its 2012 DPA relating to sanctions violations and money laundering are also at risk of public exposure through an FOIA request. In 2015, Judge John Gleeson of the Southern District of New York ordered redacted versions of the HSBC monitor reports to be made available in a case brought by an HSBC customer over a mortgage dispute. Citing the First Amendment right of public access, Gleeson stated that the monitor reports should be unsealed because the release is part of the court's judicial function in determining whether the DPA is contrary to public interest. He also analogized the monitor reports to plea agreements, statement of admitted facts by criminal defendants, and the terms of DPAs, which are all publicly accessible. Both HSBC and the DOJ appealed the order to the Second Circuit, claiming that the reports were executive documents and are therefore not subject to First Amendment claims. Further, they noted that the DPA categorized the reports as non-public and had been approved by the SDNY.

We raise these cases here because the release of compliance monitor reports could dramatically impact the use of these compliance tools in the future. This is all the more significant given the DOJ's and SEC's penchant for imposing compliance monitors as part of the 2016 FCPA enforcement actions. If compliance monitor reports were made readily available, we suspect that companies could become far more reluctant to accept compliance monitors in the future for fear that the release of those reports could have costly collateral consequences (e.g., civil litigation).

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Private Litigation

Consistent with private FCPA-related litigation in the past, 2016 has seen a number of derivative and securities lawsuits filed due to the disclosure of FCPA investigations and enforcement actions. For example, it is not surprising that shareholders have filed a civil suit against Qualcomm executives accusing them of “turn[ing] a blind eye” towards the company’s financials in part due to the investigations into possible FCPA violations.

In another class-action litigation related to the ongoing corruption investigation into Petrobras, Judge Rakoff of the Southern District of New York certified two classes of plaintiffs. The plaintiffs filed suit in 2014, claiming that Petrobras’s financial statements included misstatements for failure to disclose information to investors. The class certification, currently subject of a pending interlocutory appeal, means that the ongoing Petrobras securities case has the potential to inflict even more harm on the now-beleaguered Brazilian oil giant.

One new development in private litigation arising in 2016 is the decision by civil engineering firm Louis Berger to sue former executives following the company’s settlement with the DOJ in July 2015. The former executives, Richard J. Hirsch and James McClung, pleaded guilty to criminal violations of the FCPA in connection with Louis Berger’s 2015 FCPA enforcement action, which resulted in a \$17.1 million criminal penalty for the company. Louis Berger’s case against Hirsch, filed in New Jersey state court in June 2016, sought to recover damages for this fine and other costs incurred by the company, as well as for the reputational harm suffered as the result of the defendant’s “admittedly criminal misconduct that took place in connection with his management and oversight of LBG projects . . . in direct violation of company policies and procedures, and of his fiduciary duties to Berger.” Louis Berger and Hirsch settled the case in August 2016 on terms that were not publicly disclosed; the case against Hirsch’s co-defendant James McClung is ongoing (and includes allegations that McClung embezzled 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).

Such cases against specific former employees have not been prevalent in past FCPA cases. With the recent shift in focus toward individual accountability asserted by the Yates Memo and the DOJ’s FCPA Pilot Program, however, we may see an increase in the percentage of corporate enforcement actions that involve separate actions against individual employees. If this occurs, companies may be keen to recoup some of the penalties paid to enforcement authorities through civil suits against former employees, particularly if the *Louis Berger* case demonstrates that courts are amenable to this type of action.

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Enforcement in the United Kingdom

U.K. Government Creating New “Failure to Prevent” Offences

The U.K. Bribery Act broke new ground by expanding corporate liability beyond the traditional “directing mind” model and establishing strict corporate criminal liability for the wrongful acts of an “associated person,” albeit subject to an affirmative compliance defense. This new model, although so far only modestly used in corruption cases, appears to have won supporters in the U.K. government who intend to expand it beyond the corruption context. Following a public consultation in the early part of this year, in October 2016, the U.K. Government presented its Criminal Finances Bill to Parliament. The Bill introduces two new criminal offences for a body corporate or partnership (referred to in the Bill as a “relevant body”), wherever incorporated or formed: (i) of failure to prevent the facilitation of U.K. tax evasion offences (“U.K. Offence”); and (ii) of failure to prevent the facilitation of foreign tax evasion offences (“Foreign Offence”) by a person with whom the relevant body is associated, provided that the person commits the facilitation of tax evasion offence in their capacity as the relevant body’s associated person. Notably, in May 2016, the U.K. Government also announced that it was considering additional offences of failure to prevent other economic crimes, such as fraud, false accounting, and money laundering.

The Bill is expected to pass through the House of Commons (the lower chamber) in Q1 2017 before being introduced in the House of Lords (the upper chamber). We do not expect it to come into force before Q3 2017 at the earliest.

On September 5, 2016, in a speech to the Cambridge International Symposium on Economic Crime, the U.K. Attorney General stated that the government would be consulting on those plans and commented that the U.K.’s “current system of limited corporate liability incentivizes a company’s board to distance itself from the company’s operations. In this way, it operates in precisely the opposite way to the Bribery Act 2010, one of whose underlying policy rationales was to secure a change in corporate culture by ensuring boards set an appropriate tone from the top.”

The Attorney General concluded his remarks, stating that when “considering the question ‘where does the buck stop?’ and ‘who is responsible for economic crime’, it is clear that the answer is to be found at every level, from the boardroom down. Both corporates and individuals are responsible.”

This has led to some speculation that the government intends to make individual directors and officers personally liable for the acts of company employees, agents, subsidiaries, contractors, and other representatives. However, we consider that this is unlikely and that, as with the new offence of failure to prevent the facilitation of tax evasion, these proposed additional offences will also be modelled on section 7 of the U.K. Bribery Act 2010 and will focus on corporate liability only.

The government has yet to announce any details of or a timetable for the consultation.

SFO Update – Second UK DPA Approved

On July 8, 2016, the English High Court approved the U.K.’s second DPA between the Serious Fraud Office and a U.K. company (“XYZ Ltd”), which has not been named due to ongoing and related criminal proceedings.¹³

According to the DPA, a substantial proportion of the company’s employees and agents, for a period of nearly ten years, engaged in the systematic use of bribes to obtain contracts to supply XYZ’s products. XYZ was allegedly paid £17.24 million under those contracts. XYZ’s total gross profit from the implicated contracts was £6,553,085, representing 20.82% of its total gross profit in the period (£31.4 million).

XYZ was faced with charges of conspiracy to corrupt and conspiracy to bribe under section 1 of the U.K. Criminal Law Act 1977, together with the corporate strict liability offence of failure to prevent bribery under section 7 of the U.K. Bribery Act 2010.

¹³ For a further discussion of this case, and the Court’s reasoning for approving the DPA, you may wish to refer to our prior client publication, available at Shearman & Sterling, [UK Serious Fraud Office Secures Its Second DPA](#) (July 13, 2016).

A. Recent Trends and Patterns in FCPA Enforcement

The matter apparently came to light in August 2012, shortly after XYZ's parent company implemented a global compliance program. XYZ took immediate action, retaining external legal counsel to undertake an investigation. Following an initial oral and anonymous approach to the SFO in October 2012, XYZ formally and fully self-reported on January 31, 2013, and the SFO subsequently commenced its own investigation into XYZ's activities.

Under the terms of the DPA—which will expire on December 31, 2020—XYZ is required to pay £6,201,085 in disgorgement of gross profits, together with a financial penalty of £352,000.¹⁴ In respect of the financial penalty, the parties initially had submitted that XYZ's gross profit from the implicated contracts be subject to a harm multiplier figure of 250% (*i.e.*, £16.38 million), in accordance with U.K. Sentencing Guidelines where the culpability level of the harm (*i.e.*, the gross profit) is high.¹⁵ However, the Court considered that, under the circumstances, a 50% discount (reducing the figure to £8.19 million) was appropriate given XYZ's: (1) "genuinely proactive approach to the wrongdoing it uncovered" and early admission of guilt and (2) production of the oral summaries of witness interviews, its facilitation of further witness interviews, and its prompt and complete responses to the SFO's requests for information and documentation which, taken together, the Court considered was consistent with "full and genuine cooperation." The Court also considered that the 50% discount was appropriate as it would "encourage others to conduct themselves as XYZ has when confronting criminality."

The Court further considered that a financial penalty of £8.19 million was "wholly unrealistic" for XYZ, given its precarious financial position, and that it was "essential to consider all the circumstances," which included (although the Court did not specify any other considerations) the conclusion that it was not in the interests of justice for XYZ to be "pursued into insolvency" and that, accordingly, "XYZ's means and the impact of any financial penalty on XYZ's staff, service users, customers and the local economy are all significant factors."

The SFO accepted that a financial penalty of £352,000 was a reasonable estimate of the sum available to XYZ. The Court noted that a financial penalty, together with the disgorgement of £6,201,085, equated to the gross profit on the implicated contracts and that this overall sum (£6,553,085) "sufficiently marks the offending and is itself fair, reasonable and proportionate."

The initial 50% discount, and subsequent additional reduction, represent a significant departure from the U.K. Sentencing Guidelines (which provide for a one-third maximum discount on the financial penalty, once the harm multiplier has been applied) for section 7 Bribery Act offences and provide an interesting indication for future DPAs.

SFO Admits One-Third Discounts on DPA Penalties Insufficient to Incentivize Self-Reporting and Offers Practical Guidance on DPAs

Following the XYZ DPA, the SFO has further signaled its openness to penalty discounts which exceed the one-third limit set by the U.K. Sentencing Guidelines for companies that self-report.

Giving the keynote speech at GIR Live New York on September 15, 2016, the SFO's Joint Head of Bribery and Corruption conceded that the one-third penalty discount is insufficient to adequately incentivize companies to self-report. It "has long been said that the one third discount on a penalty, being equivalent to the maximum available on a guilty plea, is not sufficiently attractive. As it happens, at the SFO we can see the force in that argument. It is clear . . . that in the right circumstances the [English] court will support a deeper discount up to 50% [as it did in the XYZ DPA], and separately, might take into account other relevant financial matters. If taken together with the other benefits of a DPA, these have the effect of more companies coming forward, then that can only be a good thing in the overall interests of justice. [The SFO] fully support[s] it and in the right cases would look to build overall resolutions that include more than one third discounts on the financial penalty component."

Discussing recent developments in corporate culture and companies' relationships with the SFO, Morgan noted that there has been a "pronounced" change "in the way companies are routinely approaching" the SFO, and that more companies are self-reporting to the SFO

¹⁴ The published redacted preliminary and final judgments can be found at ([SFO v XYZ Ltd \(Preliminary Redacted Judgment\)](#) and [SFO v XYZ Ltd \(Final Redacted Judgment\)](#)).

¹⁵ The U.K. Sentencing Guidelines provide that the multiplier figure in respect high level culpability should be between 250% and 400%.

A. Recent Trends and Patterns in FCPA Enforcement

“now than at any time in the last four years.” Nevertheless, whistle-blowers continue to represent the SFO’s primary source of information.

Morgan commented further on the circumstances in which the SFO will seek the English Court’s approval to grant a DPA in place of a prosecution. In an address to the Annual Bar and Young Bar Conference in London on October 17, 2016, Morgan noted that the key factor for the SFO in determining how it will look to resolve a case “is the stance the company takes once it becomes aware of the issue” and whether the company and its advisers are “properly cooperating” with the SFO. Morgan explained that indicators of ‘proper cooperation’ include: (1) the point at which the company approached the SFO; (2) what work the company has already taken to investigate the matter; (3) what approach the company is intending to take to provide the SFO with access to the factual elements of that work; (4) how the company has handled data identification, collection, preservation and continuity, as well as the provision of such data to the SFO; and (5) the extent to which the company is willing to respond to the SFO’s interests in work that remains to be done in the investigation, such as sequencing interviews with the SFO, drawing relevant material to the SFO’s attention whether or not the SFO has requested such material, and allowing the SFO to do its “job fairly, without seeking to exert pressure through the media, [the U.K. government or Civil Service] or other means.”

Morgan stressed that a DPA “must be a punishment. It cannot be a cosy deal . . . It also needs to incentivise others to [self-report and cooperate]. It must be lenient enough to reward the company for having the courage and integrity to self-report a crime and to cooperate with the SFO’s investigation into it.” Getting this balance right is, as Morgan conceded, “extremely difficult.”

SFO – Continuing Uncertainty Over Approach to Internal Investigations

In a September 2016 discussion with Patrick Stokes, the former head of the DOJ’s FCPA unit, at GIR Live New York, Morgan commented that since the Bribery Act came into force in July 2011 “essentially [the U.K. is] now aligned with what’s going on in the States. Add to that [DPAs] and further legislation coming into place in the U.K., we start to come even closer together.”

When asked by Stokes whether the SFO had any intention of following the DOJ’s approach and would publish guidance about co-operation, self-disclosure and how that may impact upon the SFO’s approach to resolving an investigation or prosecution, Morgan responded that the SFO had no such plans, but that “substantively there isn’t even a cigarette paper between [the DOJ’s and the SFO’s respective approaches].”

However, in our view, the SFO has been taking a somewhat different approach in its public position on the application of privilege in such investigations, in particular to the recording of witness interviews conducted by counsel. The SFO’s stated position remains that it has “no interest in communications between client and lawyer on questions of liability or rights,” but that it will: (1) treat companies that make “false or exaggerated claims of privilege” as being uncooperative; and (2) “view as a significant mark of co-operation a company’s decision to structure its [internal] investigation in such a way as not to attract privilege claims over interviews of witnesses.”

This might reasonably be said to indicate a divergence. In a December 2016 judgment, the High Court held that notes and summaries prepared by counsel of employee and ex-employee witness interviews do not attract legal advice privilege on the basis that the privilege does not “extend to information provided by employees and ex-employees to or for the purpose of being placed before a lawyer.” The Court also held that lawyers’ working papers privilege will not apply to interview notes or summaries unless such notes or summaries reveal “from an evident process of selection the trend of legal advice being given,” the privilege will not apply to notes or summaries merely because they reflect the lawyer’s mental impressions of the interview.

We would expect the ruling to be appealed. Nevertheless, this case, together with the SFO’s stated public approach, raises the question as to the types of notes which lawyers ought to make in interviews, and whether such notes should incorporate the lawyers’ advice as well.

That said, it appears that in both the Standard Bank and the XYZ DPA cases, oral summaries of witness interviews—as opposed to, for example, transcripts—were provided to the SFO, and experience indicates that the SFO may not rigidly insist on such records being provided.

A. Recent Trends and Patterns in FCPA Enforcement

Most recently, the SFO has served a notice under section 2 of the U.K. Criminal Justice Act 1987 on a lawyer representing the subject of one of its investigations, compelling the lawyer in question to provide the SFO with information and documentation in respect of that investigation. This followed the lawyer filing a claim in the English High Court for a judicial review of the SFO's conduct against his client. Limited details of the request are available but the exercise of the section 2 power against a lawyer in this context is in itself of note.

SFO – Former Sweett Group Executive Convicted for Destroying Evidence

A former executive of Sweett Group PLC has been convicted of two destruction of evidence offences, contrary to section 2(16) of the UK Criminal Justice Act 1987. On December 21, 2016, Richard Kingston, previously a Managing Director of Sweett's Middle East and India operations, was found guilty of concealing, destroying or otherwise disposing of two mobile phones, knowing or suspecting that the data stored on those phones—namely emails, text and Whatsapp messages—was pertinent to the SFO's investigation into suspected bribes paid by Sweett. Kingston has been sentenced to 12 months' imprisonment on each count, to run concurrently.

The SFO's General Counsel, Alun Milford, said that Kingston "actively took steps to frustrate our inquiries into his involvement, and that of others, in the suspected payment of bribes. We will not hesitate to pursue those who may set out similarly to disrupt our investigations."

The SFO's prosecution and successful conviction of Kingston highlights its commitment to investigate and pursue not just those who engage in bribery and corruption, but also those who facilitate, fail to prevent or otherwise seek to conceal evidence of such conduct.

A. Recent Trends and Patterns in FCPA Enforcement

Conclusion

With the 2016 FCPA enforcement year now over and 2017 to come, it is anyone's guess what lies in store for the future of the FCPA. Though the DOJ's, SEC's and FBI's increased prosecutorial and investigatory resources are finally starting to have an impact on FCPA enforcement, we will have to see whether the incoming presidential administration attempts to pull back from the current record levels of enforcement. That said, as global anti-bribery efforts gain momentum across the world and enforcement agencies across jurisdictions continue to interface, in our opinion, it would appear that other jurisdictions, particularly as they realize the benefits from the substantial fines, may, in the future, become as active as the U.S. has been.



B. Foreign Bribery Criminal Prosecution Under the FCPA

B. Foreign Bribery Criminal Prosecution Under the FCPA

181. United States v. General Cable Corporation (2016)¹⁶

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.

Business Location. Angola, Bangladesh, China, Indonesia and Thailand.

Payment.

1. **Amount of the value.** Approximately \$13 million.
2. **Amount of business related to the payment.** Approximately \$51 million.
3. **Intermediary.** Third-party agents; Distributors.
4. **The foreign official.** Unnamed government officials in Angola, Bangladesh, China, Indonesia, and Thailand.

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 Ongoing Investigation Number F-74.

¹⁶ Matter resolved through a non-prosecution agreement (December 2016).

B. Foreign Bribery Criminal Prosecution Under the FCPA

180. [United States v. Douglas Ray \(S.D. Tex. 2016\)](#)¹⁷
[United States v. Victor Hugo Valdez Pinon \(S.D. Tex. 2016\)](#)¹⁸
[United States v. Kamta Ramnarine \(S.D. Tex. 2016\)](#)¹⁹
[United States v. Daniel Perez \(S.D. Tex. 2016\)](#)²⁰
[United States v. Ernesto Hernandez-Montemayor \(S.D. Tex. 2015\)](#)²¹
[United States v. Ramiro Ascencio Nevarez \(S.D. Tex. 2016\)](#)²²

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.

Business Location. Mexico.

Payment.

1. **Amount of the value.** Approximately \$2 million.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Not stated.
4. **The foreign official.** Eduardo Hernandez-Montemayor, former Chief Pilot for the Tamaulipas government; Ramiro Ascencio Nevarez, a Mexican public university employee; Other unnamed Mexican officials.

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. The only defendant to be sentenced so far, Ascencio Nevarez, received fifteen months in prison on May 27, 2016. The remaining five defendants are scheduled to be sentenced in 2017.

¹⁷ *United States v. Ray*, No. 4:16-cr-00409 (S.D. Tex. 2016).

¹⁸ *United States v. Valdez Pinon*, No. 4:16-cr-00409 (S.D. Tex. 2016).

¹⁹ *United States v. Ramnarine*, No. 7:16-cr-01164 (S.D. Tex. 2016).

²⁰ *United States v. Perez*, No. 7:16-cr-01164 (S.D. Tex. 2016).

²¹ *United States v. Hernandez-Montemayor*, No. 4:15-cr-00617 (S.D. Tex. 2015).

²² *United States v. Ascencio Nevarez*, No. 7:16-cr-00252 (S.D. Tex. 2016).

B. Foreign Bribery Criminal Prosecution Under the FCPA

179. [United States v. Teva Pharmaceutical Industries Ltd. \(S.D. Fla. 2016\)](#)²³ [United States v. Teva LLC \(Russia\) \(S.D. Fla. 2016\)](#)²⁴

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.

Business Location. Russia, Ukraine, and Mexico.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Approximately \$221 million.
3. **Intermediary.** Third-party distributors.
4. **The foreign official.** An unnamed Russian government official; An unnamed Ukrainian government official; Doctors employed by Mexican state-owned health facilities.

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 Ongoing Investigation Number F-21.

See Parallel Litigation Digest Number H-D14.

²³ *United States v. Teva Pharmaceutical Industries Ltd.*, No. 1:16-cr-20968 (S.D. Fla. 2016).

²⁴ *United States v. Teva LLC (Russia)*, No. 1:16-cr-20967 (S.D. Fla. 2016).

B. Foreign Bribery Criminal Prosecution Under the FCPA

178. [United States v. Odebrecht S.A. \(E.D.N.Y. 2016\)](#)²⁵ [United States v. Braskem S.A. \(E.D.N.Y. 2016\)](#)²⁶

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.

Business Location. Angola, Argentina, Brazil, Colombia, Dominican Republic, Ecuador, Guatemala, Mexico, Mozambique, Panama, Peru, and Venezuela.

Payment.

1. **Amount of the value.** Approximately \$788 million (Odebrecht S.A.); Approximately \$250 million (Braskem S.A.).
2. **Amount of business related to the payment.** Approximately \$3.336 billion (Odebrecht S.A.); Approximately \$289 million (Braskem S.A.).
3. **Intermediary.** Offshore shell companies.
4. **The 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.

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. 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

²⁵ *United States v. Odebrecht S.A.*, No. 16-cr-00643 (E.D.N.Y. 2016).

²⁶ *United States v. Braskem S.A.*, No. 16-cr-00644 (E.D.N.Y. 2016).

B. Foreign Bribery Criminal Prosecution Under the FCPA

planned to conduct an independent analysis to verify whether Odebrecht is only able to pay a \$2.6 billion criminal penalty and will complete the investigation by March 31, 2017.

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 Ongoing Investigation Number F-108.

B. Foreign Bribery Criminal Prosecution Under the FCPA

177. [United States v. Mahmoud Thiam \(S.D.N.Y. 2016\)](#)²⁷

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.

Business Location. Guinea.

Payment.

1. **Amount of the value.** Approximately \$8.5 million.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** None.
4. **The foreign official.** Minister of Mines and Geology of the Republic of Guinea.

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 misrepresented 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 sealed complaint charging Thiam with two counts of money laundering. Thiam was arrested the next day. As of December 2016, Thiam had yet to enter a plea.

²⁷ *United States v. Thiam*, No. 1:16-mj-07960 (S.D.N.Y. 2016).

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 \(S.D.N.Y. 2015\)](#)²⁸
[United States v. Julia Vivi Wang \(S.D.N.Y. 2016\)](#)²⁹
[United States v. Ng Lap Seng and Jeff C. Yin \(superseding indictment filed November 2016\)](#)³⁰

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.

Business Location. Antigua and Barbuda; China.

Payment.

1. **Amount of the value.** Approximately \$1.2 million.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** None.
4. **The 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).

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 facilitate the alleged bribery scheme.

²⁸ *U.S. v. Ashe, et al.*, No. 1:15-cr-00706 (S.D.N.Y. 2015).

²⁹ *U.S. v. Wang*, No. 1:16-cr-00495 (S.D.N.Y. 2016).

³⁰ *U.S. v. Ng, et al.*, No. 1:15-cr-00706 (S.D.N.Y. 2016)

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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 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 2017.

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 June 2017.

On July 21, 2016, Wang pleaded not guilty to the charges. The case against Wang remains pending.

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. Trial is currently scheduled to begin in May 2017.

B. Foreign Bribery Criminal Prosecution Under the FCPA

175. United States v. JPMorgan (Asia Pacific) Limited (2016)³¹

Nature of the Business. JPMorgan is a Delaware incorporated, New York headquartered financial services firm with operations around the world. JPMorgan's shares are publically 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.

Business Location. China.

Payment.

1. **Amount of the value.** Approximately \$35 million in profits.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** None.
4. **The foreign official.** Unnamed employees and executives of Chinese state-owned instrumentalities.

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-51.

³¹ Matter resolved through non-prosecution agreement (November 2016).

B. Foreign Bribery Criminal Prosecution Under the FCPA

174. [United States v. Embraer, S.A. \(S.D. Fla. 2016\)](#)³²

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 Depositary Receipts listed on the New York Stock Exchange.

Business Location. Dominican Republic, Saudi Arabia, Mozambique, India.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** \$83,816,476.
3. **Intermediary.** Local consultants/agents; Shell Companies.
4. **The 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”).

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” who 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 from 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.

³² *U.S. v. Embraer, S.A.*, No. 0:16-cr-60294 (S.D. Fla. 2016).

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Mozambique

According to the DOJ, in 2009 Embraer paid \$800,000 to a third-party agent (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 Príncipe that was controlled by the Mozambican Agent. Pursuant to the consultancy agreement, in July and August 2009 Embraer allegedly paid the São Tomé and Príncipe 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 SEC Digest Number D-162.

See Ongoing Investigation Number F-16.

B. Foreign Bribery Criminal Prosecution Under the FCPA

173. [United States v. Och-Ziff Capital Management Group LLC \(E.D.N.Y. 2016\)](#)³³ [United States v. OZ Africa Management GP, LLC \(E.D.N.Y. 2016\)](#)³⁴

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.

Business Location. Chad, the Democratic Republic of the Congo, Guinea, Libya, Niger.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Business partner; local agents.
4. **The 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.

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 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 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

³³ *U.S. v. Och-Ziff Capital Management Group LLC*, No. 1:16-cr-00516 (E.D.N.Y. 2016).

³⁴ *U.S. v. OZ Africa Management GP, LLC*, No. 1:16-cr-00515 (E.D.N.Y. 2016).

B. Foreign Bribery Criminal Prosecution Under the FCPA

“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 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 Number D-160.

See Ongoing Investigation Number F-61.

See Parallel Litigation Digest Number H-F26.

B. Foreign Bribery Criminal Prosecution Under the FCPA

172. *In re NCH Corporation (2016)*³⁵

Nature of the Business. NCH is an industrial supply and maintenance company based in Irving, Texas.

Business Location. China.

Payment.

1. **Amount of the value.** \$44,545.
2. **Amount of business related to the payment.** \$335,342.
3. **Intermediary.** Chinese subsidiary.
4. **The foreign official.** Unnamed Chinese government officials.

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.

³⁵ Matter resolved through a declination letter (September 2016).

B. Foreign Bribery Criminal Prosecution Under the FCPA

171. *In re HMT LLC (2016)*³⁶

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.

Business Location. China, Venezuela.

Payment.

1. **Amount of the value.** Approximately \$500,000.
2. **Amount of business related to the payment.** \$2,719,412.
3. **Intermediary.** Sales agent; Local distributor.
4. **The foreign official.** Unnamed Venezuelan government officials; Employees of Petróleos de Venezuela, S.A. (“PDVSA”), the Venezuelan state-owned and state-controlled energy company; Unnamed Chinese government officials.

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 would decline to bring charges against HMT in exchange for HMT’s agreement to disgorge \$2,719,412 in ill-gotten gains.

³⁶ 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)³⁷

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 (publically known to be Och-Ziff Capital Management Group) and an unnamed Turks & Caicos Islands incorporated entity.

Business Location. Chad, Guinea, Niger.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** None.
4. **The foreign official.** Unnamed government Officials from Niger, Guinea, and Chad.

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.

See DOJ Digest Number B-173.

See SEC Digest Number D-160.

See Ongoing Investigation F-61.

³⁷ U.S. v. *Mebiame*, No. 1:16-cr-00627 (E.D.N.Y. 2016).

B. Foreign Bribery Criminal Prosecution Under the FCPA

169. **United States v. LATAM Airlines Group S.A. (S.D. Fla. 2016)**³⁸

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.

Business Location. Argentina.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** \$6,743,932.
3. **Intermediary.** Local agent.
4. **The foreign official.** Unnamed foreign officials from Argentine labor unions.

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's CEO, Ignacio Cueto Plaza, with violations of the FCPA.

See SEC Digest Number D-143.

³⁸ *U.S. v. LATAM Airlines Group S.A.*, No. 0:16-cr-60195 (S.D. Fla. 2016).

B. Foreign Bribery Criminal Prosecution Under the FCPA

168. United States v. BK Medical ApS (2016)³⁹

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.

Business Location. Russia.

Payment.

1. **Amount of the value.** Approximately \$20 million.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Third-party distributors.
4. **The foreign official.** Unnamed foreign officials.

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 its 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.
See Ongoing Investigation F-40.

³⁹ 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)⁴⁰

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.

Business Location. Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Mexico.

Payment.

1. **Amount of the value.** Approximately \$3 million.
2. **Amount of business related to the payment.** Approximately \$7.5 million.
3. **Intermediary.** Agents and third-party distributors.
4. **The foreign official.** Health care practitioners (“HCPs”) employed at government-owned and private health care facilities.

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 \$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.

See Ongoing Investigation Number F-25.

⁴⁰ *U.S. v. Olympus Latin America, Inc.*, No. 2:16-mj-03525 (D.N.J. 2016).

B. Foreign Bribery Criminal Prosecution Under the FCPA

166. [United States v. VimpelCom Ltd. \(S.D.N.Y. 2016\)](#)⁴¹ [United States v. Unitel LLC \(S.D.N.Y. 2016\)](#)⁴²

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.

Business Location. Uzbekistan.

Payment.

1. **Amount of the value.** Over \$114 million.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Shell Company.
4. **The foreign official.** Unnamed Uzbek government official and close relative of a high-ranking Uzbek government official, with significant influence over Uzbek telecommunication authorities.

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.

Fifth, VimpelCom allegedly conducted complex sham "reseller" transactions to transfer an additional \$20 million in bribes to the government official through Shell Company.

⁴¹ *U.S. v. VimpelCom Ltd.*, No. 1:16-cr-00137 (S.D.N.Y. 2016).

⁴² *U.S. v. Unitel LLC*, No. 1:16-cr-00137 (S.D.N.Y. 2016).

B. Foreign Bribery Criminal Prosecution Under the FCPA

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 where 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-64.

See Parallel Litigation Digest Number H-H3.

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)**⁴³

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.

Business Location. China.

Payment.

1. **Amount of the value.** Over \$1 million.
2. **Amount of business related to the payment.** Approximately \$13 million.
3. **Intermediary.** Local “business partners.”
4. **The foreign official.** Employees of Chinese state-owned entities.

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.
See Ongoing Investigation Number F-13.

⁴³ Matter resolved through non-prosecution agreement (February 2016)

B. Foreign Bribery Criminal Prosecution Under the FCPA

164. [United States v. Roberto Enrique Rincon-Fernandez, Abraham Jose Shiera-Bastidas \(S.D. Tex. 2015\)](#)⁴⁴

[United States v. Alfonso Eliezer Gravina-Munoz \(S.D. Tex. 2015\)](#)⁴⁵

[United States v. Christian Javier Maldonado-Barillas \(S.D. Tex. 2015\)](#)⁴⁶

[United States v. Moises Abraham Millan Escobar \(S.D. Tex. 2016\)](#)⁴⁷

[United States v. Jose Luis Ramos-Castillo \(S.D. Tex. 2015\)](#)⁴⁸

Nature of the Business. Roberto Enrique Rincon Fernandez, a resident of Texas and permanent resident of the United States, controlled a series of unnamed closely held companies that were used to secure contracts from the Venezuelan state-owned oil and natural gas company, Petróleos de Venezuela S.A. (“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, was employed by Shiera as an independent contractor and acted as an agent for Shiera’s and Rincon’s companies.

Business Location. Venezuela.

Payment.

1. **Amount of the value.** \$790,000.
2. **Amount of business related to the payment.** Approximately \$16 million.
3. **Intermediary.** None.
4. **The foreign official.** Officials from PDVSA named Alfonso Eliezer Gravina-Munoz, Christian Javier Maldonado-Barillas, Jose Luis Ramos Castillo.

Influence to be Obtained. According to court documents filed in the Southern District of Texas, beginning in 2009, Rincon, Shiera, and Millan allegedly agreed to bribe officials at PDVSA to secure lucrative energy contracts for Rincon’s and Shiera’s companies. To execute the alleged scheme, the Government argued that Rincon, Shiera, and Millan attempted to bribe PDVSA officials (including Gravina, Maldonado, and Ramos) in exchange for rigging a competitive bidding process in Rincon’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, Shiera, and Millan allegedly bribed those PDVSA officials responsible for selecting the “bidding panels” (including Gravina, Maldonado, and Ramos) with money as well as travel, meals, and other entertainment in exchange for agreeing to place one or more of Rincon’s and Shiera’s closely held companies on the panels and directing the contracts to one of Rincon’s and Shiera’s companies. Although Rincon 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, Shiera, Millan, Gravina, Maldonado, and Ramos made efforts to conceal the fact that Rincon and Shiera controlled several of the companies on the bidding panels.

Once awarded the project contracts, Rincon, Shiera, and Millan 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.

⁴⁴ *U.S. v. Rincon-Fernandez*, No. 4:15-cr-654 (S.D. Tex. 2015).

⁴⁵ *U.S. v. Gravina-Munoz*, No. 4:15-cr-00637 (S.D. Tex. 2015).

⁴⁶ *U.S. v. Maldonado-Barillas*, No. 4:15-cr-00635 (S.D. Tex. 2015).

⁴⁷ *U.S. v. Millan*, No. 4:16-cr-00009 (S.D. Tex. 2016).

⁴⁸ *U.S. v. Ramos-Castillo*, No. 4:15-cr-00636 (S.D. Tex. 2015).

B. Foreign Bribery Criminal Prosecution Under the FCPA

Enforcement. On December 16, 2015 and December 17, 2015, Shiera and Rincon, 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 were charged with multiple counts of conspiracy to violate the FCPA and the federal money laundering statute along with substantive counts of the offenses. After initially pleading not guilty to the charges, in March 2016 and June 2016, Shiera and Rincon, respectively, pleaded guilty to multiple violations of the FCPA. Shiera's and Rincon's sentencing is presently scheduled for July 2017.

In March 2016, charges against Millan, Gravina, Maldonado, and Ramos were unsealed. Millan 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 July 2017.

Separately, Gravina, Maldonado, and Ramos, 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 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, and Ramos is scheduled for July 2017.

See Parallel Litigation Digest Number H-12.

B. Foreign Bribery Criminal Prosecution Under the FCPA

163. [United States v. Daren Condrey \(D. Md. 2015\)](#)⁴⁹ [United States v. Vadim Mikerin \(D. Md. 2014\)](#)⁵⁰

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 Technabexport (“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.

Business Location. Russia

Payment.

1. **Amount of the value.** \$2,126,622.36.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** None.
4. **The foreign official.** Director and President of uranium supplier and uranium enrichment services provider owned by the Russian Federation.

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 is presently scheduled for January 2017.

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.

See Ongoing Investigation Number F-86.

⁴⁹ *U.S. v. Condrey*, No. 8:15-cr-00336 (D. Md. 2015).

⁵⁰ *U.S. v. Mikerin*, No. 8:14-cr-00529 (D. Md. 2014).

B. Foreign Bribery Criminal Prosecution Under the FCPA

Related Case. *U.S. v. Rubizhevsky* (D. Md. 2015)⁵¹

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.

⁵¹ *U.S. 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 \(N.D. Cal. 2015\)](#)⁵²

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.

Business Location. Panama.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Approximately \$2.1 million.
3. **Intermediary.** Subsidiaries and a local Panamanian partner.
4. **The foreign official.** Senior government officials of the Republic of Panama.

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 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.

⁵² *U.S. v. Garcia*, No. 3:15-cr-00366 (N.D. Cal. 2015).

B. Foreign Bribery Criminal Prosecution Under the FCPA

161. [United States v. Louis Berger International, Inc. \(D.N.J. 2015\)](#)⁵³

[United States v. Richard Hirsch \(D.N.J. 2015\)](#)⁵⁴

[United States v. James McClung \(D.N.J. 2015\)](#)⁵⁵

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.

Business Location. India, Indonesia, Kuwait, Vietnam.

Payment.

1. **Amount of the value.** Approximately \$3,934,431.
2. **Amount of business related to the payment.** More than \$7 million.
3. **Intermediary.** Subcontractor; non-government organization; agent; and vendors.
4. **The foreign official.** Unnamed foreign officials in Vietnam, Indonesia, and India; Official of the Kuwaiti Ministry of Public Works.

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

⁵³ *U.S. v. Louis Berger Int’l, Inc.*, Mag. No. 15-3624 (D.N.J. 2015).

⁵⁴ *U.S. v. Hirsch*, No. 15-cr-00358-MLC (D.N.J. 2015).

⁵⁵ *U.S. v. McClung*, No. 15-cr-00357-MLC (D.N.J. 2015).

B. Foreign Bribery Criminal Prosecution Under the FCPA

telephone and email using coded language, such 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.

B. Foreign Bribery Criminal Prosecution Under the FCPA

160. [United States v. IAP World Wide Services, Inc. \(2015\)](#)⁵⁶ [United States v. James M. Rama \(E.D. Va. 2015\)](#)⁵⁷

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 Vice President of Special Projects and Programs from 2005–2007 for IAP. After 2007, Rama worked as a consultant to IAP.

Business Location. Kuwait

Payment. Not stated.

1. **Amount of the value.** \$ 1,783,688.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Consultant and shell entity.
4. **The foreign official.** Officials from the Kuwait's Ministry of the Interior.

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 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.

⁵⁶ Matter resolved through a non-prosecution agreement (June 2015).

⁵⁷ *U.S. v. Rama*, No. 1:15-CR-143-GBL (E.D. VA. 2015).

B. Foreign Bribery Criminal Prosecution Under the FCPA

159. [United States v. Dmitrij Harder \(E.D. Pa. 2015\)](#)⁵⁸

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.

Business Location. Not stated.

Payment.

1. **Amount of the value.** More than \$3.5 million.
2. **Amount of business related to the payment.** Approximately \$8 million in “success fees.”
3. **Intermediary.** Sister of the foreign official.
4. **The 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.

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’s 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. Sentencing is scheduled for June 2017.

⁵⁸ *U.S. v. Harder*, No. 2:15-cr-00001 (E.D. Pa. 2015).

B. Foreign Bribery Criminal Prosecution Under the FCPA

158. [United States v. Asem M. Elgawhary \(D. Md. 2014\)](#)⁵⁹

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.

Business Location. Egypt.

Payment.

1. **Amount of the value.** Approximately \$5,258,995.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Consultants.
4. **The foreign official.** Official for the Egyptian Electrical Holding Company.

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 assisted 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 the 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 PSEGC 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-157, D-151, and D-137.

⁵⁹ *U.S. v. Elgawhary*, No. 8:14-cr-00068 (D. Md. 2014).

B. Foreign Bribery Criminal Prosecution Under the FCPA

157. [United States v. Alstom S.A. \(D. Conn. 2014\)](#)⁶⁰
[United States v. Alstom Network Schweiz AG \(D. Conn. 2014\)](#)⁶¹
[United States v. Alstom Grid, Inc. \(D. Conn. 2014\)](#)⁶²
[United States v. Alstom Power, Inc. \(D. Conn. 2014\)](#)⁶³

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.

Business Location. Indonesia, Saudi Arabia, Egypt, the Bahamas, and Taiwan.

Payment.

1. **Amount of the value.** Approximately \$75 million.
2. **Amount of business related to the payment.** Approximately \$4 billion in projects with a gain of approximately \$296 million.
3. **Intermediary.** Consultants.
4. **The 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.

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 forego the requirement that Alstom S.A. appoint an independent compliance monitor because the company was already subject to certain monitoring

⁶⁰ *U.S. v. Alstom S.A.*, No. 3:14-cr-00246 (D. Conn. 2014).

⁶¹ *U.S. v. Alstom Network Schweiz AG*, No. 3:14-cr-00245 (D. Conn. 2014).

⁶² *U.S. v. Alstom Grid, Inc.*, No. 3:14-cr-00247 (D. Conn. 2014).

⁶³ *U.S. v. Alstom Power, Inc.*, No. 3:14-cr-00248 (D. Conn. 2014).

B. Foreign Bribery Criminal Prosecution Under the FCPA

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 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-158, D-151, D-137.

B. Foreign Bribery Criminal Prosecution Under the FCPA

156. [United States v. Avon Products, Inc. and Avon Products \(China\) Co. Ltd. \(S.D.N.Y. 2014\)](#)⁶⁴

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.

Business Location. China.

Payment.

1. **Amount of the value.** Approximately \$8 million.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Consultant.
4. **The foreign official.** Unspecified Chinese government officials.

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 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.

⁶⁴ *U.S. v. Avon Prods., Inc., et al.*, No. 1:14-cr-00828 (GBD) (S.D.N.Y. 2014).

B. Foreign Bribery Criminal Prosecution Under the FCPA

155. **United States v. Dallas Airmotive, Inc. (N.D. Tex. 2014)**⁶⁵

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 the BBA Aviation plc, a U.K. company traded on the London Stock Exchange.

Business Location. Argentina; Brazil; Peru.

Payment.

1. **Amount of the value.** Not Stated.
2. **Amount of business related to the payment.** Not Stated.
3. **Intermediary.** Third-party representative.
4. **The 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.

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 kick-backs 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.

⁶⁵ *U.S. v. Dallas Airmotive, Inc.*, No. 3:14-cr-483 (N.D. Tex. 2014).

B. Foreign Bribery Criminal Prosecution Under the FCPA

154. [United States v. Bio-Rad Laboratories, Inc. \(2014\)](#)⁶⁶

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.

Business Location. Russia.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Approximately \$35.1 million.
3. **Intermediary.** Sales Agent/Consultant.
4. **The foreign official.** Russian Ministry of Health officials.

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.

⁶⁶ Matter resolved through non-prosecution agreement (November 2014).

B. Foreign Bribery Criminal Prosecution Under the FCPA

153. [United States v. Zao Hewlett-Packard A.O. \(N.D. Cal. 2014\)](#)⁶⁷
[United States v. Hewlett-Packard Polska, SP. Z.O.O. \(N.D. Cal. 2014\)](#)⁶⁸
[United States v. Hewlett-Packard Mexico, S. de R.L. de C.V. \(2014\)](#)⁶⁹

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.

Business Location. Russia; Poland; Mexico.

Payment.

1. **Amount of the value.** Not stated.
2. **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.
3. **Intermediary.** Consultants and intermediary companies.
4. **The 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).

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.

⁶⁷ *U.S. v. Zao Hewlett-Packard A.O.*, No. cr-14-00201 (N.D. Cal. 2014).

⁶⁸ *U.S. v. Hewlett-Packard Polska, SP. Z.O.O.*, No. cr-14-00202 (N.D. Cal. 2014).

⁶⁹ Matter resolved through non-prosecution agreement (April 2014).

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In March 2007, the Polish Official signed another contract with HP Poland, 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 US 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.

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)**⁷⁰

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).

Business Location. India.

Payment.

1. **Amount of the value.** Approximately \$18.5 million.
2. **Amount of business related to the payment.** Expected profits of approximately \$500 million.
3. **Intermediary.** Agent and shell companies.
4. **The 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.

Influence to be Obtained. According to the DOJ, beginning in 2006, Dmitry 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, 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. The Austrian court's ruling is now on appeal. News reports indicated that US 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.

⁷⁰ *U.S. v. Firtash, et al.*, 1:13-cr-00515 (N.D. Ill. 2013).

B. Foreign Bribery Criminal Prosecution Under the FCPA

151. [United States v. Marubeni Corporation \(D. Conn. 2014\)](#)⁷¹

Nature of the Business. Marubeni Corporation is a global trading company headquartered in Japan that conducts business around the world, including the provision of engineering services. Marubeni and its subsidiaries and joint ventures employed approximately 24,000 employees in over 70 countries.

Business Location. Indonesia.

Payment.

1. **Amount of the value.** Not Stated.
2. **Amount of business related to the payment.** \$118 million.
3. **Intermediary.** Sales Agent/Consultant.
4. **The foreign official.** Members of the Indonesian Parliament; Officials at the state-owned Indonesian electricity company, Perusahaan Listrik Negara.

Influence to be Obtained. According to court filings, in 2002, Marubeni entered into a joint-venture partnership with an unnamed French power and transportation company (publicly known to be Alstom S.A. but referred to as the “Power Company” in the DOJ’s information) to procure a valuable power services contract in Indonesia (the “Tarahan Project”).

Beginning in 2002, the DOJ alleges that executives from Power Company—Frederic Pierucci, Lawrence Hoskins, William Pomponi, and David Rothschild (along with two unnamed employees)—hired two consultants with the intent to bribe members of the Indonesian parliament and the state-owned power company, Perusahaan Listrik Negara (“PLN”), in exchange for securing the contract for the Tarahan Project.

Court documents state that employees of Marubeni were complicit in organizing the bribes, specifically alleging that Marubeni employees were responsible for: approving three separate wire transfers totaling \$357,793.79 from a bank account in New York to one consultant’s bank account in Maryland for use as bribes; attending multiple meetings with officials of the Power Company in Connecticut regarding the Tarahan Project; and corresponding via e-mail with officials of the Power Company to discuss the bribery scheme. In 2005, Marubeni and the Power Company were awarded the contract for the Tarahan Project.

Enforcement. On March 19, 2014, the DOJ announced that it reached a plea agreement with Marubeni for its involvement in the Tarahan Project bribery scheme. In the agreement, Marubeni pleaded guilty to one count of conspiracy to violate the FCPA and seven counts of violating the FCPA’s anti-bribery provisions.

See DOJ Digest Number B-157 and B-137.

⁷¹ *U.S. v. Marubeni Corp.*, No. 3:14-cr-00052 (D. Conn. 2014).

B. Foreign Bribery Criminal Prosecution Under the FCPA

150. [United States v. Alcoa World Alumina \(W.D. Pa. 2014\)](#)⁷²

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”).

Business Location. Bahrain.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Sales Agent/Consultant.
4. **The 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.

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.

⁷² *U.S. v. Alcoa World Alumina LLC*, No. 2:14-cr-7 (W.D. Pa. 2014).

B. Foreign Bribery Criminal Prosecution Under the FCPA

149. [United States v. Knut Hammarskjold \(D.N.J. 2013\)](#)⁷³

[United States v. Joseph Sigelman \(D.N.J. 2013\)](#)⁷⁴

[United States v. Gregory Weisman \(D.N.J. 2013\)](#)⁷⁵

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.

Business Location. Colombia.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Approximately \$39 million.
3. **Intermediary.** Foreign official's wife.
4. **The foreign official.** Official at Ecopetrol S.A., a state-owned and state-controlled petroleum company in Colombia.

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 officials' 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.

⁷³ *U.S. v. Hammarskjold*, No. 1:14-cr-00065 (D.N.J. 2013).

⁷⁴ *U.S. v. Sigelman*, No. 1:14-cr-00263 (D.N.J. 2013).

⁷⁵ *U.S. v. Weisman*, No. 1:13-cr-00730 (D.N.J. 2013).

B. Foreign Bribery Criminal Prosecution Under the FCPA

148. [United States v. Archer Daniels Midland Company \(2013\)](#)⁷⁶ [United States v. Alfred C. Toepfer International \(Ukraine\) Limited \(C.D. Ill. 2013\)](#)⁷⁷

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.

Business Location. Venezuela and Ukraine.

Payment.

1. **Amount of the value.** \$22,000 in Ukraine; not stated as to Venezuela.
2. **Amount of business related to the payment.** Approximately \$100 million in Ukraine; not stated as to Venezuela.
3. **Intermediary.** Insurance company, third party vendor, third party agent.
4. **The foreign official.** Ukrainian government officials; employee of oil company indirectly owned by the Venezuelan government.

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, Alfred 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 antibribery 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 million 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.

See SEC Digest Number D-124.

⁷⁶ Matter resolved through non-prosecution agreement (December 2013).

⁷⁷ *U.S. v. Alfred C. Toepfer Int’l (Ukraine) Ltd.*, No. 2:13-cr-20062 (C.D. Ill. 2013).

B. Foreign Bribery Criminal Prosecution Under the FCPA

147. [United States v. Bilfinger SE \(S.D. Tex. 2013\)](#)⁷⁸

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.

Business Location. Nigeria.

Payment.

1. **Amount of the value.** Approximately \$6 million.
2. **Amount of business related to the payment.** \$388 million.
3. **Intermediary.** Third party consultants, direct.
4. **The foreign official.** 1) Nigerian National Petroleum Corporation (“NNPC”) officials; 2) officials of NNPC’s wholly-owned subsidiary National Petroleum Investment Management Services; 3) officials of NNPC’s majority-owned joint venture operator, Shell Petroleum Development Company of Nigeria, Ltd.; 4) an official in the executive branch of the Nigerian government; 5) the dominant political party 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 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 2006-2008, 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.

⁷⁸ *U.S. v. Bilfinger SE*, No. 4:13-cr-00745 (S.D. Tex. 2013).

B. Foreign Bribery Criminal Prosecution Under the FCPA

146. [United States v. Weatherford International Ltd. \(S.D. Tex. 2013\)](#)⁷⁹ [United States v. Weatherford Services, Ltd. \(S.D. Tex. 2013\)](#)⁸⁰

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.

Business Location. Angola, Algeria, Albania, Iraq.

Payment.

1. **Amount of the value.** Approximately \$14.2 million.
2. **Amount of business related to the payment.** Profits of approximately \$59.3 million.
3. **Intermediary.** Subsidiary companies; third-party distributors; third-party agents; joint ventures.
4. **The 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.

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 screens 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.

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

⁷⁹ *U.S. v. Weatherford Int’l Ltd.*, No. 4:13-cr-00733 (S.D. Tex. 2013).

⁸⁰ *U.S. v. Weatherford Servs., Ltd.*, No. 13-cr-00734 (S.D. Tex. 2013).

B. Foreign Bribery Criminal Prosecution Under the FCPA

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 plead 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)**⁸¹

Nature of the Business. Diebold, Inc., an Ohio company, is a global provider of automated teller machines and bank security systems.

Business Location. China, Indonesia, Russia.

Payment.

1. **Amount of the value.** Approximately \$1.75 million.
2. **Amount of business related to the payment.** \$281 million.
3. **Intermediary.** Third parties designated by state-owned banks, distributors.
4. **The foreign official.** Employees and officials of state-owned banks in China and Indonesia (also employees of private bank customers in Russia).

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.

In a related settlement with the SEC, Diebold agreed to pay approximately \$23 million in disgorgement and prejudgment interest.

See SEC Digest Number D-121.

⁸¹ *U.S. v. Diebold, Inc.*, No. 5:13-cr-00464 (N.D. Ohio 2013).

B. Foreign Bribery Criminal Prosecution Under the FCPA

144. [United States v. Alain Riedo \(S.D. Cal. 2013\)](#)⁸²

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.

Business Location. China.

Payment.

1. **Amount of the value.** \$2.8 million.
2. **Amount of business related to the payment.** \$15 million.
3. **Intermediary.** Sales agents/consultants.
4. **The foreign official.** Officials at state-owned and controlled electric-utility infrastructure agencies of the Chinese government.

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.

⁸² *U.S. v. Riedo*, No. 3:13-cr-3789 (S.D. Cal. 2013).

B. Foreign Bribery Criminal Prosecution Under the FCPA

143. [United States v. Total S.A. \(E.D. Va. 2013\)](#)⁸³

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.

Business Location. Iran.

Payment.

1. **Amount of the value.** Approximately \$60 million.
2. **Amount of business related to the payment.** \$147 million.
3. **Intermediary.** Unnamed third parties designated by the foreign official.
4. **The 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.

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.

⁸³ *U.S. v. Total S.A.*, No. 1:13-cr-239 (E.D. Va. 2013).

B. Foreign Bribery Criminal Prosecution Under the FCPA

142. [United States v. Tomas Alberto Clarke Bethancourt \(S.D.N.Y. 2013\)](#)⁸⁴
[United States v. Jose Alejandro Hurtado \(S.D.N.Y. 2013\)](#)⁸⁵
[United States v. Maria de los Angeles Gonzalez de Hernandez \(S.D.N.Y. 2013\)](#)⁸⁶
[United States v. Ernesto Lujan \(S.D.N.Y. 2013\)](#)⁸⁷
[United States v. Benito Chinae and Joseph DeMeneses \(S.D.N.Y. 2014\)](#)⁸⁸

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 Chinae and Joseph DeMeneses were both senior executives at DAP’s New York headquarters.

Business Location. Venezuela.

Payment.

1. **Amount of the value.** \$3.6 million.
2. **Amount of business related to the payment.** \$60 million.
3. **Intermediary.** Shell entity.
4. **The foreign official.** Maria de los Angeles Gonzalez de Hernandez (“Gonzalez”), a senior official at BANDES.

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 Chinae 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, Chinae, 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.

⁸⁴ *U.S. v. Clarke*, No. 1:13-cr-00670 (S.D.N.Y. 2013).

⁸⁵ *U.S. v. Hurtado*, No. 1:13-cr-00673 (S.D.N.Y. 2013).

⁸⁶ *U.S. v. Gonzalez*, No. 1:13-cr-00901 (S.D.N.Y. 2013).

⁸⁷ *U.S. v. Lujan*, No. 1:13-cr-00671 (S.D.N.Y. 2013).

⁸⁸ *U.S. v. Chinae, et al.*, No. 1:14-cr-00240 (S.D.N.Y. 2014).

B. Foreign Bribery Criminal Prosecution Under the FCPA

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 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 Chinaa and DeMeneses who surrendered to authorities. Both Chinaa and DeMeneses later pleaded guilty to one count of violating the FCPA in December 2014 and were sentenced on March 31, 2015. Both Chinaa 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, Chinaa 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, Chinaa, and DeMeneses for securities fraud.

See SEC Digest Number D-119.

B. Foreign Bribery Criminal Prosecution Under the FCPA

141. United States v. Ralph Lauren Corporation (2013)⁸⁹

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.

Business Location. Argentina.

Payment.

1. **Amount of the value.** \$538,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Customs broker.
4. **The foreign official.** Argentine customs officials and other government officials.

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.

⁸⁹ Matter resolved through non-prosecution agreement (April 2013).

B. Foreign Bribery Criminal Prosecution Under the FCPA

140. United States v. Frederic Cilins (S.D.N.Y. 2013)⁹⁰

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.

Business Location. Guinea.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Agent/consultant.
4. **The foreign official.** Guinean government official with authority to influence the award of mining concessions.

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-54.
See Parallel Litigation Digest Number H-C29 and H-E7.

⁹⁰ *U.S. v. Cilins*, No. 1:13-cr-315 (S.D.N.Y. 2013).

B. Foreign Bribery Criminal Prosecution Under the FCPA

139. United States v. Parker Drilling Company (E.D. Va. 2013)⁹¹

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.

Business Location. Nigeria, Mexico.

Payment.

1. **Amount of the value.** \$1.25 million.
2. **Amount of business related to the payment.** Saved \$3.05 million in fines.
3. **Intermediary.** Nigerian agent, U.S. law firm.
4. **The 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.”

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.

⁹¹ U.S. v. Parker Drilling Co., No. 1:13-cr-00176 (E.D. Va. 2013).

B. Foreign Bribery Criminal Prosecution Under the FCPA

138. [United States v. Peter DuBois \(N.D. Ok. 2011\)](#)⁹²
[United States v. Jald Jensen \(N.D. Ok. 2012\)](#)⁹³
[United States v. Bernd Kowalewski \(N.D. Ok. 2012\)](#)⁹⁴
[United States v. Neal Uhl \(N.D. Ok. 2011\)](#)⁹⁵

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.

Business Location. Mexico, Panama, and Brazil.

Payment.

1. **Amount of the value.** Approximately \$565,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Shell company.
4. **The 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.

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, Kowalweski 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.

⁹² *U.S. v. DuBois*, No. 11-cr-183 (N.D. Ok. 2011).

⁹³ *U.S. v. Jensen*, No. 12-cr-06 (N.D. Ok. 2012).

⁹⁴ *U.S. v. Kowalewski*, No. 12-cr-07 (N.D. Ok. 2012).

⁹⁵ *U.S. v. Uhl*, No. 11-cr-184 (N.D. Ok. 2011).

B. Foreign Bribery Criminal Prosecution Under the FCPA

137. [United States v. Frederic Pierucci and William Pomponi \(D. Conn. 2012\)](#)⁹⁶
[United States v. Lawrence Hoskins and William Pomponi \(second superseding indictment, filed July 2013\)](#)⁹⁷
[United States v. David Rothschild \(D. Conn. 2012\)](#)⁹⁸

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.

Business Location. Indonesia.

Payment.

1. **Amount of the value.** Approximately \$2.3 million.
2. **Amount of business related to the payment.** \$118 million.
3. **Intermediary.** Two Indonesian consultants.
4. **The 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.

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.

⁹⁶ *U.S. v. Pierucci & Pomponi*, No. 3:12-cr-00238 (D. Conn. 2012).

⁹⁷ *U.S. v. Hoskins & Pomponi*, No. 3:12-cr-00238 (D. Conn. 2013).

⁹⁸ *U.S. v. Rothschild*, No. 3:12-cr-00223 (D. Conn. 2012).

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. Pierucci's indictment was initially filed under seal on November 27, 2012, and was not made publicly available until April 16, 2013.

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 D-158, D-157, and D-151.

B. Foreign Bribery Criminal Prosecution Under the FCPA

136. [United States v. Tyco International, Ltd. \(2012\)](#)⁹⁹ [United States v. Tyco Valves & Controls Middle East, Inc. \(E.D. Va. 2012\)](#)¹⁰⁰

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.

Business Location. Iran, Saudi Arabia, United Arab Emirates (“UAE”).

Payment.

1. **Amount of the value.** \$488,479.
2. **Amount of business related to the payment.** \$1,153,500.
3. **Intermediary.** Joint venture; sales agents and consultants; subsidiary companies.
4. **The 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.

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.

⁹⁹ Matter resolved through non-prosecution agreement (September 2012).

¹⁰⁰ *U.S. v. Tyco Valves & Controls Middle East, Inc.*, No. 1:12-cr-00418 (E.D. Va. 2012).

B. Foreign Bribery Criminal Prosecution Under the FCPA

135. United States v. Pfizer H.C.P. Corporation (D.D.C. 2012)¹⁰¹

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.

Business Location. Bulgaria, Croatia, Kazakhstan, Russia.

Payment.

1. **Amount of the value.** \$2 million.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Sales agents and consultants; subsidiary companies.
4. **The foreign official.** Unspecified Croatian official and professor; Russian medical doctors employed at public hospitals; high-ranking Russian government officials.

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 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.

¹⁰¹ *U.S. v. Pfizer H.C.P. Corp.*, No. 1:12-cr-00169 (D.D.C. 2012).

B. Foreign Bribery Criminal Prosecution Under the FCPA

134. [United States v. The NORDAM Group, Inc. \(2012\)](#)¹⁰²

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.

Business Location. China.

Payment.

1. **Amount of the value.** \$1.5 million.
2. **Amount of business related to the payment.** Over \$2.48 million in contract profits.
3. **Intermediary.** Subsidiary company.
4. **The foreign official.** Employees of airlines controlled and owned by the Chinese government.

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 airlines 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.

¹⁰² 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)*¹⁰³

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.

Business Location. Mexico.

Payment.

1. **Amount of the value.** Approximately \$300,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Subsidiary company.
4. **The foreign official.** Employees of state-owned hospitals; officials employed by the Mexican state social-services agency, the Instituto Mexicano del Seguro Social (“IMSS”).

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-107.

See Ongoing Investigation Number F-65.

¹⁰³ *U.S. v. Orthofix Int’l, N.V.*, No. 4:12-cr-150 (E.D. Tex. 2012).

B. Foreign Bribery Criminal Prosecution Under the FCPA

132. United States v. Data Systems & Solutions LLC (E.D. Va. 2012)¹⁰⁴

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.

Business Location. Lithuania.

Payment.

1. **Amount of the value.** Approximately \$485,000.
2. **Amount of business related to the payment.** \$32.4 million.
3. **Intermediary.** Subcontractor.
4. **The foreign official.** Officials at the Ignalina Nuclear Power Plant, a state-owned nuclear power plant in Lithuania.

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.

¹⁰⁴ *U.S. v. Data Sys. & Solutions, LLC*, No. 12-cr-00262 (E.D. Va. 2012).

B. Foreign Bribery Criminal Prosecution Under the FCPA

131. [United States v. Garth Peterson \(E.D.N.Y. 2012\)](#)¹⁰⁵

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.

Business Location. China.

Payment.

1. **Amount of the value.** Approximately \$2.8 million.
2. **Amount of business related to the payment.** Unspecified.
3. **Intermediary.** Shell entity.
4. **The 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.

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.

¹⁰⁵ *U.S. v. Peterson*, No. 12-cr-00224 (E.D.N.Y. 2012).

B. Foreign Bribery Criminal Prosecution Under the FCPA

130. [United States v. Biomet, Inc. \(D.D.C. 2012\)](#)¹⁰⁶

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.

Business Location. Argentina, Brazil, China.

Payment.

1. **Amount of the value.** \$1,536,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Subsidiary companies, third party distributors.
4. **The foreign official.** Health care providers employed by publicly-owned and operated hospitals in Argentina, Brazil, and China.

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 independent corporate compliance monitor for a period of 18 months.

See SEC Digest Number D-107.

See Ongoing Investigation Numbers F-72.

¹⁰⁶ *U.S. v. Biomet, Inc.*, No. 1:12-cr-00080 (D.D.C. 2012).

B. Foreign Bribery Criminal Prosecution Under the FCPA

129. [United States v. BizJet International Sales and Support, Inc. \(N.D. Ok. 2012\)](#)¹⁰⁷ [United States v. Lufthansa Technik AG \(2012\)](#)¹⁰⁸

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.

Business Location. Mexico, Panama.

Payment.

1. **Amount of the value.** Approximately \$565,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Shell company.
4. **The 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.

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 contract 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.

¹⁰⁷ *U.S. v. Bizjet Int'l Sales and Support, Inc.*, No. 4:12-cr-00061 (N.D. Ok. 2012).

¹⁰⁸ Matter resolved through non-prosecution agreement (December 2011).

B. Foreign Bribery Criminal Prosecution Under the FCPA

128. [United States v. Smith & Nephew, Inc. \(D.D.C. 2012\)](#)¹⁰⁹

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.

Business Location. Greece.

Payment.

1. **Amount of the value.** \$9.4 million.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Shell companies, subsidiary companies.
4. **The foreign official.** Publicly-employed doctors and healthcare providers in Greece.

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.

¹⁰⁹ *U.S. v. Smith & Nephew, Inc.*, No. 1:12-cr-00030 (D.D.C. 2012).

B. Foreign Bribery Criminal Prosecution Under the FCPA

127. United States v. Marubeni Corporation (S.D. Tex. 2012)¹¹⁰

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”).

Business Location. Nigeria, Japan.

Payment.

1. **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.
2. **Amount of business related to the payment.** Approximately \$6 billion.
3. **Intermediary.** Sales agent.
4. **The foreign official.** Nigerian government officials.

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.

¹¹⁰ *U.S. v. Marubeni Corp.*, No. 4:12-cr-00022 (S.D. Tex. 2012).

B. Foreign Bribery Criminal Prosecution Under the FCPA

126. [United States v. Magyar Telekom, Plc. \(E.D. Va. 2011\)](#)¹¹¹

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.

Business Location. Macedonia, Montenegro.

Payment.

1. **Amount of the value.** €12,225,000.
2. **Amount of business related to the payment.** Unspecified.
3. **Intermediary.** Shell companies and third-party intermediaries.
4. **The foreign official.** Macedonian and Montenegrin government officials.

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 Telekom, 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.

¹¹¹ *U.S. v. Magyar Telekom, Plc.*, No. 11-cr-597 (E.D. Va. 2011).

B. Foreign Bribery Criminal Prosecution Under the FCPA

125. United States v. Aon Corporation (2011)¹¹²

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.

Business Location. Costa Rica, Bangladesh, Bulgaria, Egypt, Indonesia, Myanmar, Panama, United Arab Emirates, Vietnam.

Payment.

1. **Amount of the value.** 865,000.
2. **Amount of business related to the payment.** \$1,840,200.
3. **Intermediary.** A tourism company associated with a government official.
4. **The foreign official.** Officials at the Instituto Nacional De Seguros (“INS”), Costa Rica’s state-owned insurance company.

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 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.’s Financial Services Authority (“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.

¹¹² Matter resolved through non-prosecution agreement (December 2011).

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 Czynsch \(S.D.N.Y. 2011\)](#)¹¹³

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 Czynsch, a citizen of Argentina, was a business associate of Carlos Sergi.

Business Location. Argentina.

Payment.

1. **Amount of the value.** Approximately \$100 million.
2. **Amount of business related to the payment.** Approximately \$1 billion.
3. **Intermediary.** Business consultants and agents, shell companies.
4. **The foreign official.** Argentine government officials and Argentine candidates for office.

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, Czynsch 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 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 Czynsch. 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.

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’s remaining seven co-defendants remain at large.

¹¹³ *U.S. v. Sharef, et al.*, No. 11-cr-01056 (S.D.N.Y. 2011).

B. Foreign Bribery Criminal Prosecution Under the FCPA

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 Czych, 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.

B. Foreign Bribery Criminal Prosecution Under the FCPA

123. [United States v. Bridgestone Corporation \(S.D. Tex. 2011\)](#)¹¹⁴

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.

Business Location. Mexico and other unspecified Latin America countries.

Payment.

1. **Amount of the value.** More than \$2 million.
2. **Amount of business related to the payment.** \$17,103,694.
3. **Intermediary.** Sales Agents.
4. **The foreign official.** Government officials employed at unidentified state-owned entities.

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 twenty-four 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.

¹¹⁴ *U.S. v. Bridgestone Corp.*, No. 4:11-cr-00651 (S.D. Tex. 2011).

B. Foreign Bribery Criminal Prosecution Under the FCPA

122. United States v. Tenaris, S.A. (2011)¹¹⁵

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.

Business Location. Uzbekistan.

Payment.

1. **Amount of the value.** More than \$32,140.
2. **Amount of business related to the payment.** Unknown.
3. **Intermediary.** Agent.
4. **The foreign official.** Officials at OJSC O’zashqineftgaz (“OAO”), a subsidiary of Uzbekneftegaz, the state-owned holding company of Uzbekistan’s oil and gas industry.

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’zashqineftgaz (“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.

¹¹⁵ Matter resolved through non-prosecution agreement (May 2011).

B. Foreign Bribery Criminal Prosecution Under the FCPA

121. [United States v. Armor Holdings Inc. \(2011\)](#)¹¹⁶

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.

Business Location. Indonesia, Iraq.

Payment.

1. **Amount of the value.** Approximately \$4.6 million.
2. **Amount of business related to the payment.** Approximately \$6,000,000.
3. **Intermediary.** Sales Agent/Consultant.
4. **The foreign official.** Officials at the United Nations and other unspecified government customers.

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 Holding’s 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.

¹¹⁶ 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)*¹¹⁷

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.

Business Location. Greece, Iraq, Poland, Romania.

Payment.

1. **Amount of the value.** Unspecified.
2. **Amount of business related to the payment.** Unspecified.
3. **Intermediary.** Greek distributor.
4. **The 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.

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 authorizing 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.

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.

¹¹⁷ *U.S. v. DePuy, Inc.*, No. 1:11-cr-00099 (D.D.C. 2011).

B. Foreign Bribery Criminal Prosecution Under the FCPA

119. [United States v. Comverse Technology Inc. \(2011\)](#)¹¹⁸

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.

Business Location. Greece, Cyprus, Israel.

Payment.

1. **Amount of the value.** \$536,000.
2. **Amount of business related to the payment.** \$1,250,000.
3. **Intermediary.** Third-party agent and shell entity.
4. **The foreign official.** Employees of Hellenic Telecommunications Organisation S.A., which is partially owned by the Greek government.

Influence to be Obtained. Between 2000 to 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.

¹¹⁸ 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)¹¹⁹

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.

Business Location. Nigeria.

Payment.

1. **Amount of the value.** Approximately \$182 million.
2. **Amount of business related to the payment.** More than \$6 billion.
3. **Intermediary.** Consultant and Japanese trading company, agents.
4. **The 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.

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.

¹¹⁹ *U.S. v. JGC Corp.*, No. 4:11-cr-00260 (S.D. Tex. 2011).

B. Foreign Bribery Criminal Prosecution Under the FCPA

117. [United States v. Tyson Foods, Inc. \(D.D.C. 2011\)](#)¹²⁰

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.

Business Location. Mexico.

Payment.

1. **Amount of the value.** Approximately \$350,000.
2. **Amount of business related to the payment.** Net profits of more than \$880,000.
3. **Intermediary.** The wives of two Mexican government-employed veterinarians.
4. **The foreign official.** Veterinarians responsible for certifying meat exports under a federal inspection program in Mexico.

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.

¹²⁰ *U.S. v. Tyson Foods, Inc.*, No. 1:11-cr-00037 (D.D.C. 2011).

B. Foreign Bribery Criminal Prosecution Under the FCPA

116. [United States v. Maxwell Technologies, Inc. \(S.D. Cal. 2011\)](#)¹²¹

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.

Business Location. China.

Payment.

1. **Amount of the value.** At least \$2,789,131.
2. **Amount of business related to the payment.** Unspecified.
3. **Intermediary.** Sales Agent/Consultant.
4. **The foreign official.** Officials at Chinese state-owned entities.

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.

¹²¹ *U.S. v. Maxwell Techs., Inc.*, No. 3:11-cr-00329 (S.D. Cal. 2011).

B. Foreign Bribery Criminal Prosecution Under the FCPA

115. [United States v. Alcatel-Lucent, S.A. \(S.D. Fla. 2010\)](#)¹²² [United States v. Alcatel-Lucent France, S.A., Alcatel-Lucent Trade Int'l, A.G., and Alcatel Centroamerica, S.A \(S.D. Fla. 2010\)](#)¹²³

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.

Business Location. Costa Rica, Honduras, Malaysia, Taiwan, Kenya, Nigeria, Bangladesh, Ecuador, Nicaragua, Angola, Ivory Coast, Uganda, and Mali.

Payment.

1. **Amount of the value.** Over \$9.8 million.
2. **Amount of business related to the payment.** Over \$454.7 million.
3. **Intermediary.** Consultants and local subsidiaries.
4. **The foreign officials.** 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.

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.

¹²² *U.S. v. Alcatel-Lucent, S.A.*, No. 10-cr-20907 (S.D. Fla. 2010).

¹²³ *U.S. v. Alcatel-Lucent France, S.A., et al.*, No. 10-cr-20906 (S.D. Fla. 2010).

B. Foreign Bribery Criminal Prosecution Under the FCPA

On May 9, 2011, the Instituto Costarricense de Electricidad (“ICE”) filed in the 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.

B. Foreign Bribery Criminal Prosecution Under the FCPA

114. [United States v. Juan Pablo Vasquez \(S.D. Fla. 2010\)](#)¹²⁴
[United States v. Jorge Granados and Manuel Caceres \(S.D. Fla. 2010\)](#)¹²⁵
[United States v. Manuel Salvoch \(S.D. Fla. 2010\)](#)¹²⁶

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.

Business Location. Honduras.

Payment.

1. **Amount of the value.** \$545,039.
2. **Amount of business related to the payment.** Approximately \$0.07-\$0.11 per minute in long-distance time sold.
3. **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.
4. **The foreign official.** Officials at Hondutel, the Honduran state-owned telecommunications company.

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 December 20, 2010 in Miami and made initial appearances in U.S. District Court for the Southern District of Florida on that date.

¹²⁴ *U.S. v. Vasquez*, No. 10-cr-20894 (S.D. Fla. 2010).

¹²⁵ *U.S. v. Granados, et al.*, No. 1:10-cr-20881 (S.D. Fla. 2010).

¹²⁶ *U.S. v. Salvoch*, No. 10-cr-20893 (S.D. Fla. 2010).

B. Foreign Bribery Criminal Prosecution Under the FCPA

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 ten 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.

B. Foreign Bribery Criminal Prosecution Under the FCPA

113. [United States v. RAE Systems Inc. \(D.D.C. 2010\)](#)¹²⁷

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.

Business Location. China.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Joint-venture entities and a third-party agent.
4. **The foreign official.** Employees of Chinese state-owned entities including employees of the Dagang Oil Field.

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.

¹²⁷ 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. \(S.D. Tex. 2010\)](#)¹²⁸ [United States v. Panalpina, Inc. \(S.D. Tex. 2010\)](#)¹²⁹

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.

Business Location. Angola, Azerbaijan, Brazil, Kazakhstan, Nigeria, Russia, Turkmenistan.

Payment.

1. **Amount of the value.** Approximately \$49 million.
2. **Amount of business related to the payment.** Unknown.
3. **Intermediary.** Subsidiary and agent.
4. **The 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.

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.

¹²⁸ *U.S. v. Panalpina World Transport (Holding) Ltd.*, No. 4:10-cr-769 (S.D. Tex. 2010).

¹²⁹ *U.S. v. Panalpina, Inc.*, No. 4:10-cr-765 (S.D. Tex. 2010).

B. Foreign Bribery Criminal Prosecution Under the FCPA

111. United States v. Shell Nigeria Exploration and Production Company Ltd. (S.D. Tex. 2010)¹³⁰

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.

Business Location. Nigeria.

Payment.

1. **Amount of the value.** Approximately \$2 million.
2. **Amount of business related to the payment.** Approximately \$7 million.
3. **Intermediary.** Freight forwarder, Subcontractor, Agent.
4. **The foreign official.** Nigerian Customs Service officials.

Influence to be Obtained. Between 2004 and 2006, Shell Nigeria Exploration and Production Company Ltd (“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.

¹³⁰ U.S. v. Shell Nigeria Expl. & Prod. Co. Ltd., No. 4:10-cr-767 (S.D. Tex. 2010).

B. Foreign Bribery Criminal Prosecution Under the FCPA

110. United States v. Transocean Inc. (S.D. Tex. 2010)¹³¹

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.

Business Location. Nigeria.

Payment.

1. **Amount of the value.** Approximately \$90,000.
2. **Amount of business related to the payment.** Approximately \$2.17 million.
3. **Intermediary.** Freight forwarder, Agent.
4. **The foreign official.** Nigerian Customs Service officials.

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.

¹³¹ U.S. v. *Transocean Inc.*, No. 4:10-cr-768 (S.D. Tex. 2010).

B. Foreign Bribery Criminal Prosecution Under the FCPA

109. [United States v. Tidewater Marine International, Inc. \(S.D. Tex. 2010\)](#)¹³²

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.

Business Location. Azerbaijan, Nigeria.

Payment.

1. **Amount of the value.** Approximately \$1.76 million.
2. **Amount of business related to the payment.** Approximately \$6.62 million.
3. **Intermediary.** Freight forwarder, Agent.
4. **The foreign official.** Officials of the Ministry of Taxes for the Republic of Azerbaijan; Nigerian Customs Service officials.

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.

¹³² *U.S. v. Tidewater Marine Int’l, Inc.*, No. 4:10-cr-770 (S.D. Tex. 2010).

B. Foreign Bribery Criminal Prosecution Under the FCPA

108. [United States v. Pride International Inc. \(S.D. Tex. 2010\)](#)¹³³ [United States v. Pride Forasol S.A.S. \(S.D. Tex. 2010\)](#)¹³⁴

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.

Business Location. India, Mexico, Venezuela.

Payment.

1. **Amount of the value.** Approximately \$800,000.
2. **Amount of business related to the payment.** Approximately \$13 million.
3. **Intermediary.** Subsidiary company, agent.
4. **The 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.

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.

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.

¹³³ *U.S. v. Pride Int’l, Inc.*, No. 4:10-cr-770 (S.D. Tex. 2010).

¹³⁴ *U.S. v. Pride Forasol S.A.S.*, No. 4:10-cr-771 (S.D. Tex. 2010).

B. Foreign Bribery Criminal Prosecution Under the FCPA

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.*

B. Foreign Bribery Criminal Prosecution Under the FCPA

107. United States v. Noble Corp. (2010)¹³⁵

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.

Business Location. Nigeria.

Payment.

1. **Amount of the value.** Approximately \$74,000.
2. **Amount of business related to the payment.** Approximately \$2,973,000.
3. **Intermediary.** Customs agent.
4. **The foreign official.** Nigeria Customs Service officials.

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 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 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.

¹³⁵ 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)**¹³⁶

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 Comisión 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.

Business Location. Mexico.

Payment.

1. **Amount of the value.** \$5.9 million.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Sales Representative.
4. **The foreign officials.** Current and former director of operations of Comisión Federal de Electricidad (“CFE”), a state-owned electrical utility in Mexico.

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 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.

¹³⁶ U.S. v. Aguilar, et al., No. 10-cr-01031 (C.D. Cal. 2010).

B. Foreign Bribery Criminal Prosecution Under the FCPA

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.

B. Foreign Bribery Criminal Prosecution Under the FCPA

105. [United States v. Bobby J. Elkin, Jr. \(W.D. Va. 2010\)](#)¹³⁷

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.

Business Location. Kyrgyzstan.

Payment.

1. **Amount of the value.** More than \$3 million.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** None.
4. **The foreign officials.** Kyrgyz tobacco authority, local Kyrgyz government officials, and Kyrgyz Tax Inspection Police.

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.

¹³⁷ *U.S. v. Elkin*, No. 4:10-cr-00015 (W.D. Va. 2010).

B. Foreign Bribery Criminal Prosecution Under the FCPA

104. *United States v. Universal Leaf Tabacos Ltda. (E.D. Va. 2010)*¹³⁸

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.

Business Location. Thailand.

Payment.

1. **Amount of the value.** Approximately \$697,800.
2. **Amount of business related to the payment.** Sales orders valued at over \$9 million.
3. **Intermediary.** Tobacco sales agents.
4. **The foreign official.** Officials of the Thailand Tobacco Monopoly (“TTM”).

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.

¹³⁸ *U.S. v. Universal Leaf Tabacos Ltda.*, No. 3:10-cr-225 (E.D. Va. 2010).

B. Foreign Bribery Criminal Prosecution Under the FCPA

103. [United States v. Alliance One International AG \(W.D. Va. 2010\)](#)¹³⁹ [United States v. Alliance One Tobacco Osh, LLC \(W.D. Va. 2010\)](#)¹⁴⁰

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.

Business Location. Thailand; Kyrgyzstan.

Payment.

1. **Amount of the value.** Alliance One and its subsidiaries paid approximately \$1,238,750.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Tobacco sales agents.
4. **The foreign officials.** Officials of the Thailand Tobacco Monopoly (“TTM”); Kyrgyz provincial government officials.

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-subidiaries 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.

Enforcement. 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.

Alliance One Tobacco Osh, LLC (“AOTOL”), a wholly-owned subsidiary of Alliance One that operates in Kyrgyzstan, 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.

¹³⁹ *U.S. v. Alliance One Int’l AG*, No. 4:10-cr-00017 (W.D. Va. 2010).

¹⁴⁰ *U.S. v. Alliance One Tobacco Osh, LLC*, No. 4:10-cr00016 (W.D. Va. 2010).

B. Foreign Bribery Criminal Prosecution Under the FCPA

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.

B. Foreign Bribery Criminal Prosecution Under the FCPA

102. [United States v. ABB Ltd. \(2010\)](#)¹⁴¹
[United States v. ABB Ltd. – Jordan \(S.D. Tex. 2010\)](#)¹⁴²
[United States v. ABB Inc. \(S.D. Tex. 2010\)](#)¹⁴³

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.

Business Location. Iraq and Mexico.

Payment.

1. **Amount of the value.** Approximately \$2.2 million.
2. **Amount of business related to the payment.** At least \$86.9 million.
3. **Intermediary.** Mexican companies purporting to act as service and support providers.
4. **The foreign official.** Officials at Comisión Federal de Electricidad (“CFE”), a Mexican state-owned utility company; regional companies of the Iraqi Electricity Commission.

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. 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.

¹⁴¹ Matter resolved through deferred-prosecution agreement (September 2010).

¹⁴² *U.S. v. ABB Ltd. – Jordan*, No. 4:10-cr-00665 (S.D. Tex. 2010).

¹⁴³ *U.S. v. ABB Inc.*, No. 4:10-cr-00664 (S.D. Tex. 2010).

B. Foreign Bribery Criminal Prosecution Under the FCPA

101. *United States v. Snamprogetti Netherlands B.V. (S.D. Tex. 2010)*¹⁴⁴

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”).

Business Location. Nigeria.

Payment.

1. **Amount of the value.** Approximately \$182 million.
2. **Amount of business related to the payment.** Over \$6 billion.
3. **Intermediary.** Agents.
4. **The 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.

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.

¹⁴⁴ *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)¹⁴⁵

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.

Business Location. Nigeria.

Payment.

1. **Amount of the value.** Approximately \$182 million.
2. **Amount of business related to the payment.** Over \$6 billion.
3. **Intermediary.** Agents.
4. **The 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.

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.

¹⁴⁵ 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 \(D.D.C. 2010\)](#)¹⁴⁶
[United States v. Daimler Export and Trade Finance GmbH \(D.D.C. 2010\)](#)¹⁴⁷
[United States v. DaimlerChrysler Automotive Russia SAO \(D.D.C. 2010\)](#)¹⁴⁸
[United States v. DaimlerChrysler China Ltd. \(D.D.C. 2010\)](#)¹⁴⁹

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.

Business Location. 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.

Payment.

1. **Amount of the value.** Tens of millions.
2. **Amount of business related to the payment.** Over \$50 million.
3. **Intermediary.** Various.
4. **The foreign official.** Various officials involved in the purchase of vehicles around 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

¹⁴⁶ *U.S. v. Daimler AG*, No. 10-cr-63 (D.D.C. 2010).

¹⁴⁷ *U.S. v. Daimler Export & Trade Finance GmbH*, No. 10-cr-65 (D.D.C. 2010).

¹⁴⁸ *U.S. v. DaimlerChrysler Automotive Russia SAO*, No. 10-cr-54 (D.D.C. 2010).

¹⁴⁹ *U.S. v. DaimlerChrysler China Ltd.*, No. 10-cr-66 (D.D.C. 2010).

B. Foreign Bribery Criminal Prosecution Under the FCPA

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.

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.

B. Foreign Bribery Criminal Prosecution Under the FCPA

98. [United States v. Innospec, Inc. \(D.D.C. 2010\)](#)¹⁵⁰

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.

Business Location. Iraq.

Payment.

1. **Amount of the value.** Over \$5,800,000.
2. **Amount of business related to the payment.** Approximately \$50 million in profits.
3. **Intermediary.** Sales Agent/Consultant.
4. **The foreign official.** Iraqi government officials (Ministry of Oil).

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 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.

¹⁵⁰ *U.S. v. Innospec, Inc.*, 10-cr-00061 (D.D.C. 2010).

B. Foreign Bribery Criminal Prosecution Under the FCPA

97. United States v. BAE Systems PLC (D.D.C. 2010)¹⁵¹

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.

Business Location. Czech Republic, Hungary, and Saudi Arabia.

Payment.

1. **Amount of the value.** More than £135,000,000 and \$14,000,000.
2. **Amount of business related to the payment.** At least \$200,000,000.
3. **Intermediary.** Offshore shell companies and marketing advisors.
4. **The foreign officials.** Saudi public official.

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.

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.

¹⁵¹ U.S. v. BAE Sys. PLC, No. 1:10-cr-00035 (D.D.C. 2010).

B. Foreign Bribery Criminal Prosecution Under the FCPA

96. [United States v. Richard T. Bistrong \(D.D.C. 2010\)](#)¹⁵²

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.

Business Location. Netherlands and Nigeria.

Payment.

1. **Amount of the value.** Approximately \$4.4 million.
2. **Amount of business related to the payment.** At least \$8.4 million.
3. **Intermediary.** Agents.
4. **The foreign officials.** U.N. procurement official, Dutch procurement officer, and an official with the Independent National Election Commission of Nigeria (“INECN”).

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 facilitate 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.

¹⁵² *U.S. v. Bistrong*, No. 1:10-cr-0021 (D.D.C. 2010).

B. Foreign Bribery Criminal Prosecution Under the FCPA

95. [United States v. UTStarcom, Inc. \(2009\)](#)¹⁵³

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.

Business Location. China.

Payment.

1. **Amount of the value.** \$7,000,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** None.
4. **The foreign officials.** Employees of Chinese government-owned telecommunications companies.

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.

¹⁵³ Matter resolved through non-prosecution agreement (Dec. 2009).

B. Foreign Bribery Criminal Prosecution Under the FCPA

94. [United States v. Daniel Alvarez and Lee Allen Tolleson \(D.D.C. 2009\)](#)¹⁵⁴
[United States v. Helmie Ashiblie \(D.D.C. 2009\)](#)¹⁵⁵
[United States v. Andrew Bigelow \(D.D.C. 2009\)](#)¹⁵⁶
[United States v. R. Patrick Caldwell and Stephen Gerard Giordanella \(D.D.C. 2009\)](#)¹⁵⁷
[United States v. Yochanan R. Cohen \(D.D.C. 2009\)](#)¹⁵⁸
[United States v. Haim Geri \(D.D.C. 2009\)](#)¹⁵⁹
[United States v. John Gregory Godsey and Mark Frederick Morales \(D.D.C. 2009\)](#)¹⁶⁰
[United States v. Amaro Goncalves \(D.D.C. 2009\)](#)¹⁶¹
[United States v. Saul Mishkin \(D.D.C. 2009\)](#)¹⁶²
[United States v. John M. Mushriqui and Jeana Mushriqui \(D.D.C. 2009\)](#)¹⁶³
[United States v. David Painter and Lee Wares \(D.D.C. 2009\)](#)¹⁶⁴
[United States v. Pankesh Patel \(D.D.C. 2009\)](#)¹⁶⁵
[United States v. Ofer Paz \(D.D.C. 2009\)](#)¹⁶⁶
[United States v. Jonathan M. Spiller \(D.D.C. 2009\)](#)¹⁶⁷
[United States v. Israel Weisler and Michael Sacks \(D.D.C. 2009\)](#)¹⁶⁸
[United States v. John Benson Weir III \(D.D.C. 2009\)](#)¹⁶⁹

Nature of the Business. Military and law enforcement equipment.

Business Location. None (FBI Sting).

Payment.

1. **Amount of the value.** Various payments made as part of a 20% commission to sales agents defendants believed represented a government official.
2. **Amount of business related to the payment.** Approximately \$15 million.
3. **Intermediary.** Sales Agents.
4. **The foreign official.** None (Undercover FBI Sting).

¹⁵⁴ *U.S. v. Alvarez & Tolleson*, No. 09-cr-348 (D.D.C. 2009).

¹⁵⁵ *U.S. v. Ashiblie*, No. 09-cr-347 (D.D.C. 2009).

¹⁵⁶ *U.S. v. Bigelow*, No. 09-cr-346 (D.D.C. 2009).

¹⁵⁷ *U.S. v. Caldwell & Giordanella*, No. 09-cr-345 (D.D.C. 2009).

¹⁵⁸ *U.S. v. Cohen*, No. 09-cr-343 (D.D.C. 2009).

¹⁵⁹ *U.S. v. Geri*, No. 09-cr-342 (D.D.C. 2009).

¹⁶⁰ *U.S. v. Godsey & Morales*, No. 09-cr-349 (D.D.C. 2009).

¹⁶¹ *U.S. v. Goncalves*, No. 09-cr-335 (D.D.C. 2009).

¹⁶² *U.S. v. Mishkin*, No. 09-cr-344 (D.D.C. 2009).

¹⁶³ *U.S. v. Mushriqui*, No. 09-cr-336 (D.D.C. 2009).

¹⁶⁴ *U.S. v. Painter & Wares*, No. 09-cr-337 (D.D.C. 2009).

¹⁶⁵ *U.S. v. Patel*, No. 09-cr-338 (D.D.C. 2009).

¹⁶⁶ *U.S. v. Paz*, No. 09-cr-339 (D.D.C. 2009).

¹⁶⁷ *U.S. v. Spiller*, No. 09-cr-350 (D.D.C. 2009).

¹⁶⁸ *U.S. v. Weisler & Sacks*, No. 09-cr-340 (D.D.C. 2009).

¹⁶⁹ *U.S. v. Weir*, No. 09-cr-341 (D.D.C. 2009).

B. Foreign Bribery Criminal Prosecution Under the FCPA

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 Africa 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. 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 Alvarez 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 Alvarez, Spiller, and Geri were dismissed as well.

See DOJ Digest Number B-96.

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 \(second superseding indictment, filed January 2012\)](#)¹⁷⁰

[United States v. Jean Fourcand \(S.D. Fla. 2010\)](#)¹⁷¹

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.

Business Location. Haiti.

Payment.

1. **Amount of the value.** \$888,818 in illegal money transfers in furtherance of the conspiracy and another \$75,000 in bribes.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Shell company and co-defendant Grandison's company.
4. **The foreign officials.** Duperval, Antoine, and Joseph, Directors of International Relations of Telecommunications D'Haiti.

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.

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).

¹⁷⁰ *U.S. v. Esquenazi, et al.*, 1:09-cr-21010 (S.D. Fla. 2009); Court of Appeals Docket Nos. 11-15331 (11th Cir. 2011) (appeal of Esquenazi and Rodriguez) and 12-13009 (11th Cir. 2012) (appeal of Duperval).

¹⁷¹ *U.S. v. Fourcand*, 1:10-cr-20062 (S.D. Fla. 2010).

B. Foreign Bribery Criminal Prosecution Under the FCPA

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 Case. *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.

B. Foreign Bribery Criminal Prosecution Under the FCPA

92. [United States v. John Joseph O’Shea \(S.D. Tex. 2009\)](#)¹⁷²
[United States v. Fernando Maya Basurto \(S.D. Tex. 2009\)](#)¹⁷³

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.

Business Location. Mexico.

Payment.

1. **Amount of the value.** Over \$900,000.
2. **Amount of business related to the payment.** \$81 million.
3. **Intermediary.** Mexican shell companies.
4. **The foreign official.** Four top officials with the Comisión Federal de Electricidad (“CFE”), Mexico’s national electric grid operator.

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.

¹⁷² *U.S. v. O’Shea*, No. 09-cr-00629 (S.D. Tex. 2009).

¹⁷³ *U.S. v. Basurto*, No. 09-cr-00325 (S.D. Tex. 2009).

B. Foreign Bribery Criminal Prosecution Under the FCPA

91. [United States v. Charles Paul Edward Jumet \(E.D. Va. 2009\)](#)¹⁷⁴
[United States v. John W. Warwick \(E.D. Va. 2009\)](#)¹⁷⁵

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.

Business Location. Panama.

Payment.

1. **Amount of the value.** Over \$200,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** None.
4. **The foreign officials.** Administrator of Panama’s National Maritime Ports Authority and a high-ranking elected executive official of the Republic of Panama.

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 5-year statute of limitations period, so the DOJ may have made a request for foreign evidence to toll the statute of limitations.

¹⁷⁴ *U.S. v. Jumet*, No. 09-cr-00397 (E.D. Va. 2009).

¹⁷⁵ *U.S. v. Warwick*, No. 09-cr-00449 (E.D. Va. 2009).

B. Foreign Bribery Criminal Prosecution Under the FCPA

90. [United States v. AGCO Ltd. \(D.D.C. 2009\)](#)¹⁷⁶

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.

Business Location. Iraq.

Payment.

1. **Amount of the value.** Approximately \$553,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Jordanian agent.
4. **The foreign officials.** Former Iraqi Ministry of Agriculture.

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 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.

¹⁷⁶ *U.S. v. AGCO Ltd.*, No. 1:09-cr-249-RJL (D.D.C. 2009); Matter resolved by AGCO Corp. through deferred-prosecution agreement (September 2009).

B. Foreign Bribery Criminal Prosecution Under the FCPA

89. [United States v. Helmerich & Payne, Inc. \(2009\)](#)¹⁷⁷

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.

Business Location. Argentina, Venezuela.

Payment.

1. **Amount of the value.** Payments totaling approximately \$173,000.
2. **Amount of business related to the payment.** The avoidance of approximately \$204,000 in customs-related costs.
3. **Intermediary.** Customs brokers.
4. **The foreign officials.** Argentine and Venezuelan customs officials.

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.

¹⁷⁷ 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)¹⁷⁸

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”).

Business Location. China, South Korea, Malaysia, and the United Arab Emirates.

Payment.

1. **Amount of the value.** \$4,900,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Consultants.
4. **The foreign officials.** 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).

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 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.

¹⁷⁸ *U.S. v. Control Components, Inc.*, No. 09-00162 (C.D. Cal. 2009).

B. Foreign Bribery Criminal Prosecution Under the FCPA

87. [United States v. Novo Nordisk A/S \(D.D.C. 2009\)](#)¹⁷⁹

Nature of the Business. Novo Nordisk A/S is an international manufacturer of insulin, medicines, and other pharmaceutical supplies headquartered in Denmark.

Business Location. Iraq.

Payment.

1. **Amount of the value.** \$1.4 million.
2. **Amount of business related to the payment.** €22 million.
3. **Intermediary.** Agent.
4. **The foreign official.** Kickbacks were paid to Kimadia, a state-owned company which was part of the Iraqi Ministry of Health.

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.

¹⁷⁹ *U.S. v. Novo Nordisk A/S*, No. 09-cr-00126 (D.D.C. 2009).

B. Foreign Bribery Criminal Prosecution Under the FCPA

86. [United States v. Juan Diaz \(S.D. Fla. 2009\)](#)¹⁸⁰

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.

Business Location. Haiti.

Payment.

1. **Amount of the value.** Diaz kept \$73,824 as commissions and paid \$955,028 in bribes to two Haitian officials.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Shell company.
4. **The foreign official.** Then-Director of International Relations and then-Director General of Telecommunications D'Haiti, the state-owned telecommunications company.

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.

¹⁸⁰ *U.S. v. Diaz*, 1:09-cr-20346 (S.D. Fla. 2009).

B. Foreign Bribery Criminal Prosecution Under the FCPA

85. United States v. Antonio Perez (S.D. Fla. 2009)¹⁸¹

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.

Business Location. Haiti.

Payment.

1. **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.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Shell company.
4. **The foreign official.** Then-Director of International Relations of Telecommunications D'Haiti, the state-owned telecommunications company.

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. The forfeiture will be satisfied if the United States collects from the other co-conspirators the full value of the proceeds derived from the conspiracy.

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. Diaz also forfeited his right, title, and interest in assets totaling \$1,028,852.

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.

¹⁸¹ U.S. v. Perez, No. 1:09-cr-20347 (S.D. Fla. 2009).

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)**¹⁸²

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.

Business Location. China, South Korea, Malaysia, and the United Arab Emirates.

Payment.

1. **Amount of the value.** \$4,900,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Consultants.
4. **The foreign officials.** 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).

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 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.

¹⁸² *U.S. v. Carson, et al.*, No. 09-cr-00077 (C.D. Cal. 2009).

B. Foreign Bribery Criminal Prosecution 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 14, 2012 was sentenced to 13 months' home confinement 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.

B. Foreign Bribery Criminal Prosecution Under the FCPA

83. [United States v. Latin Node, Inc. \(S.D. Fla. 2009\)](#)¹⁸³

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.

Business Location. Honduras, Yemen.

Payment.

1. **Amount of the value.** \$2,250,543.
2. **Amount of business related to the payment.** Unspecified.
3. **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.
4. **The 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.

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.

¹⁸³ *U.S. v. Latin Node, Inc.*, No. 1:09-cr-20239 (S.D. Fla. 2009).

B. Foreign Bribery Criminal Prosecution Under the FCPA

82. United States v. Jeffery Tesler and Wojciech J. Chodan (S.D. Tex. 2009)¹⁸⁴

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.

Business Location. Nigeria.

Payment.

1. **Amount of the value.** Approximately \$180 million.
2. **Amount of business related to the payment.** Approximately \$6 billion.
3. **Intermediary.** Agent.
4. **The 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.

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 was sentenced to one year of unsupervised probation and was ordered to pay a \$20,000 penalty.

¹⁸⁴ U.S. v. Tesler, et al., No. 4:09-cr-00098 (S.D. Tex. 2009).

B. Foreign Bribery Criminal Prosecution Under the FCPA

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.

B. Foreign Bribery Criminal Prosecution Under the FCPA

81. *United States v. Ousama M. Naaman* (D.D.C. 2008)¹⁸⁵

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 Adu 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.

Business Location. Iraq.

Payment.

1. **Amount of the value.** Over \$5 million in kickbacks to the Iraqi government.
2. **Amount of business related to the payment.** Approximately \$40 million in profits.
3. **Intermediary.** Agent.
4. **The foreign officials.** Ministry of Oil and unspecified Iraqi government officials.

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 OFFP, 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 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.

¹⁸⁵ *U.S. v. Naaman*, No. 1:08-cr-00246 (D.D.C. 2008).

B. Foreign Bribery Criminal Prosecution Under the FCPA

80. United States v. Kellogg Brown & Root LLC (S.D. Tex. 2009)¹⁸⁶

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.”

Business Location. Nigeria.

Payment.

1. **Amount of the value.** Approximately \$180 million.
2. **Amount of business related to the payment.** Over \$6 billion.
3. **Intermediary.** Agents.
4. **The 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.

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, who 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 it had settled its charges against Technip, one of the joint venture 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

¹⁸⁶ U.S. v. Kellogg Brown & Root LLC, No. 4:090-cr-00071 (S.D. Tex. 2009).

B. Foreign Bribery Criminal Prosecution Under the FCPA

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 \(C.D. Cal. 2009\)](#)¹⁸⁷

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.

Business Location. China, Korea, Romania, and Saudi Arabia.

Payment.

1. **Amount of the value.** \$628,000.
2. **Amount of business related to the payment.** At least \$3.5 million.
3. **Intermediary.** Agents.
4. **The 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).

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.

¹⁸⁷ *U.S. v. Morlok*, No. 09-cr-00005 (C.D. Cal. 2009).

B. Foreign Bribery Criminal Prosecution Under the FCPA

78. [United States v. Siemens Aktiengesellschaft \(D.D.C 2008\)](#)¹⁸⁸
[United States v. Siemens S.A. \(Argentina\) \(D.D.C 2008\)](#)¹⁸⁹
[United States v. Siemens Bangladesh Ltd. \(D.D.C 2008\)](#)¹⁹⁰
[United States v. Siemens S.A. \(Venezuela\) \(D.D.C 2008\)](#)¹⁹¹

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).

Business Location. Argentina, Bangladesh, Germany, Iraq, and Venezuela.

Payment.

1. **Amount of the value.** Over \$800 million.
2. **Amount of business related to the payment.** More than \$1.4 billion.
3. **Intermediary.** Business consultants, agents, and other payment intermediaries.
4. **The foreign official.** 1) unspecified Argentine government officials; 2) the Minister and other officials of the Bangladesh Ministry of Posts and Telecommunications; 3) the Director of Procurement and other officials of the state-owned Bangladesh Telegraph & Telephone Board; and 4) unspecified Venezuelan government officials.

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 Siemens Bangladesh did not need the relatives’ services for its business.

¹⁸⁸ *U.S. v. Siemens Aktiengesellschaft*, No. 08-CR-367 (D.D.C. 2008).

¹⁸⁹ *U.S. v. Siemens S.A. (Argentina)*, No. 08-CR-368 (D.D.C 2008).

¹⁹⁰ *U.S. v. Siemens Bangladesh Ltd.*, No. 08-CR-369 (D.D.C 2008).

¹⁹¹ *U.S. v. Siemens S.A. (Venezuela)*, No. 08-CR-370 (D.D.C 2008).

B. Foreign Bribery Criminal Prosecution Under the FCPA

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 Wiegler, 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 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 \(S.D. Tex. 2008\)](#)¹⁹²

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.

Business Location. Argentina, Brazil, Ecuador, Mexico, and Venezuela.

Payment.

1. **Amount of the value.** More than \$1 million.
2. **Amount of business related to the payment.** Unspecified.
3. **Intermediary.** Agents.
4. **The foreign official.** Employees of state-owned businesses.

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.

¹⁹² *U.S. v. Hioki*, No. 08-cr-795 (S.D. Tex. 2008).

B. Foreign Bribery Criminal Prosecution Under the FCPA

76. [United States v. James K. Tillery and Paul G. Novak \(S.D. Tex. 2008\)](#)¹⁹³

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”).

Business Location. Nigeria and Ecuador.

Payment.

1. **Amount of the value.** \$4.2 million.
2. **Amount of business related to the payment.** Approximately \$390 million.
3. **Intermediary.** Consultants and employees.
4. **The 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.

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 dollars 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 FCPA 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.

¹⁹³ *U.S. v. Tillery, et al.*, No. 4:08-cr-00022 (S.D. Tex. 2008).

B. Foreign Bribery Criminal Prosecution Under the FCPA

75. United States v. Aibel Group Ltd. (S.D. Tex. 2008)¹⁹⁴

Nature of the Business. Provision of engineering and procurement services and subsea construction equipment for Nigeria's first deepwater oil drilling operation.

Business Location. Nigeria.

Payment.

1. **Amount of the value.** Approximately \$2.1 million.
2. **Amount of business related to the payment.** \$10.5 million.
3. **Intermediary.** Major international freight forwarding and customs clearance company.
4. **The foreign official.** Nigerian customs officials.

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.

¹⁹⁴ *U.S. v. Aibel Grp. Ltd.*, No. 4:07-cr-00005 (S.D. Tex. 2008).

B. Foreign Bribery Criminal Prosecution Under the FCPA

74. [United States v. Fiat S.p.A., et al. \(2008\)](#)¹⁹⁵
[United States v. Iveco S.p.A. \(D.D.C. 2008\)](#)¹⁹⁶
[United States v. CNH Italia S.p.A \(D.D.C. 2008\)](#)¹⁹⁷
[United States v. CNH France S.A. \(D.D.C. 2008\)](#)¹⁹⁸

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.

Business Location. Iraq.

Payment.

1. **Amount of the value.** \$4.4 million.
2. **Amount of business related to the payment.** €46.1 million.
3. **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.
4. **The foreign official.** None.

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.

The government did not allege bribery of any individual foreign governmental officials.

¹⁹⁵ Matter resolved through deferred-prosecution agreement (December 2008).

¹⁹⁶ *U.S. v. Iveco S.p.A.*, No. 1:08-cr-00377-RJL (D.D.C. 2008).

¹⁹⁷ *U.S. v. CNH Italia S.p.A.*, No. 1:08-cr-00378-RJL (D.D.C. 2008).

¹⁹⁸ *U.S. v. CNH France S.A.*, No. 1:08-cr-00379-RJL (D.D.C. 2008).

B. Foreign Bribery Criminal Prosecution Under the FCPA

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.

B. Foreign Bribery Criminal Prosecution Under the FCPA

73. [United States v. Mario Covino \(C.D. Cal. 2008\)](#)¹⁹⁹

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, gas, and power generation industries.

Business Location. Brazil, China, India, Korea, Malaysia, and the United Arab Emirates.

Payment.

1. **Amount of the value.** \$1 million.
2. **Amount of business related to the payment.** At least \$5 million.
3. **Intermediary.** Agents.
4. **The 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).

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.

¹⁹⁹ *U.S. v. Covino*, No. 08-cr-336 (C.D. Cal. 2008).

B. Foreign Bribery Criminal Prosecution Under the FCPA

72. [United States v. Shu Quan-Sheng \(E.D. Va. 2008\)](#)²⁰⁰

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.

Business Location. China.

Payment.

1. **Amount of the value.** Approximately \$189,300.
2. **Amount of business related to the payment.** Approximately \$4 million.
3. **Intermediary.** Agent.
4. **The foreign official.** Chinese government officials with the 101st Research Institute, a research institute of the China Academy of Launch Vehicle Technology.

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 – 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 Control Export 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.

²⁰⁰ *U.S. v. Shu*, No. 2:08-cr-00194 (E.D. Va. 2008).

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)**²⁰¹

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.

Business Location. Vietnam.

Payment.

1. **Amount of the value.** At least \$150,000.
2. **Amount of business related to the payment.** At least \$500,000.
3. **Intermediary.** An unnamed company located in Hong Kong.
4. **The foreign official.** Officials from multiple Vietnamese government agencies, including Vietnam's Ministries of Transport, Industry, and Public Safety.

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.

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

²⁰¹ *U.S. v. Nguyen, et al.*, No. 2:08-cr-00522 (E.D. Pa. 2008).

B. Foreign Bribery Criminal Prosecution Under the FCPA

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 sixteen 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.

B. Foreign Bribery Criminal Prosecution Under the FCPA

70. United States v. Albert Jackson Stanley (S.D. Tex. 2008)²⁰²

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.

Business Location. Nigeria.

Payment.

1. **Amount of the value.** \$182 million.
2. **Amount of business related to the payment.** \$6 billion.
3. **Intermediary.** Two agents.
4. **The foreign official.** Officials of the Nigerian Government.

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.

²⁰² *U.S. v. Stanley*, No. 08-cr-597 (S.D. Tex. 2008).

B. Foreign Bribery Criminal Prosecution Under the FCPA

69. [United States v. Faro Technologies Inc. \(2008\)](#)²⁰³

Nature of the Business. Procurement of contracts for the sale of portable computerized measurement devices and software for the manufacturing sector.

Business Location. China.

Payment.

1. **Amount of the value.** \$533,163 paid or authorized.
2. **Amount of business related to the payment.** \$4.9 million.
3. **Intermediary.** Agent.
4. **The foreign official.** Employees of China state-owned or controlled entities.

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.

²⁰³ Matter resolved through non-prosecution agreement (June 2008).

B. Foreign Bribery Criminal Prosecution Under the FCPA

68. [United States v. AGA Medical Corp. \(D. Minn. 2008\)](#)²⁰⁴

Nature of the Business. Sale of medical devices.

Business Location. China.

Payment.

1. **Amount of the value.** At least \$480,000.
2. **Amount of business related to the payment.** \$13.5 million.
3. **Intermediary.** Chinese distributor.
4. **The foreign official.** Physicians employed at state-owned hospitals; officials of China's State Intellectual Property Office.

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.

²⁰⁴ *U.S. v. AGA Medical Corp.*, No. 0:08-cr-00172-1 (D. Minn. 2008).

B. Foreign Bribery Criminal Prosecution Under the FCPA

67. [United States v. Willbros Group, Inc., and Willbros Int'l, Inc. \(S.D. Tex. 2008\)](#)²⁰⁵

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.

Business Location. Nigeria, Ecuador, Bolivia.

Payment.

1. **Amount of the value.** Approximately \$10.8 million.
2. **Amount of business related to the payment.** Approximately \$390 million.
3. **Intermediary.** Outside consultants; direct.
4. **The foreign official.** 1) Nigerian National Petroleum Corporation (“NNPC”) officials; 2) officials of NNPC’s wholly-owned subsidiary National Petroleum Investment Management Services (“NAPIMS”); 3) officials of NNPC’s majority-owned joint venture operator, Shell Petroleum Development Company of Nigeria (“SPDC”); 4) a senior official in the Nigerian federal government; 5) officials in the dominant political party in Nigeria; and 6) officials of PetroEcuador and PetroComercial in Ecuador.

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.

²⁰⁵ *U.S. v. Willbros Grp., Inc., et al.*, No. 4:08-cr-0287 (S.D. Tex. 2008).

B. Foreign Bribery Criminal Prosecution Under the FCPA

66. [United States v. Martin Eric Self \(C.D. Cal. 2008\)](#)²⁰⁶

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.

Business Location. United Kingdom.

Payment.

1. **Amount of the value.** \$70,350.
2. **Amount of business related to the payment.** Not specified.
3. **Intermediary.** Relative of government official.
4. **The foreign official.** United Kingdom Ministry of Defense official.

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.

²⁰⁶ *U.S. v. Self*, No. 8:08-cr-00110 (C.D. Cal. 2008).

B. Foreign Bribery Criminal Prosecution Under the FCPA

65. [United States v. AB Volvo \(D.D.C. 2008\)](#)²⁰⁷
[United States v. Volvo Construction Equipment AB \(D.D.C. 2008\)](#)²⁰⁸
[United States v. Renault Trucks SAS \(D.D.C. 2008\)](#)²⁰⁹

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.

Business Location. Iraq.

Payment.

1. **Amount of the value.** \$6.1 million in kickbacks to the Iraqi government.
2. **Amount of business related to the payment.** \$13.8 million and €61 million.
3. **Intermediary.** Distributors and “bodybuilder.”
4. **The foreign official.** None.

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 onto 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 VCE 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.

See SEC Digest Number D-50.
 See Ongoing Investigations Number F-2.

²⁰⁷ *U.S. v. AB Volvo, et al.*, No. 1:08-cr-00069 (D.D.C. 2008).

²⁰⁸ *U.S. v. Volvo Const. Equip. AB*, No. 1:08-cr-00069 (D.D.C. 2008).

²⁰⁹ *U.S. v. Renault Trucks SAS*, No. 1:08-cr-00069 (D.D.C. 2008).

B. Foreign Bribery Criminal Prosecution Under the FCPA

64. [United States v. Flowserve Corp. \(D.D.C. 2008\)](#)²¹⁰ [United States v. Flowserve Pompes SAS \(D.D.C. 2008\)](#)²¹¹

Nature of the Business. Sale of pumps and other oil refinery equipment to Iraq under the U.N. Oil-for-Food Program.

Business Location. Iraq.

Payment.

1. **Amount of the value.** \$778,409 in paid or authorized kickbacks to the Iraqi government.
2. **Amount of business related to the payment.** €7,435,381.
3. **Intermediary.** Jordanian agent.
4. **The foreign official.** None.

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-98 and F-2.

²¹⁰ *U.S. v. Flowserve Corp.*, No. 1:08-00035 (D.D.C. 2008).

²¹¹ *U.S. v. Flowserve Pompes SAS*, No. 1:08-cr-00035 (D.D.C. 2008).

B. Foreign Bribery Criminal Prosecution Under the FCPA

63. [United States v. Westinghouse Air Brake Technologies Corp. \(2008\)](#)²¹²

Nature of the Business. Sales of railway equipment and scheduling inspections, product delivery certificates, and curbing tax audits.

Business Location. India.

Payment.

1. **Amount of the value.** \$170,542.
2. **Amount of business related to the payment.** \$259,000.
3. **Intermediary.** Agents.
4. **The foreign official.** Officials of the Indian Railway Board.

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.

²¹² Matter resolved through non-prosecution agreement (February 2008).

B. Foreign Bribery Criminal Prosecution Under the FCPA

62. United States v. El Paso Corp. (S.D.N.Y. 2007)²¹³

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.

Business Location. Iraq.

Payment.

1. **Amount of the value.** Approximately \$5.48 million.
2. **Amount of business related to the payment.** Approximately \$420 million in oil purchases.
3. **Intermediary.** Third-party Iraqi oil companies.
4. **The foreign official.** None.

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.

²¹³ 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 \(C.D. Cal. 2007\)](#)²¹⁴
[United States v. Juthamas Siriwan and Jittisopa Siriwan \(C.D. Cal. 2009\)](#)²¹⁵

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.”).

Business Location. Thailand.

Payment.

1. **Amount of the value.** At least \$1,800,000.
2. **Amount of business related to the payment.** At least \$14 million.
3. **Intermediary.** Daughter and friend of the Thai government official with TAT.
4. **The foreign official.** Thai government official with TAT.

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 the 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 the 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 of 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 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.

²¹⁴ *U.S. v. Green*, No. 08-00059 (C.D. Cal. 2008).

²¹⁵ *U.S. v. Siriwan*, No. 09-00081 (C.D. Cal. 2009).

B. Foreign Bribery Criminal Prosecution Under the FCPA

Related Case. *U.S. v. Siriwan* (C.D. Cal. 2009)²¹⁶

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, Jittisopa Siriwan, on charges of taking bribes, corruption, and bid rigging. A status conference in the district court has been scheduled for April 2016.

²¹⁶ *U.S. v. Siriwan, et al.*, No. 2:09-cr-00081 (C.D. Cal. 2009)

B. Foreign Bribery Criminal Prosecution Under the FCPA

60. United States v. Akzo Nobel, N.V. (2007)²¹⁷

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.

Business Location. Iraq.

Payment.

1. **Amount of the value.** Approximately \$280,000 in kickbacks to the Iraqi government.
2. **Amount of business related to the payment.** \$1,446,626.92 in profits.
3. **Intermediary.** Agents.
4. **The foreign official.** None.

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.

²¹⁷ Matter resolved through non-prosecution agreement (December 2007).

B. Foreign Bribery Criminal Prosecution Under the FCPA

59. [United States v. Chevron Corp. \(S.D.N.Y. 2007\)](#)²¹⁸

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.

Business Location. Iraq.

Payment.

1. **Amount of the value.** Approximately \$20 million in kickbacks to the Iraqi government.
2. **Amount of business related to the payment.** Unspecified.
3. **Intermediary.** Unnamed third-party intermediaries and allocation holders.
4. **The foreign official.** None.

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 Asset 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.

²¹⁸ Matter resolved through non-prosecution agreement (November 2007).

B. Foreign Bribery Criminal Prosecution Under the FCPA

58. [United States v. Lucent Technologies Inc. \(2007\)](#)²¹⁹

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.

Business Location. China.

Payment.

1. **Amount of the value.** Approximately \$7.4 million.
2. **Amount of business related to the payment.** At least \$2 billion.
3. **Intermediary.** None specified.
4. **The foreign official.** Senior level officials of the Chinese government, including heads of state-owned telecommunications companies and provincial subsidiaries.

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.

²¹⁹ Matter resolved through non-prosecution agreement (December 2007).

B. Foreign Bribery Criminal Prosecution Under the FCPA

57. [United States v. Ingersoll-Rand Co. Ltd. \(D.D.C. 2007\)](#)²²⁰
[United States v. Ingersoll-Rand Italiana SpA \(D.D.C. 2007\)](#)²²¹
[United States v. Thermo King Ireland Ltd. \(D.D.C. 2007\)](#)²²²

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.

Business Location. Iraq.

Payment.

1. **Amount of the value.** Approximately \$850,000 in kickbacks to the Iraqi government.
2. **Amount of business related to the payment.** \$2.27 million in profits.
3. **Intermediary.** Agent/Distributor.
4. **The foreign official.** Unspecified Iraqi officials.

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.

²²⁰ *U.S. v. Ingersoll-Rand Co. Ltd.*, No. 1:07-cr-00294 (D.D.C. 2007).

²²¹ *U.S. v. Ingersoll-Rand Italiana SpA*, No. 1:07-cr-00294 (D.D.C. 2007).

²²² *U.S. v. Thermo King Ir. Ltd.*, No. 1:07-cr-00296 (D.D.C. 2007).

B. Foreign Bribery Criminal Prosecution Under the FCPA

56. [United States v. York International Corp. \(D.D.C. 2007\)](#)²²³

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.

Business Location. Iraq, Bahrain, Egypt, India, Turkey and the United Arab Emirates.

Payment.

1. **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.
2. **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.
3. **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.
4. **The foreign official.** Various Bahraini, Egyptian, Indian, Turkish, and UAE government officials.

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 a \$2 million civil penalty.

See SEC Digest Number D-41.

²²³ *U.S. v. York Int'l Corp.*, No. 1:07-cr-00253 (D.D.C. 2007).

B. Foreign Bribery Criminal Prosecution Under the FCPA

55. *United States v. Paradigm B.V. (2007)*²²⁴

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.

Business Location. China, Indonesia, Kazakhstan, Mexico and Nigeria.

Payment.

1. **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.
2. **Amount of business related to the payment.** Total is not stated; \$249,290 in Kazakhstan; first contract in Mexico was \$1.48 million.
3. **Intermediary.** Frontera Holding, a British West Indies "consultant" (for Kazakhstan); Tangshan Haitai Oil Technology Consulting Co. Ltd. in China; unnamed agents for Nigeria, Indonesia.
4. **The 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.

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 & 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 Pertamina, the national oil company.

²²⁴ Matter resolved through non-prosecution agreement (September 2007).

B. Foreign Bribery Criminal Prosecution Under the FCPA

Enforcement. Paradigm agreed to pay a \$1 million penalty, implement internal controls, and cooperate fully. In a departure from previous practice the DOJ permitted the company to retain its existing external counsel as a “compliance counsel” with unspecified reporting requirements for a period of 18 months. The government agreed not to prosecute Paradigm or its subsidiaries if all conditions are met within 18 months.

B. Foreign Bribery Criminal Prosecution Under the FCPA

54. [United States v. Jason Edward Steph \(S.D. Tex. 2007\)](#)²²⁵

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.

Business Location. Nigeria.

Payment.

1. **Amount of the value.** \$6 million.
2. **Amount of business related to the payment.** Approximately \$387,500,000.
3. **Intermediary.** Outside consultants.
4. **The 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 Nigerian government.

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.

²²⁵ *U.S. v. Steph*, No. 4:07-cr-00307 (S.D. Tex. 2007).

B. Foreign Bribery Criminal Prosecution Under the FCPA

53. [United States v. Textron Inc. \(2007\)](#)²²⁶

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.

Business Location. Iraq, UAE, Bangladesh, Indonesia, Egypt, and India.

Payment.

1. **Amount of the value.** Approximately \$600,000 in Iraq; \$114,995.20 in the other countries.
2. **Amount of business related to the payment.** Profits of \$1,936,926 from Iraq, and \$328,939 from the other countries.
3. **Intermediary.** Two “consultants” for the Iraq payments, one in Lebanon and one in Jordan.
4. **The 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.

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.

²²⁶ Matter resolved through non-prosecution agreement (August 2007).

B. Foreign Bribery Criminal Prosecution Under the FCPA

52. [United States v. Steven J. Ott \(D.N.J. 2007\)](#)²²⁷
[United States v. Roger Michael Young \(D.N.J. 2007\)](#)²²⁸

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.

Business Location. Nigeria, Rwanda, and Senegal.

Payment.

1. **Amount of the value.** \$267,468.48.
2. **Amount of business related to the payment.** Unspecified.
3. **Intermediary.** Fictitious “sales representative” entity owned by ultimate recipient (Nigeria); none (Rwanda, Senegal).
4. **The foreign official.** Employees of state-owned telecommunications carriers.

Influence to be Obtained. Ott and Young helped arranged 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.

²²⁷ *U.S. v. Ott*, No. 07-cr-608 (D.N.J. 2007).

²²⁸ *U.S. v. Young*, No. 07-cr-609 (D.N.J. 2007).

B. Foreign Bribery Criminal Prosecution Under the FCPA

51. [United States v. Si Chan Wooh \(D. Or. 2007\)](#)²²⁹

Nature of the Business. Sale of scrap metal to Chinese government instrumentalities by SSI International, Inc. (“SSI”), which was until 2006 a wholly-owned U.S. subsidiary of Schnitzer Steel Industries, Inc. (“Schnitzer Steel”), a U.S. corporation.

Business Location. China.

Payment.

1. **Amount of the value.** \$204, 537.
2. **Amount of business related to the payment.** Gross revenue of \$96,396,740 and profits of \$6,259,104 from government entities.
3. **Intermediary.** None.
4. **The foreign official.** Managers of government customers.

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.

²²⁹ *U.S. v. Wooh*, No. 3:07-cr-00244 (D. Or. 2007).

B. Foreign Bribery Criminal Prosecution Under the FCPA

50. *United States v. William J. Jefferson (E.D. Va. 2007)*²³⁰

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.

Business Location. Nigeria.

Payment.

1. **Amount of the value.** \$500,000.
2. **Amount of business related to the payment.** Unspecified.
3. **Intermediary.** None.
4. **The foreign official.** High-ranking Nigerian executive government official.

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, Incorporated, 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, 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.

²³⁰ *U.S. v. Jefferson*, No: 1:07-cr-00209 (E.D. Va. 2007).

B. Foreign Bribery Criminal Prosecution Under the FCPA

49. [United States v. Leo Winston Smith \(C.D. Cal. 2007\)](#)²³¹

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.

Business Location. United Kingdom.

Payment.

1. **Amount of the value.** More than \$70,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Relative of government official.
4. **The foreign official.** United Kingdom Ministry of Defense official.

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.

²³¹ *U.S. v. Smith*, No. 8:07-cr-00069 (C.D. Cal. 2007).

B. Foreign Bribery Criminal Prosecution Under the FCPA

48. [United States v. Baker Hughes Services Int'l, Inc. \(S.D. Tex. 2007\)](#)²³² [United States v. Baker Hughes Inc. \(S.D. Tex. 2007\)](#)²³³

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.

Business Location. Kazakhstan.

Payment.

1. **Amount of the value.** Approximately \$4.1 million.
2. **Amount of business related to the payment.** Approximately \$205 million.
3. **Intermediary.** An unidentified Isle of Man-based consulting firm.
4. **The foreign official.** Officials of Kazakhoil, a state-owned entity.

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.

²³² *U.S. v. Baker Hughes Servs. Int'l, Inc.*, No. 07-cr-129 (S.D. Tex. 2007).

²³³ *U.S. v. Baker Hughes Inc.*, No. 07-cr-130 (S.D. Tex. 2007).

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. \(S.D. Tex. 2007\)](#)²³⁴

[United States v. Aibel Group Ltd. \(S.D. Tex. 2007\)](#)²³⁵

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.

Business Location. Nigeria.

Payment.

1. **Amount of the value.** Approximately \$2.1 million.
2. **Amount of business related to the payment.** None specified.
3. **Intermediary.** Major international freight forwarding and customs clearance company.
4. **The foreign official.** Nigerian customs officials.

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.

²³⁴ *U.S. v. Vetco Gray Controls Inc.*, No. 4:07-cr-00004 (S.D. Tex. 2007).

²³⁵ *U.S. v. Aibel Grp. Ltd.*, No. 4:07-cr-00005 (S.D. Tex. 2007).

B. Foreign Bribery Criminal Prosecution Under the FCPA

46. [United States v. Christian Sapsizian and Edgar Valverde Acosta \(S.D. Fla. 2006\)](#)²³⁶

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.

Business Location. Costa Rica.

Payment.

1. **Amount of the value.** At least \$2.56 million.
2. **Amount of business related to the payment.** At least \$250 million.
3. **Intermediary.** Consulting firm in Costa Rica.
4. **The foreign official.** Board member of state telecommunications authority.

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 three 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.

²³⁶ *U.S. v. Sapsizian*, No. 1:06-cr-20797 (S.D. Fla. 2006).

B. Foreign Bribery Criminal Prosecution Under the FCPA

45. [United States v. Jim Bob Brown \(S.D. Tex. 2006\)](#)²³⁷

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.

Business Location. Nigeria and Ecuador.

Payment.

1. **Amount of the value.** \$6.6 million.
2. **Amount of business related to the payment.** Revenue of \$390,500,000.
3. **Intermediary.** Outside consultants.
4. **The foreign official.** Officials of Nigerian Petroleum Corporation, Nigerian tax officials, Nigerian court officials, officials of PetroEcuador.

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.

²³⁷ *U.S. v. Brown*, No. 4:06-cr-00316 (S.D. Tex. 2006).

B. Foreign Bribery Criminal Prosecution Under the FCPA

44. [United States v. SSI Int'l Far East, Ltd. \(D. Or. 2006\)](#)²³⁸ [United States v. Schnitzer Steel Industries, Inc. \(2006\)](#)²³⁹

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.

Business Location. South Korea and China.

Payment.

1. **Amount of the value.** \$204, 537 (foreign officials) and \$1,683,672 (private parties).
2. **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.
3. **Intermediary.** None.
4. **The foreign official.** Managers of government customers.

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.

²³⁸ *U.S. v. SSI Int'l Far East, Ltd.*, No.3: 06-cr-00398 (D. Or. 2006).

²³⁹ Matter resolved through deferred prosecution agreement (October 2006).

B. Foreign Bribery Criminal Prosecution Under the FCPA

43. [United States v. Statoil ASA \(S.D.N.Y. 2006\)](#)²⁴⁰

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.

Business Location. Iran.

Payment.

1. **Amount of the value.** \$5.2 million.
2. **Amount of business related to the payment.** Undetermined.
3. **Intermediary.** Offshore intermediary company consultant.
4. **The foreign official.** Head of a subsidiary organization of the national oil company.

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.

²⁴⁰ *U.S. v. Statoil ASA*, No. 06-cr-00960 (S.D.N.Y. 2006).

B. Foreign Bribery Criminal Prosecution Under the FCPA

42. [United States v. Steven Lynwood Head \(S.D. Cal. 2006\)](#)²⁴¹

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.

Business Location. Benin.

Payment.

1. **Amount of the value.** Approximately \$2 million.
2. **Amount of business related to the payment.** Undetermined.
3. **Intermediary.** The business advisor of the President of Benin.
4. **The foreign official.** President of Benin.

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 six months imprisonment, supervised release for a term of three 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.

²⁴¹ *U.S. v. Head*, No. 06-cr-01380 (S.D. Cal. 2006).

B. Foreign Bribery Criminal Prosecution Under the FCPA

41. [United States v. Richard John Novak \(E.D. Wash. 2006\)](#)²⁴²

Nature of the Business. So-called “diploma mill” universities and Internet-based universities that were falsely accredited and sold fraudulent degrees.

Business Location. United States, Ghana and Liberia.

Payment.

1. **Amount of the value.** Between \$30,000 and \$70,000.
2. **Amount of business related to the payment.** \$2,345,326 in fraudulent products.
3. **Intermediary.** None specified.
4. **The foreign official.** Two embassy officials of Liberia, Director of National Commission of Higher Education of Liberia, and Director General of Higher Education of Liberia.

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.

²⁴² *U.S. v. Novak*, No. 05-cr-180 (E.D. Wash. 2006).

B. Foreign Bribery Criminal Prosecution Under the FCPA

40. [United States v. Faheem Mousa Salam \(D.D.C. 2006\)](#)²⁴³

Nature of the Business. A translator working for a U.S. contractor in Iraq engaged in business transactions unrelated to his employment.

Business Location. Iraq.

Payment.

1. **Amount of the value.** \$60,000.
2. **Amount of business related to the payment.** Approximately \$1,090,000.
3. **Intermediary.** None.
4. **The foreign official.** Senior Iraqi police official.

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 three years in prison followed by two years of supervised release and 250 hours of community service.

²⁴³ *U.S. v. Salam*, No. 06-cr-00157 (D.D.C. 2006).

B. Foreign Bribery Criminal Prosecution Under the FCPA

39. [United States v. Viktor Kozeny, Frederic Bourke, Jr., and David Pinkerton \(S.D.N.Y. 2005\)](#)²⁴⁴
[United States v. Hans Bodmer \(S.D.N.Y. 2003\)](#)²⁴⁵
[United States v. Omega Advisors, Inc. \(2007\)](#)²⁴⁶
[United States v. Clayton Lewis \(S.D.N.Y. 2003\)](#)²⁴⁷
[United States v. Thomas Farrell \(S.D.N.Y. 2003\)](#)²⁴⁸

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.

Business Location. The Republic of Azerbaijan.

Payment.

1. **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.
2. **Amount of business related to the payment.** Unspecified.
3. **Intermediary.** Unspecified.
4. **The foreign official.** Senior official of the government of Azerbaijan, a senior official of SOCAR, and two senior officials of the Azerbaijan’s State Property Committee.

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. 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

²⁴⁴ *U.S. v. Kozeny*, No. 05-cr-518 (S.D.N.Y. 2005).

²⁴⁵ *U.S. v. Bodmer*, No. 03-cr-947 (S.D.N.Y. 2003).

²⁴⁶ Matter resolved through non-prosecution agreement (June 2007).

²⁴⁷ *U.S. v. Lewis*, No. 03-cr-930 (S.D.N.Y. 2003).

²⁴⁸ *U.S. v. Farrell*, No. 03-cr-290 (S.D.N.Y. 2003).

B. Foreign Bribery Criminal Prosecution Under the FCPA

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 payer 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 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.

B. Foreign Bribery Criminal Prosecution Under the FCPA

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 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. *U.S. v. Hans Bodmer* (S.D.N.Y. 2003)²⁴⁹

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

²⁴⁹ *U.S. v. Bodmer*, No. 1:03-cr-00947 (S.D.N.Y. 2003)

B. Foreign Bribery Criminal Prosecution Under the FCPA

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.

Related Cases. *U.S. v. Omega Advisors, Inc.*, *U.S. 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.

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38. [United States v. DPC \(Tianjin\) Co. Ltd. \(C.D. Cal. 2005\)](#)²⁵⁰

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.

Business Location. China.

Payment.

1. **Amount of the value.** \$1.6 million.
2. **Amount of business related to the payment.** Unspecified.
3. **Intermediary.** Unknown.
4. **The foreign official.** Foreign official’s physicians and laboratory workers at government-owned hospitals.

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, 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.

²⁵⁰ *U.S. v. Diagnostic Prods. Corp.*, No. 05-cr-482 (C.D. Cal. 2005).

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37. [United States v. Yaw Osei Amoako \(D.N.J. 2005\)](#)²⁵¹

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.

Business Location. Nigeria, Rwanda, Senegal.

Payment.

1. **Amount of the value.** \$267,468.95.
2. **Amount of business related to the payment.** \$11,509,733.
3. **Intermediary.** none specified.
4. **The foreign official.** Senior officials of government-owned telephone companies.

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.

²⁵¹ *U.S. v. Amoako*, No. 3:05-cr-01122 (D.N.J. 2006).

B. Foreign Bribery Criminal Prosecution Under the FCPA

36. **United States v. Monsanto Co. (2005)**²⁵²

Nature of the Business. Cultivation of genetically modified crops in Indonesia by Monsanto Co. (“Monsanto”), a U.S. corporation.

Business Location. Indonesia.

Payment.

1. **Amount of the value.** \$50,000.
2. **Amount of business related to the payment.** Unknown.
3. **Intermediary.** An Indonesian consultant.
4. **The foreign official.** A local Indonesian government official.

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 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.

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.

²⁵² Matter resolved through non-prosecution agreement (January 2005).

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35. **United States v. InVision Technologies, Inc. (2005)**²⁵³

Nature of the Business. Sales of explosives detection products by InVision Technologies, Inc. (“InVision”), a U.S. corporation.

Business Location. Thailand, China, and the Philippines.

Payment.

1. **Amount of the value.** Approximately \$203,000.
2. **Amount of business related to the payment.** Approximately \$41,300,000.
3. **Intermediary.** Third party distributors of InVision’s products and InVision’s own sales agents.
4. **The foreign official.** Unknown.

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 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.

²⁵³ Matter resolved through non-prosecution agreement (February 2005).

B. Foreign Bribery Criminal Prosecution Under the FCPA

34. United States v. Micrus Corp. (2005)²⁵⁴

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.

Business Location. France, Turkey, Spain, and Germany.

Payment.

1. **Amount of the value.** More than \$105,000.
2. **Amount of business related to the payment.** Unknown.
3. **Intermediary.** None.
4. **The foreign official.** Physicians at state-run hospitals.

Influence to be Obtained. After conducting investigations, Micrus and 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. 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 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.

²⁵⁴ Matter resolved through non-prosecution agreement (March 2005).

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33. [United States v. Titan Corp. \(S.D. Cal. 2005\)](#)²⁵⁵

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.

Business Location. Benin.

Payment.

1. **Amount of the value.** More than \$3.5 million.
2. **Amount of business related to the payment.** Approximately \$98 million.
3. **Intermediary.** The business advisor of the President of Benin.
4. **The foreign official.** President of Benin.

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. Titan also agreed to retain an independent consultant to review and further implement its FCPA compliance procedures.

See DOJ Digest Number B-42.

See SEC Digest Number D-19.

See Parallel Litigation Digest Number H-A3.

²⁵⁵ *U.S. v. Titan Corp.*, No. 05-cr-314 (S.D. Cal. 2005).

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32. [United States v. Robert E. Thompson and James C. Reilly \(N.D. AI. 2005\)](#)²⁵⁶

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.

Business Location. Saudi Arabia.

Payment.

1. **Amount of the value.** \$2.5 million.
2. **Amount of business related to the payment.** \$50 million.
3. **Intermediary.** HealthSouth affiliate in Australia.
4. **The foreign official.** The Director General of a Saudi Arabian foundation.

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.

²⁵⁶ *U.S. v. Thompson*, No. 2:04-cr-00240 (N.D. AI. 2005).

B. Foreign Bribery Criminal Prosecution Under the FCPA

31. [United States v. ABB Vetco Gray, Inc. and ABB Vetco Gray U.K. Ltd. \(S.D. Tex. 2004\)](#)²⁵⁷

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”).

Business Location. Nigeria, Angola, and Kazakhstan.

Payment.

1. **Amount of the value.** Over \$1.1 million.
2. **Amount of business related to the payment.** At least \$5,501,157 in profits.
3. **Intermediary.** See below.
4. **The foreign official.** See below.

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 a \$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 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.

²⁵⁷ *U.S. v. ABB Vetco Gray, Inc.*, No. 4:04-cr-00279 (S.D. Tex. 2004).

B. Foreign Bribery Criminal Prosecution Under the FCPA

30. [United States v. James Giffen \(S.D.N.Y. 2003\)](#)²⁵⁸
[United States v. J. Bryan Williams \(S.D.N.Y. 2003\)](#)²⁵⁹
[United States v. The Mercator Corp. \(S.D.N.Y. 2010\)](#)²⁶⁰

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.

Business Location. Kazakhstan.

Payment.

1. **Amount of the value.** \$78 million.
2. **Amount of business related to the payment.** Millions of dollars.
3. **Intermediary.** Payments made through the accounts of foreign "shell" organizations, masked as fees to Giffen's bank, which in turn were paid to Kazakh government officials.
4. **The foreign official.** Senior Kazakh government officials.

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 certain Swiss bank accounts, including the one funding charitable projects in Kazakhstan and nine other accounts in the names of various corporate entities.

²⁵⁸ *U.S. v. Giffen*, No. 03-cr-663 (S.D.N.Y. 2003); *U.S. v. Giffen*, No. 03-cr-404 (S.D.N.Y. 2003).

²⁵⁹ *U.S. v. Williams*, No. 03-cr-406 (S.D.N.Y. 2003).

²⁶⁰ *U.S. v. The Mercator Corp.*, No. 03-cr-404 (S.D.N.Y. 2003).

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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.²⁶¹ 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 Investigation. There are press reports that in or around September 2003, the DOJ subpoenaed ChevronTexaco Corporation, BP Amoco, and Exxon Mobil in connection with its investigation of bribery schemes in oil deals in Kazakhstan.

Related Case. *U.S. v. The Mercator Corporation*²⁶²

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.

²⁶¹ *U.S. v. Approx. \$84 Million*, No. 1:07-cv-3559 (S.D.N.Y. 2007).

²⁶² *U.S. v. Mercator Corp.*, S3 03 Cr. 404 (S.D.N.Y. 2010).

B. Foreign Bribery Criminal Prosecution Under the FCPA

29. [United States v. Richard G. Pitchford \(D.D.C. 2002\)](#)²⁶³

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.

Business Location. Turkmenistan.

Payment.

1. **Amount of the value.** Approximately \$400,000.
2. **Amount of business related to the payment.** Approximately \$6 million.
3. **Intermediary.** A Pakistani citizen (in two schemes).
4. **The foreign official.** A British government official (in one scheme).

Influence to be Obtained. Assist in obtaining contracts from the Central Asia American Enterprise Fund for Turkmenistan.

Enforcement. Pitchford pled 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 three years supervised release, a fine of \$400,000, forfeiture of \$142,797.95 from bank accounts in New York and a luxury yacht, and 200 hours of community service.

²⁶³ *U.S. v. Pitchford*, No. 1:02-cr-00365 (D.D.C. 2002).

B. Foreign Bribery Criminal Prosecution Under the FCPA

28. **United States v. Syncor Taiwan, Inc. (C.D. Cal. 2002)**²⁶⁴

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.

Business Location. Taiwan.

Payment.

1. **Amount of the value.** At least \$457,117.
2. **Amount of business related to the payment.** Unspecified.
3. **Intermediary.** Payments made by Syncor Taiwan.
4. **The foreign official.** Physicians employed by hospitals owned by legal authorities in Taiwan.

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.

²⁶⁴ *U.S. v. Syncor Taiwan, Inc.*, No. 02-cr-1244 (C.D. Cal. 2002).

B. Foreign Bribery Criminal Prosecution Under the FCPA

27. [United States v. Gautam Sengupta \(D.D.C. 2002\)](#)²⁶⁵
[United States v. Ramendra Basu \(D.D.C. 2002\)](#)²⁶⁶

Nature of the Business. Securing World Bank financing for projects in Africa.

Business Location. Kenya.

Payment.

1. **Amount of the value.** \$127,000.
2. **Amount of business related to the payment.** Three contracts for World Bank development projects.
3. **Intermediary.** Swedish consultant.
4. **The foreign official.** Kenyan government official.

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 Defendant’s 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, two 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.

²⁶⁵ *U.S. v. Sengupta*, No. 02-cr-40 (D.D.C. 2002).

²⁶⁶ *U.S. v. Basu*, No. 02-cr-475 (D.D.C. 2002).

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26. United States v. David Kay and Douglas Murphy (S.D. Tex. 2002)²⁶⁷

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.

Business Location. Haiti.

Payment.

1. **Amount of the value.** The alleged bribes ranged from \$25,000 to \$72,000 and totaled more than \$528,000.
2. **Amount of business related to the payment.** The alleged bribes saved the company more than \$1.5 million dollars in Haitian import tax.
3. **Intermediary.** None.
4. **The foreign official.** Haitian customs and tax officials.

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 nexus²⁶⁸ 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. 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

²⁶⁷ *U.S. v. Kay*, No. 4:01-cr-914 (S.D. Tex. 2002).

²⁶⁸ 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.

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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 which the SEC asks that each pay \$187,000 in civil penalties, are still pending.

See SEC Digest Number D-13.

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25. [United States v. Richard K. Halford \(W.D. Mo. 2001\)](#)²⁶⁹
[United States v. Albert Franklin Reitz \(W.D. Mo. 2001\)](#)²⁷⁰
[United States v. Robert Richard King and Pablo Barquero Hernandez \(W.D. Mo. 2001\)](#)²⁷¹

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.

Business Location. Costa Rica.

Payment.

1. **Amount of the value.** Conspirators agreed to pay an unspecified total amount, which included one payment of \$1,500,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** OSI’s Costa Rican agent.
4. **The foreign official.** Costa Rican politicians, party officials and candidates for political office.

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.

1. **Amount of fine.** See below.
2. **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.

3. **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 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

²⁶⁹ *U.S. v. Halford*, No. 01-cr-221 (W.D. Mo. 2001).

²⁷⁰ *U.S. v. Reitz*, No. 01-cr-222 (W.D. Mo. 2001).

²⁷¹ *U.S. v. King*, No. 01-cr-190 (W.D. Mo. 2001).

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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.

4. **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.

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24. [United States v. Daniel Ray Rothrock \(W.D. Tex. 2001\)](#)²⁷²

Nature of the Business. Sale of approximately 20 work-over oil rigs to RVO Zarubezhneftstroy (“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.

Business Location. Russia.

Payment.

1. **Amount of the value.** \$300,000.
2. **Amount of business related to the payment.** \$5.5 million, plus other unstated amounts.
3. **Intermediary.** Trading & Business Services, Ltd.
4. **The foreign official.** Officials of the government owned purchasing agency.

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.

²⁷² *U.S. v. Rothrock*, No. 5:01-cr-00343 (W.D. Tex. 2001).

B. Foreign Bribery Criminal Prosecution Under the FCPA

23. [United States v. Joshua C. Cantor \(S.D.N.Y. 2001\)](#)²⁷³

Nature of the Business. American Bank Note Holographics (“American Bank Note”) is a Delaware corporation engaged in the origination, production and marketing of mass-produced secure holograms.

Business Location. Saudi Arabia.

Payment.

1. **Amount of the value.** \$239,000.
2. **Amount of business related to the payment.** Approximately \$597,500 (bribe was 40% of the contract’s value).
3. **Intermediary.** Foreign agent of American Bank Note.
4. **The foreign official.** Saudi Arabian government officials.

Influence to be Obtained. Awarding of contract to produce holograms for foreign government by depositing \$239,000 into a Swiss bank account.

Enforcement. Joshua Cantor, former executive vice president and general manager of American Bank Note and later its president and a director, pleaded guilty to one count of violating the FCPA. Sentencing for Joshua Cantor had been postponed three times, the last having been scheduled for December 2006. However, as of December 2012, no new information is available.

In a related action, Cantor settled with the SEC without admitting or denying the allegations in the SEC’s complaint. He consented to an order permanently enjoining him from violating 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 probation from acting as an officer or director of a public company.

See SEC Digest Number D-10.

²⁷³ *U.S. v. Cantor*, No. 01-cr-687 (S.D.N.Y. 2001).

B. Foreign Bribery Criminal Prosecution Under the FCPA

22. [United States v. Int'l Material Solutions Corp., and Thomas K. Qualey \(S.D. Ohio 1999\)](#)²⁷⁴

Nature of the Business. Sale of ten forklift trucks.

Business Location. Brazil.

Payment.

1. **Amount of the value.** \$67,563.
2. **Amount of business related to the payment.** \$392,250.
3. **Intermediary.** None.
4. **The foreign official.** Lt. Col. in the Brazilian Air Force.

Influence to be Obtained. Approval of a bid to sell ten forklift trucks.

Enforcement.

1. **Amount of fine as to Corporate Defendant.** \$500 and one year's probation.
2. **Amount of fine as to Individual Defendant.** \$2,500, three years' probation and four months' home confinement with work release.
3. **Individuals charged and their relationship with the business.** Thomas K. Qualey, president of the company.
4. **Other crimes charged.** None.

²⁷⁴ *U.S. v. Int'l Material Solutions Corp.*, No. 3:99-cr-008 (S.D. Ohio 1999).

B. Foreign Bribery Criminal Prosecution Under the FCPA

21. [United States v. Control Systems Specialist, Inc. and Darrold Richard Crites \(S.D. Ohio 1998\)](#)²⁷⁵

Nature of the Business. Purchase, repair and resale of surplus military equipment by Control Systems Specialist, Inc., an Ohio corporation and domestic concern.

Business Location. Brazil.

Payment.

1. **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”).
2. **Amount of business related to the payment.** At least 44 purchases of surplus U.S. military equipment for repair and resale to the BAC.
3. **Intermediary.** None.
4. **The foreign official.** BAF/Lt. Col. Z, who was authorized to make purchases of military equipment on behalf of the BAC.

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.

1. **Amount of fine.** Darrold Richard 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.
2. **Individuals charged and their relationship with the business.** Darrold Richard Crites, president of Control Systems Specialist, Inc.
3. **Other crimes charged.** None.

²⁷⁵ *U.S. v. Control Sys. Specialist, Inc.*, No. 3:98-cr-00073 (S.D. Ohio 1998).

B. Foreign Bribery Criminal Prosecution Under the FCPA

20. **United States v. Herbert Tannenbaum (S.D.N.Y. 1998)**²⁷⁶

Nature of the Business. Garbage incinerator manufacturer, Tanner Management Corporation (“Tanner”).

Business Location. Argentina.

Payment.

1. **Amount of the value.** \$16,000 paid to an undercover agent posing as an Argentinean government official.
2. **Amount of business related to the payment.** Not stated in information.
3. **Intermediary.** Incorporation of a fictitious entity, Cybernet U.S.A, to disguise the secret payment to the agent of the government of Argentina.
4. **The foreign official.** An undercover agent posing as a procurement officer of the government of Argentina.

Influence to be Obtained. To obtain a contract for sale of a garbage incinerator to the government of Argentina.

Enforcement.

1. **Amount of fine.** 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.
2. **Individuals charged and their relationship with the business.** Herbert Tannenbaum, president of the Tanner Management Corporation.
3. **Other crimes charged.** None.

²⁷⁶ *U.S. v. Tannenbaum*, No. 98-cr-784 (S.D.N.Y. 1998).

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19. [United States v. Saybolt North America Inc. and Saybolt Inc. \(D. Mass. 1998\)](#)²⁷⁷ [United States v. David H. Mead and Frerik Plumiers \(D.N.J. 1998\)](#)²⁷⁸

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.

Business Location. The Republic of Panama.

Payment.

1. **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.
2. **Amount of business related to the payment.** Not stated in indictment.
3. **Intermediary.** Person acting as an intermediary for senior officials of the government of the Republic of Panama.
4. **The foreign official.** Officials of the government of the Republic of Panama.

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.

1. **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 Plumiers is a fugitive.
2. **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 Plumiers, 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).
3. **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 Plumiers were charged with conspiracy to violate the FCPA, use of facility in foreign commerce in aid of racketeering, and aiding and abetting.

²⁷⁷ *U.S. v. Saybolt N. Am. Inc.*, No. 98-cr-10266 (D. Mass. 1998).

²⁷⁸ *U.S. v. Mead*, No. 98-cr-240 (D.N.J. 1998).

B. Foreign Bribery Criminal Prosecution Under the FCPA

Related Case. *Stichting Ter Behartiging Van De Belangen Van Oudaandeelhouders In Het Kapitaal Van Saybolt International B.V. (Foundation of the Former Shareholders of Saybolt International B.V.) v. Philippe S.E. Schreiber and Walter, Conston, Alexander & Green P.C.*

(S.D.N.Y. 2001) (99 Civ. 11441, Memorandum Order, Filed June 13, 2001).

See Parallel Litigation Digest Number H-A1.

B. Foreign Bribery Criminal Prosecution Under the FCPA

18. [United States v. Lockheed Corp., Allen R. Love and Suleiman A. Nassar \(N.D. Ga. 1994\)](#)²⁷⁹

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.

Business Location. Egypt.

Payment.

1. **Amount of the value.** \$600,000 for each C-130 aircraft sold to Egypt; a total of \$1 million was transferred.
2. **Amount of business related to the payment.** A \$79 million contract for three aircraft.
3. **Intermediary.** The foreign official's husband facilitated the bribe payment.
4. **The 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.

Influence to be Obtained. To obtain a contract for the sale of three C-130 Hercules aircraft to Egypt in 1989.

Enforcement.

1. **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.
2. **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.
3. **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.

²⁷⁹ *U.S. v. Lockheed Corp.*, No. 1:94-cr-00226 (N.D. Ga. 1994).

B. Foreign Bribery Criminal Prosecution Under the FCPA

17. [United States v. Vitusa Corp. \(D.N.J. 1994\)](#)²⁸⁰ [United States v. Herzberg \(D.N.J. 1994\)](#)²⁸¹

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.

Business Location. The Dominican Republic.

Payment.

1. **Amount of the value.** \$20,000.
2. **Amount of business related to the payment.** Collecting a debt of \$163,000.
3. **Intermediary.** Vitusa’s agent, Horizontes Dominicanos, a broker located in the Dominican Republic, owned and operated by Mancebo, a resident of the Dominican Republic.
4. **The 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.

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.

1. **Amount of fine.** Vitusa pled guilty to a single count violation of the FCPA, agreed to cooperate and was fined \$20,000.
2. **Individuals charged and their relationship with the business.** Herzberg, president, chief executive officer and sole stockholder of Vitusa, pled guilty to the single count of violating the FCPA, was sentenced to two years’ unsupervised probation and was fined \$5,000.
3. **Other crimes charged.** None.

²⁸⁰ *U.S. v. Vitusa Corp.*, No. 94-cr-253 (D.N.J. 1994).

²⁸¹ *U.S. v. Herzberg*, No. 94-cr-254 (D.N.J. 1994).

B. Foreign Bribery Criminal Prosecution Under the FCPA

16. **United States v. Herbert B. Steindler, Rami Dotan and Harold Katz (S.D. Ohio 1994)**²⁸²

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.

Business Location. Israel.

Payment.

1. **Amount of the value.** \$7.875 million.
2. **Amount of business related to the payment.** Contracts exceeding \$300 million.
3. **Intermediary.** 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.
4. **The foreign official.** Dotan, an Israeli Air Force (“IAF”) officer, who oversaw the purchase and maintenance of the IAF’s aircraft engines.

Influence to be Obtained. To obtain business with the Israeli government for aircraft engines and related services.

Enforcement.

1. **Amount of fine.** See below.
2. **Individuals charged and their relationship with the business.** 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.
3. **Other crimes charged.** See above.

See SEC Digest Number D-75.

²⁸² *U.S. v. Steindler*, No. 1:94-cr-29 (S.D. Ohio 1994).

B. Foreign Bribery Criminal Prosecution Under the FCPA

15. [United States v. Harris Corp., John D. Iacobucci, and Ronald I. Schultz \(N.D. Cal. 1990\)](#)²⁸³

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.

Business Location. Colombia.

Payment.

1. **Amount of the value.** \$22,845.
2. **Amount of business related to the payment.** Not stated.
3. **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.
4. **The 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.

Influence to be Obtained. To obtain telecommunications contracts from the Empresa Nacional de Telecomunicaciones, an instrumentality of the Colombian government.

Enforcement.

1. **Amount of fine.** After hearing the government’s evidence, the trial judge granted a motion for judgment of acquittal.
2. **Individuals charged and their relationship with the business.** Iacobucci, vice president of Digital Telephone, and Schultz, director of Human Relations at Digital Telephone.
3. **Other crimes charged.** Conspiracy, making false books and records and aiding and abetting.

²⁸³ *U.S. v. Harris Corp.*, No. 90-cr-0456 (N.D. Cal. 1990).

B. Foreign Bribery Criminal Prosecution Under the FCPA

14. [United States v. F.G. Mason Engineering, Inc. and Francis G. Mason \(D. Conn. 1990\)](#)²⁸⁴

Nature of the Business. Manufacture, sale, distribution and servicing of technical security countermeasure equipment (“Technical Security”), i.e., “anti-bugging” devices, by F.G. Mason Eng’g, Inc. (“Mason Engineering”), a Connecticut corporation and a domestic concern.

Business Location. Federal Republic of Germany.

Payment.

1. **Amount of the value.** 13.3% commission, an aggregate of \$225,688.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** None.
4. **The 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.

Influence to be Obtained. To be selected by MAD to develop, produce and sell a new Technical Security device, known as the MICRO-G, designed to meet the requirements of MAD and other agencies of the West German government.

Enforcement.

1. **Amount of fine.** Mason Engineering 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.
2. **Individuals charged and their relationship with the business.** Mason, president and sole stockholder of Mason Engineering, pleaded guilty to a single count of conspiracy to violate the FCPA, agreed to cooperate, was sentenced to five years’ probation and fined \$75,000 jointly with Mason Engineering.
3. **Other crimes charged.** See above.

²⁸⁴ *U.S. v. F.G. Mason Eng’g Inc.*, No. B-90-29 (D. Conn. 1990).

B. Foreign Bribery Criminal Prosecution Under the FCPA

13. [United States v. George V. Morton \(N.D. Tex. 1990\)](#)²⁸⁵
[United States v. John Blondek, Vernon R. Tull, Donald Castle and Darrell W.T. Lowry \(N.D. Tex. 1990\)](#)²⁸⁶
[United States v. Eagle Bus Manufacturing, Inc. \(S.D. Tex. 1991\)](#)²⁸⁷
[United States v. Donald Castle and Darrell W.T. Lowry \(N.D. Tex. 1990\)](#)²⁸⁸

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.

Business Location. Canada.

Payment.

1. **Amount of the value.** Canadian \$50,000, equal to 2% of price of eleven buses.
2. **Amount of business related to the payment.** Valued at \$2.77 million.
3. **Intermediary.** Morton, the Canadian agent of Eagle, used a Canadian corporation (owned and controlled by Morton) to help conceal the bribe.
4. **The foreign official.** Castle, the president, and Lowry, the vice president of the Saskatchewan Transp. Co., a Canadian Crown corporation (the “STC”).

Influence to be Obtained. To ensure that Eagle’s bid to sell eleven buses to the STC was accepted.

Enforcement.

1. **Amount of fine.** In a civil action, Eagle consented to entry of a permanent injunction prohibiting future violations of the FCPA.
2. **Individuals charged and their relationship with the business.** 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.
3. **Other crimes charged.** See above.

Issues Decided.

1. Since the FCPA excludes from prosecution foreign officials who receive bribes, these officials may not be prosecuted under the general conspiracy statute, 18 U.S.C. § 371, for conspiring to violate the FCPA.

²⁸⁵ *U.S. v. Morton*, No. 3:90-cr-061 (N.D. Tex. 1990).

²⁸⁶ *U.S. v. Blondek*, 741 F. Supp. 116 (N.D. Tex. 1990).

²⁸⁷ *U.S. v. Eagle Bus Mfg. Inc.*, No. B-91-171 (S.D. Tex. 1991).

²⁸⁸ *U.S. v. Castle*, 741 F. Supp. 116 (N.D. Tex. 1990), *aff’d*, 925 F.2d 831 (5th Cir. 1991).

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)**²⁸⁹
Abrahams v. Young & Rubicam (D. Conn. 1994)²⁹⁰

Nature of the Business. Advertising and marketing by Young & Rubicam, Inc. (“Y&R”), a New York corporation and a domestic concern.

Business Location. Jamaica.

Payment.

1. **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).
2. **Amount of business related to the payment.** \$3.75 million.
3. **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.
4. **The foreign official.** An advisor to the Jamaica Tourist Board and the Jamaican Minister of Tourism.

Influence to be Obtained. To obtain an advertising account with the Jamaica Tourist Board.

Enforcement.

1. **Amount of fine.** Y&R pled guilty to a one count information charging conspiracy to bribe a foreign official and was fined \$500,000.
2. **Individuals charged and their relationship with the business.** FCPA and RICO charges against all individuals were dismissed.
3. **Other crimes charged.** RICO violations and perjury. The various activities and payments made by Y&R and the others in the conspiracy constituted a total of 33 alleged racketeering acts.

Issues Decided.

1. A company is liable for an FCPA violation even if the bribe money is never actually paid to the foreign official as intended, but is instead kept by the intermediaries.
2. Although a violation of the anti-bribery provisions of the FCPA was not at the time a predicate act under RICO, 18 U.S.C. § 1961 *et seq.*, a violation of the bribery provisions of the FCPA can be used to allege a violation of the Travel Act, 18 U.S.C. § 1952, which is a predicate act under RICO.
3. Even a single bribe of a foreign official can satisfy the RICO requirement of a “pattern of racketeering activity” if the defendant commits a number of acts (*e.g.*, travel, use of mails, installment payments) in furtherance of the FCPA violation.
4. To have standing to bring a private cause of action under RICO, a plaintiff must have been a target of defendant’s FCPA violation. Targets include the foreign government whose officials were bribed and commercial rivals directly injured by the bribery.

See Parallel Litigation Digest Number H-C6.

²⁸⁹ *U.S. v. Young & Rubicam, Inc.*, 741 F. Supp. 334 (D. Conn. 1990).

²⁹⁰ *Abrahams v. Young & Rubicam, Inc.*, 793 F. Supp. 404 (D. Conn. 1994), *aff’d in part and rev’d in part*, 79 F.3d 234 (2d Cir. 1996).

B. Foreign Bribery Criminal Prosecution Under the FCPA

11. [United States v. Joaquin Pou, Alfredo G. Duran and Jose Guarsch \(S.D. Fla. 1989\)](#)²⁹¹

Nature of the Business. Florida company, a domestic concern, engaged in business of recovering seized aircraft.

Business Location. Dominican Republic.

Payment.

1. **Amount of the value.** \$20,000-\$30,000.
2. **Intermediary.** Alfredo Duran, Miami lawyer, General Joaquin Pou (Dominican Republic Army, retired) and his Miami agent, Jose Guarsch.
3. **The foreign official.** Dominican Republic officials.

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.

²⁹¹ *U.S. v. Pou*, No. 1:89-cr-00802 (S.D. Fla. 1989).

B. Foreign Bribery Criminal Prosecution Under the FCPA

10. *United States v. Goodyear Int'l Corp. (D.D.C. 1989)*²⁹²

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.

Business Location. Iraq.

Payment.

1. **Amount of the value.** \$981,124, a 7% payment on sale of tires.
2. **Amount of business related to the payment.** \$10 million in business.
3. **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.
4. **The 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.

Influence to be Obtained. To influence the Iraqi government to buy Goodyear's car and truck tires.

Enforcement.

1. **Amount of fine.** Goodyear pled guilty to the single count of violating the FCPA bribery section and was fined \$250,000.
2. **Individuals charged and their relationship with the business.** None.
3. **Other crimes charged.** None.

²⁹² *U.S. v. Goodyear Int'l Corp.*, No. 89-cr-0156 (D.D.C. 1989).

B. Foreign Bribery Criminal Prosecution Under the FCPA

9. [United States v. Napco Int'l, Inc. and Venturian Corp. \(D. Minn. 1989\)](#)²⁹³
[United States v. Richard H. Liebo \(D. Minn. 1989\)](#)²⁹⁴
[United States v. Richard H. Liebo 1308 \(8th Cir. 1991\)](#)²⁹⁵

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.

Business Location. Republic of Niger.

Payment.

1. **Amount of the value.** \$130,813.83, equaling 10% of the net revenues on contracts.
2. **Amount of business related to the payment.** \$3.2 million in contracts.
3. **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.
4. **The 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.

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.

1. **Amount of fine.** The companies pleaded guilty to a three-count information, including one count charging bribery of a foreign official, and were fined \$785,000 in the aggregate.
2. **Individuals charged and their relationship with the business.** In a related case, Liebo, vice president of the Aerospace Division of Napco, 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.
3. **Other crimes charged.** Multi-object conspiracy to defraud the U.S. and preparation of a false tax return. The companies paid \$140,000 for settlement of civil liability and \$75,000 for settlement of civil tax liabilities.

Issues Decided.

1. A payment, gift or gratuity is given “corruptly” under the FCPA if it is intended to induce the recipient to misuse his official position to influence official action.
2. A jury may find that an employee did not act “corruptly” in giving a gift to a foreign official if the evidence shows that the employee acted at his supervisor’s direction.

See DOJ Parallel Litigation Digest Number H-C3.

²⁹³ *U.S. v. NAPCO Int'l, Inc.*, No. 4-89-65 (D. Minn. 1989).

²⁹⁴ *U.S. v. Liebo*, No. 4-89-76 (D. Minn. 1989).

²⁹⁵ *U.S. v. Liebo*, 923 F.2d, 1308 (8th Cir. 1991).

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 \(E.D. La. 1985\)](#)²⁹⁶

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.

Business Location. Mexico.

Payment.

1. **Amount of the value.** \$132,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** None.
4. **The foreign official.** Mexican officials at the Comisión Federal de Electricidad, a Mexican government agency.

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.

1. **Amount of fine.** 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.
2. **Individuals charged and their relationship with the business.** 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.
3. **Other crimes charged.** None.

²⁹⁶ *U.S. v. Silicon Contractors, Inc., et al.*, No. 85-cr-00251 (E.D. La. 1985).

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)²⁹⁷

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.

Business Location. Nigeria.

Payment.

1. **Amount of the value.** \$1.7 million, 20% of the contract value.
2. **Amount of business related to the payment.** \$10.8 million contract.
3. **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.
4. **The 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.

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.

1. **Amount of fine.** Kirkpatrick pled guilty to the single count of bribery under the FCPA and was fined \$75,000, to be paid over a five-year period.
2. **Individuals charged and their relationship with the business.** Carpenter, former chairman of the board and chief executive officer of Kirkpatrick, pled 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.
3. **Other crimes charged.** None.

See Parallel Litigation Digest Number H-C3.

²⁹⁷ U.S. v. W.S. Kirkpatrick & Co., et al., No. 85-cr-00353 (D.N.J. 1985).

B. Foreign Bribery Criminal Prosecution Under the FCPA

6. [United States v. Applied Process Products Overseas, Inc. \(D.D.C. 1983\)](#)²⁹⁸ [United States v. Gary D. Bateman \(D.D.C. 1983\)](#)²⁹⁹

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.

Business Location. Mexico.

Payment.

1. **Amount of the value.** \$342,000 (representing 30% of Applied’s gross profit derived from Pemex contracts).
2. **Amount of business related to the payment.** \$5 million in purchase orders from Pemex.
3. **Intermediary.** None.
4. **The foreign official.** The Administrative Secretary to the Chief of Purchasing at Pemex and other Pemex officials.

Influence to be Obtained. To obtain and retain contracts from Pemex for compression-related equipment and spare parts.

Enforcement.

1. **Amount of fine.** 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.
2. **Individuals charged and their relationship with the business.**
3. **Other crimes charged.** 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.

²⁹⁸ *U.S. v. Applied Process Prods. Overseas, Inc.*, No. 83-cr-00004 (D.D.C. 1983).

²⁹⁹ *U.S. v. Bateman*, No. 83-cr-00005 (D.D.C. 1983).

B. Foreign Bribery Criminal Prosecution Under the FCPA

5. [United States v. Int'l Harvester Co. \(S.D. Tex. 1982\)](#)³⁰⁰
[United States v. McLean \(5th Cir. 1984\)](#)³⁰¹
[McLean v. Int'l Harvester Co. \(5th Cir. 1987\)](#)³⁰²

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.

Business Location. Mexico.

Payment.

1. **Amount of the value.** 5% of each Pemex purchase order, a total of \$9.9 million.
2. **Amount of business related to the payment.** \$112 million in contracts.
3. **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.
4. **The 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.

Influence to be Obtained. To obtain from Pemex purchase orders for turbine compression systems and related equipment for Solar and Crawford.

Enforcement.

1. **Amount of fine.** Harvester pled guilty to a single count of conspiracy to violate the FCPA, was fined \$10,000, and paid prosecution costs of \$40,000.
2. **Individuals charged and their relationship with the business.** 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.
3. **Other crimes charged.** See above.

Issues Decided.

1. An employee may not be prosecuted under the FCPA for acts committed for his corporate employer's benefit if the employer has only been convicted for conspiracy to violate the FCPA, not for a substantive violation of the FCPA itself.

³⁰⁰ *U.S. v. Int'l Harvester Co.* (now known as Navistar International Company), No. 82-cr-00244 (S.D. Tex., Nov. 1982); *U.S. v. Luis Uriarte*, No. 82-cr-00224 (S.D. Tex. 1982).

³⁰¹ *U.S. v. McLean*, 738 F.2d 655 (5th Cir. 1984), *cert. denied*, 470 U.S. 1050 (1985).

³⁰² *McLean v. Int'l Harvester Co.*, 817 F.2d 1214 (5th Cir. 1987).

B. Foreign Bribery Criminal Prosecution Under the FCPA

4. United States v. Ruston Gas Turbines, Inc. (S.D. Tex. 1982)³⁰³

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.

Business Location. Mexico.

Payment.

1. **Amount of the value.** 5% of the contract price, plus \$200,000.
2. **Amount of business related to the payment.** Ruston and other companies involved received \$225 million in purchase orders from Pemex.
3. **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.
4. **The 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.

Influence to be Obtained. To obtain purchase orders from Pemex for turbine compression systems and related equipment for Ruston and Crawford.

Enforcement.

1. **Amount of fine.** Ruston pled guilty to one count charging a bribery violation of the FCPA and was fined \$750,000.
2. **Individuals charged and their relationship with the business.** Eyster, president of Ruston, and Smith, vice president of Ruston. Both pled no contest and were fined \$5,000 each.
3. **Other crimes charged.** None.

³⁰³ U.S. v. Ruston Gas Turbines, Inc., No. 82-cr-00207 (S.D. Tex.1982); U.S. v. Al Lee Eyster, et al., No. 82-cr-00224 (S.D. Tex. 1982).

B. Foreign Bribery Criminal Prosecution Under the FCPA

3. [United States v. C.E. Miller Corp. and Charles E. Miller \(C.D. Cal. 1982\)](#)³⁰⁴ [United States v. Marquis D. King \(D.D.C. 1983\)](#)³⁰⁵

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.

Business Location. Mexico.

Payment.

1. **Amount of the value.** 5% of each Pemex purchase order.
2. **Amount of business related to the payment.** \$79 million in process fabrication subcontracts from Pemex.
3. **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.
4. **The 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.

Influence to be Obtained. To obtain purchase orders from Pemex for turbine compression systems and related equipment for C.E. Miller and Crawford.

Enforcement.

1. **Amount of fine.** C.E. Miller pled guilty to one count of an FCPA bribery violation and was fined \$20,000.
2. **Individuals charged and their relationship with the business.** 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.
3. **Other crimes charged.** Aiding and abetting Crawford by assisting in the computation of bids with the knowledge that 5% of the purchase order value would be paid to officials of Pemex. 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.

³⁰⁴ *U.S. v. C.E. Miller Corp.*, No. 82-cr-788 (C.D. Cal. 1982).

³⁰⁵ *U.S. v. King*, No. 83-cr-00020 (D.D.C. 1983).

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 \(S.D. Tex. 1982\)](#)³⁰⁶

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.

Business Location. Mexico.

Payment.

1. **Amount of the value.** 4.5% of each Pemex purchase order in which Crawford was involved. Total of \$9.9 million.
2. **Amount of business related to the payment.** Crawford, and other companies involved, received \$225 million in purchase orders from Pemex.
3. **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.
4. **The 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.

Influence to be Obtained. To obtain purchase orders from Pemex for turbine compression systems and related equipment.

Enforcement.

1. **Amount of fine.** 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.
2. **Individuals charged and their relationship with the business.** 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.
3. **Other crimes charged.** Conspiracy and aiding and abetting.

³⁰⁶ *U.S. v. Crawford Enters., Inc., et al.*, No. 82-cr-00224 (S.D. Tex. 1982).

B. Foreign Bribery Criminal Prosecution Under the FCPA

1. United States v. Finbar B. Kenny and Kenny Int'l Corp. (D.D.C. 1979)³⁰⁷

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.

Business Location. The Cook Islands.

Payment.

1. **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.
2. **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).
3. **Intermediary.** Shell corporations were created to transfer the funds.
4. **The foreign official.** Sir Albert Henry and The Cook Islands Party (the then-majority political party in The Cook Islands Legislative Assembly).

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.

1. **Amount of fine.** 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.
2. **Individuals charged and their relationship with the business.**
3. **Other crimes charged.** 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 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.

³⁰⁷ *U.S. v. Kenny Int'l Corp.*, No. 79-cr-00372 (D.D.C. 1979); *U.S. v. Kenny*, No. 79-cv-02038 (D.D.C. 1979).



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 \(D. Ma. 1999\)](#)³⁰⁸

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.

³⁰⁸ *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)³⁰⁹

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.

³⁰⁹ *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 \(D. Minn. 1990\)](#)³¹⁰

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.

³¹⁰ *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. \(D.P.R. 1983\)](#)³¹¹ [United States v. Alfonso A. Rodriguez \(D.P.R. 1983\)](#)³¹²

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.

³¹¹ *U.S. v. Sam P. Wallace Co.*, No. 83-cr-0034 (D.P.R. 1983).

³¹² *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)³¹³

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.

³¹³ *U.S. v. Carver* (S.D. Fla. 1979).



D. SEC Actions Relating to Foreign Bribery

D. SEC Actions Relating to Foreign Bribery

166. [In the Matter of General Cable Corporation \(2016\)](#)³¹⁴ [In the Matter of Karl J. Zimmer \(2016\)](#)³¹⁵

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.

Business Location. Angola, Thailand, China, Indonesia, Bangladesh, and Egypt.

Payment.

1. **Amount of the value.** Approximately \$19 million.
2. **Amount of business related to the payment.** Approximately \$51 million.
3. **Intermediary.** Third-party agents; Distributors.
4. **The foreign official.** Unnamed employees and officials from state-owned entities in Angola, Thailand, Indonesia, Bangladesh, China, and Egypt.

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 Ongoing Investigation Number F-74.

³¹⁴ *In the Matter of General Cable Corporation*, Admin. Proc. File No. 3-17755 (Dec. 29, 2016).

³¹⁵ *In the Matter of Karl J. Zimmer*, Admin. Proc. File No. 3-17756 (Dec. 29, 2016).

D. SEC Actions Relating to Foreign Bribery

165. SEC v. Teva Pharmaceutical Industries Ltd. (S.D. Fla. 2016)³¹⁶

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.

Business Location. Russia, Ukraine, and Mexico.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Approximately \$214 million.
3. **Intermediary.** Third-party distributors.
4. **The foreign official.** An unnamed Russian government official; An unnamed Ukrainian government official; Doctors employed by Mexican state-owned health facilities.

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 obtain or retain 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 Ongoing Investigation Number F-21.

See Parallel Litigation Digest Number H-D14.

³¹⁶ SEC v. Teva Pharmaceutical Industries Ltd., No. 1:16-cv-25298 (S.D. Fla. 2016).

D. SEC Actions Relating to Foreign Bribery

164. SEC v. Braskem, S.A. (D.D.C. 2016)³¹⁷

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.

Business Location. Brazil.

Payment.

1. **Amount of the value.** Approximately \$250 million.
2. **Amount of business related to the payment.** Approximately \$325 million.
3. **Intermediary.** Offshore shell companies.
4. **The foreign official.** An official from the Brazilian state-owned oil company, Petrobras; Multiple unnamed Brazilian legislators.

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 allegedly 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 Ongoing Investigation Number F-108.

³¹⁷ SEC v. Braskem, S.A., No. 1:16-cv-02488 (D.D.C. 2016).

D. SEC Actions Relating to Foreign Bribery

163. In the Matter of JP Morgan Chase & Co. (2016)³¹⁸

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.

Business Location. China.

Payment.

1. **Amount of the value.** More than \$100 million in revenue.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** None.
4. **The foreign official.** Unnamed employees and executives from Chinese state-owned enterprises.

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 20 different Chinese state-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. 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-51.

³¹⁸ *In the Matter of JP Morgan Chase & Co.*, Admin. Pro. File No. 3-17684 (Nov. 17, 2016).

D. SEC Actions Relating to Foreign Bribery

162. SEC v. Embraer, S.A. (S.D. Fla. 2016)³¹⁹

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.

Business Location. Dominican Republic, Saudi Arabia, Mozambique, India.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** \$83,248,291.
3. **Intermediary.** Local agents/consultants; Shell companies.
4. **The 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.

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 airforce. 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

³¹⁹ SEC v. Embraer, S.A., No. 0:16-cv-062501 (S.D. Fla. 2016).

D. SEC Actions Relating to Foreign Bribery

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 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.

See Ongoing Investigation Number F-16.

D. SEC Actions Relating to Foreign Bribery

161. In the Matter of GlaxoSmithKline plc (2016)³²⁰

Nature of the Business. GlaxoSmithKline plc (“GSK”), headquartered in Middlesex, United Kingdom, is a global provider of pharmaceutical and consumer health products with operations in at least 150 countries, including China. GSK’s common stock is registered with the SEC under Section 12(b) of the Securities Exchange Act and trades on the New York Stock Exchange.

Business Location. China.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Joint Venture, Subsidiary Company.
4. **The foreign official.** Employees of Chinese state-owned and state-controlled healthcare facilities.

Influence to be Obtained. According to the SEC, from at least 2010 until June 2013, employees of GSK’s Chinese subsidiary, GlaxoSmithKline (China) Investment Co Ltd (“GSKCI”), and a public-private joint venture called Sino-American Tianjin Smith Kline & French Laboratories Ltd (“TSKF”), of which GSK owned a 55% interest, engaged in a scheme to improperly influence Chinese foreign officials in exchange for increased pharmaceutical sales. Specifically, employees of GSKCI and TSKF allegedly made payments to employees of Chinese state-owned and state-controlled healthcare facilities by way of gifts, improper travel, entertainment with little educational purpose, shopping excursions, family and home visits, and cash. The SEC claims that the costs associated with these payments were recorded in GSK’s books and records as legitimate expenses, such as medical association sponsorships, employee expenses, conferences, speaker fees, and marketing costs.

The SEC also alleges that the improper practices were pervasive at GSKCI and TSKF and were condoned by regional and district managers. Moreover, local internal audits and compliance reviews allegedly identified controls deficiencies concerning GSKCI and TSKF’s sales and promotional practices, but the results of these internal audits and reviews were allegedly treated as isolated incidents rather than signs of a larger problem.

Enforcement. On September 30, 2016, the SEC announced that it had settled an enforcement action against GSK for violations of the FCPA’s books-and-records and internal controls provisions. According to the cease-and-desist order, GSK agreed to pay a total sanction of \$20 million. The DOJ separately informed GSK that it had concluded its investigation into the matter and would decline to take further action against the company.

See Ongoing Investigation Number F-2.

³²⁰ *In the Matter of GlaxoSmithKline plc*, Admin. Proc. File No. 3-17606 (Sept. 30, 2016).

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 \(2016\)](#)³²¹

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.

Business Location. Chad, Libya, Niger, Guinea, and the Democratic Republic of the Congo.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Customs Broker or Agent/Consultant, Joint Venture, Sales Agent/Consultant, Subsidiary Company.
4. **The foreign official.** Unnamed government officials from Chad, the Democratic Republic of the Congo, Guinea, Libya, and Niger.

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

³²¹ *In the Matter of Och-Ziff Capital Management Group, OZ Management LP, Daniel S. Och, and Joel M. Frank*, Admin. Proc. File No. 3-17595 (Sept. 29, 2016).

D. SEC Actions Relating to Foreign Bribery

million of those funds to a local consultant who then used them to bribe government officials in Guinea. According to the SEC, Och-Ziff failed to conduct sufficient due diligence on the use of those funds to prevent the payment of bribes.

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-61.
See Parallel Litigation Digest Number H-F26.

D. SEC Actions Relating to Foreign Bribery

159. [In the Matter of Anheuser-Busch InBev SA/NV \(2016\)](#)³²²

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").

Business Location. India.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Joint Venture, Sales Agent/Consultant.
4. **The foreign official.** Unnamed Indian government officials.

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 ("IIPL") that was managed by Crown. During this period, IIPL allegedly invoiced Crown for reimbursement of certain promotional expenses without proper documentation, but Crown paid the invoices nevertheless and expenses as legitimate promotional expenses. The SEC claims that IIPL 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 IIPL'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 IIPL 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 Securities 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.

See Ongoing Investigation Number F-57.

³²² *In the Matter of Anheuser-Busch InBev SA/NV*, Admin. Proc. File No. 3-17586 (Sept. 28, 2016).

D. SEC Actions Relating to Foreign Bribery

158. [In the Matter of Nu Skin Enterprises, Inc. \(2016\)](#)³²³

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.

Business Location. China.

Payment.

1. **Amount of the value.** RMB 1 million (approximately \$154,000).
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Not stated.
4. **The foreign official.** High ranking Chinese Communist Party official and representatives of a provincial Chinese enforcement authority.

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.

See Ongoing Investigation Number F-82.

³²³ *In the Matter of Nu Skin Enterprises, Inc.*, Admin. Proc. File No. 3-17556 (Sept. 20, 2016).

D. SEC Actions Relating to Foreign Bribery

157. [In the Matter of Jun Ping Zhang \(2016\)](#)³²⁴

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.

Business Location. China.

Payment.

1. **Amount of the value.** Approximately \$200,000 to \$1 million.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Not stated.
4. **The foreign official.** Unnamed Chinese foreign officials.

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 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.

See Ongoing Investigation Number F-30.

³²⁴ *In the Matter of Jun Ping Zhang*, Admin. Proc. File No. 3-17535 (Sept. 12, 2016).

D. SEC Actions Relating to Foreign Bribery

156. In the Matter of AstraZeneca PLC (2016)³²⁵

Nature of the Business. AstraZeneca 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.

Business Location. China, Russia.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Not stated.
4. **The foreign official.** Unnamed government officials, including health care providers at state-owned and state-controlled entities in China and Russia.

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.

See Ongoing Investigation Number F-4.

³²⁵ *In the Matter of AstraZeneca PLC*, Admin. Proc. File No. 3-17517 (Aug. 30, 2016).

D. SEC Actions Relating to Foreign Bribery

155. [In the Matter of Key Energy Services, Inc. \(2016\)](#)³²⁶

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.

Business Location. Mexico.

Payment.

1. **Amount of the value.** \$229,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Customs Broker or Agent/Consultant.
4. **The foreign official.** Contract employee at the Mexican state-owned oil company, Petróleos Mexicanos ("Pemex").

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.

See Ongoing Investigations Number F-70.

³²⁶ *In the Matter of Key Energy Services, Inc.*, Admin. Proc. File No. 3-17379 (Aug. 11, 2016).

D. SEC Actions Relating to Foreign Bribery

154. [In the Matter of Johnson Controls, Inc. \(2016\)](#)³²⁷

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.

Business Location. China.

Payment.

1. **Amount of the value.** \$4.9 million.
2. **Amount of business related to the payment.** \$11.8 million.
3. **Intermediary.** Subsidiary Company.
4. **The foreign official.** Unnamed Chinese foreign officials.

Influence to be Obtained. According to the SEC, beginning in 2007, a pair of Johnson Controls' wholly-owned Chinese subsidiaries ("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.

See Ongoing Investigation Number F-69.

³²⁷ *In the Matter of Johnson Controls, Inc.*, Admin. Proc. File No. 3-17337 (July 11, 2016).

D. SEC Actions Relating to Foreign Bribery

153. In the Matter of Analogic Corporation and Lars Frost (2016)³²⁸

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 served as BK Medical's CFO from 2008 until 2011.

Business Location. Russia, Ghana, Israel, Kazakhstan, Russia, Ukraine, and Vietnam.

Payment.

1. **Amount of the value.** Approximately \$20 million.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Subcontractor.
4. **The foreign official.** Unnamed foreign officials.

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. The DOJ and SEC separately settled enforcement actions against Analogic and BK Medical, causing the companies to pay approximately \$15 million in sanctions.

See DOJ Digest Number B-168.
See Ongoing Investigation Number F-40.

³²⁸ *In the Matter of Analogic Corporation and Lars Frost*, Admin. Proc. File No. 3-17305 (June 21, 2016).

D. SEC Actions Relating to Foreign Bribery

152. SEC v. Nortek, Inc. (2016)³²⁹

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.

Business Location. China.

Payment.

1. **Amount of the value.** Approximately \$290,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Chinese subsidiary.
4. **The foreign official.** Unnamed Chinese foreign officials.

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 5 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.

See Ongoing Investigation Number F-78.

³²⁹ Matter resolved through non-prosecution agreement (July 2016).

D. SEC Actions Relating to Foreign Bribery

151. SEC v. Akamai Technologies, Inc. (2016)³³⁰

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.

Business Location. China.

Payment.

1. **Amount of the value.** Approximately \$187,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Chinese subsidiary; third-party channel partner.
4. **The foreign official.** Unnamed Chinese foreign officials.

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. The alleged bribes constituted cash, expensive gifts, and entertainment totaling approximately \$155,000.

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.

See Ongoing Investigation Number F-81.

³³⁰ Matter resolved through non-prosecution agreement (July 2016).

D. SEC Actions Relating to Foreign Bribery

150. [In the Matter of Las Vegas Sands Corp. \(2016\)](#)³³¹

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.

Business Location. China.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Local consultant.
4. **The foreign official.** Unnamed Chinese foreign officials.

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 state-owned ferry company and a shipping company that was indirectly controlled by the Consultant and the chairman of another state-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-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 Ongoing Investigation Number F-17.

See Parallel Litigation Digest Numbers H-D16 and H-F16.

³³¹ *In the Matter of Las Vegas Sands Corp.*, Admin. Pro. File No. 3-17204 (Apr. 7, 2016).

D. SEC Actions Relating to Foreign Bribery

149. [In the Matter of Novartis AG \(2016\)](#)³³²

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.

Business Location. China.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Subsidiaries, Third-party agents.
4. **The foreign official.** Chinese healthcare professionals.

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.

³³² *In the Matter of Novartis AG*, Admin. Pro. File No. 3-17177 (Mar. 23, 2016).

D. SEC Actions Relating to Foreign Bribery

148. [In the Matter of Nordion \(Canada\) Inc. \(2016\)](#)³³³ [In the Matter of Mikhail Gourevitch \(2016\)](#)³³⁴

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.

Business Location. Russia.

Payment.

1. **Amount of the value.** \$235,043.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Local agent.
4. **The foreign official.** Unnamed Russian government official.

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 procure 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 budgets estimates before they were reviewed by Nordion. In total, the SEC claims that Nordion paid the Agent \$235,043 from 2005 to 2011 for purposes of obtaining 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 DOJ separately declined to bring charges against Nordion.

See Ongoing Investigation Number F-26.

³³³ *In the Matter of Nordion (Canada) Inc.*, Admin. Pro. File No. 3-17153 (Mar. 3, 2016).

³³⁴ *In the Matter of Mikhail Gourevitch*, Admin. Pro. File No. 3-17152 (Mar. 3, 2016).

D. SEC Actions Relating to Foreign Bribery

147. In the Matter of Qualcomm Incorporated (2016)³³⁵

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.

Business Location. China.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** None.
4. **The foreign official.** Various unnamed Chinese government officials and executives from Chinese state-owned enterprises.

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 specifically 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.

See Ongoing Investigation Number F-23.

³³⁵ *In the Matter of Qualcomm Incorporated*, Admin. Pro. File No. 3-17145 (Mar. 1, 2016).

D. SEC Actions Relating to Foreign Bribery

146. SEC v. VimpelCom Ltd (S.D.N.Y. 2016)³³⁶

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.

Business Location. Uzbekistan.

Payment.

1. **Amount of the value.** Approximately \$114 million.
2. **Amount of business related to the payment.** More than \$2.5 billion.
3. **Intermediary.** Shell company; local subsidiary.
4. **The foreign official.** Unnamed Uzbek government official and close relative of a high-ranking Uzbek government official, with significant influence over Uzbek telecommunication authorities.

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-64.

See Parallel Litigation Digest Numbers H-A21 and H-H3.

³³⁶SEC v. VimpelCom Ltd, No. 1:16-cv-01266 (S.D.N.Y. 2016).

D. SEC Actions Relating to Foreign Bribery

145. [In the Matter of PTC Inc. \(2016\)](#)³³⁷ [SEC v. Yu Kai Yuan \(2016\)](#)³³⁸

Nature of the Business. PTC Inc. (formerly Parametric Technology Company) is a Massachusetts corporation with its headquarters in Needham, Massachusetts. PTC 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").

Business Location. China.

Payment.

1. **Amount of the value.** Approximately \$1.5 million
2. **Amount of business related to the payment.** Approximately \$ 11.8 million.
3. **Intermediary.** Chinese subsidiaries; Third-party business partners.
4. **The foreign official.** Employees of state-owned entities in 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.
See Ongoing Investigation Number F-13.

³³⁷ *In the Matter of PTC Inc.*, Admin. Pro. File No. 3-17118 (Feb. 16, 2016).

³³⁸ Matter resolved through deferred prosecution agreement (February 2016).

D. SEC Actions Relating to Foreign Bribery

144. [In the Matter of SciClone Pharmaceuticals, Inc. \(2016\)](#)³³⁹

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. SciClone's products are primarily marketed and sold in China.

Business Location. China.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Chinese subsidiary; Local consultant.
4. **The foreign official.** Health care providers ("HCPs") at state-owned hospitals in China and other foreign officials 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 Ongoing Investigation Number F-7.

See Parallel Litigation Digest Number H-A12.

³³⁹ *In the Matter of SciClone Pharmaceuticals, Inc.*, Admin. Pro. File No. 3-17101 (Feb. 4, 2016).

D. SEC Actions Relating to Foreign Bribery

143. [In the Matter of Ignacio Cueto Plaza \(2016\)](#)³⁴⁰ [In the Matter of LAN Airlines S.A. \(2016\)](#)³⁴¹

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.

Business Location. Argentina.

Payment.

1. **Amount of the value.** Approximately \$1.15 million.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Local agent.
4. **The foreign official.** Unnamed officials from Argentine labor unions.

Influence to be Obtained. According to the SEC's cease-and-desist order, in 2006 and 2007, Cueto 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 and LAN understood would never occur. To execute the scheme, Cueto 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. As stated in the SEC's cease-and-desist order, Cueto 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.

³⁴⁰ *In the Matter of Ignacio Cueto Plaza*, Admin. Pro. File No. 2-17100 (Feb. 4, 2016).

³⁴¹ *In the Matter of LAN Airlines S.A.*, Admin Pro. File No. 3-17357 (July 25, 2016).

D. SEC Actions Relating to Foreign Bribery

142. In the Matter of Standard Bank Plc³⁴²

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.

Business Location. Tanzania.

Payment.

1. **Amount of the value.** \$6 million.
2. **Amount of business related to the payment.** \$8.4 million.
3. **Intermediary.** Local partner.
4. **The foreign official.** Not specified.

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 percent 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 percent 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” later became known as 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 percent (\$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 Stanbic were accused of using the 1 percent 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 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.

³⁴² *In the Matter of Standard Bank Plc*, Admin. Proc. File No. 3-16973 (Nov. 20, 2015).

D. SEC Actions Relating to Foreign Bribery

141. [In the Matter of Bristol-Myers Squibb Company \(2015\)](#)³⁴³

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.

Business Location. China.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Local subsidiary.
4. **The foreign official.** Health care providers (“HCPs”) at state-owned and state-controlled hospitals in China.

Influence to be Obtained. According to the SEC, between 2009 and 2014, BMS employees of a local Chinese subsidiary engaged in the regular practice of offering cash payments, gifts, meals, travel, entertainment, and sponsorships for conferences and meetings to various HCPs of state-owned and state-controlled Chinese hospitals in exchange for increased sales. To execute these transactions, the SEC alleges that BMS employees regularly submitted false or altered reimbursement invoices and receipts to secure the funds to facilitate the improper payments. The SEC claims that BMS 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, 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.

³⁴³ *In the Matter of Bristol-Myers Squibb Co.*, Admin. Pro. File No. 3-16881 (Oct. 5, 2015).

D. SEC Actions Relating to Foreign Bribery

140. In the Matter of Hyperdynamics Corporation (2015)³⁴⁴

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.

Business Location. Guinea.

Payment.

1. **Amount of the value.** \$130,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Consultant/Shell Company.
4. **The foreign official.** Not stated.

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, BMS 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.

³⁴⁴ *In the Matter of Hyperdynamics Corp.*, Admin. Pro. File No. 3-16843 (Sept. 29, 2015).

D. SEC Actions Relating to Foreign Bribery

139. SEC v. Hitachi, Ltd. (2015)³⁴⁵

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.

Business Location. South Africa.

Payment.

1. **Amount of the value.** \$10.5 million.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Shell entity.
4. **The foreign official.** African National Congress.

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. To do so, Hitachi sold 25 percent 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 as part of the arrangement, Chancellor agreed to use its political connections to steer procurement contracts to HPA in exchange for a success fee (in addition to its 25 percent 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 as a result of Chancellor’s efforts—jointly worth approximately \$5 billion. According to the SEC, HPA paid a \$1.1 million success fee to Chancellor for the award of the two contracts. Further, in 2012, HPA issued a dividend worth approximately \$5 million and later repurchased Chancellor’s 25 percent equity stake for \$4.4 million. In total, the SEC claims that HPA paid Chancellor \$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 arrangement. In exchange for settling the SEC’s charges, Hitachi agreed to pay a \$19 million civil penalty.

³⁴⁵ SEC v. Hitachi, Ltd., 1:15-cv-01572 (D.D.C. 2015).

D. SEC Actions Relating to Foreign Bribery

138. [In the Matter of The Bank of New York Mellon Corporation \(2015\)](#)³⁴⁶

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.

Business Location. Middle East.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** None.
4. **The foreign official.** Officials from a sovereign wealth fund recognized as a governmental body of an unnamed Middle Eastern country.

Influence to be Obtained. According to the SEC, a Middle East sovereign wealth fund (the “Middle East Sovereign Wealth Fund”), a government body 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 Middle East Sovereign Wealth 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 Middle East Sovereign Wealth Fund to manage. The second official, a senior official in the European office of the Middle East Sovereign Wealth 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 this 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 Middle East Sovereign Wealth 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 intern 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, 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-51.

³⁴⁶ *In the Matter of The Bank of New York Mellon Corp.*, Admin. Pro. File No. 3-16762 (Aug. 18, 2015).

D. SEC Actions Relating to Foreign Bribery

137. [In the Matter of Vicente E. Garcia \(2015\)](#)³⁴⁷ [In the Matter of SAP SE \(2016\)](#)³⁴⁸

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 SAP and was responsible for SAP's sales in Latin America.

Business Location. Panama.

Payment.

1. **Amount of the value.** \$145,000.
2. **Amount of business related to the payment.** \$3.7 million.
3. **Intermediary.** Agent/Consultant.
4. **The foreign official.** Senior government officials of the Republic of Panama.

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 percent 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.

³⁴⁷ *In the Matter of Vicente E. Garcia*, Admin. Proc. File No. 3-16750 (Aug. 12, 2015).

³⁴⁸ *In the Matter of SAP SE*, Admin Pro. File No. 3-17080 (2016).

D. SEC Actions Relating to Foreign Bribery

136. In the Matter of Mead Johnson Nutrition Company (2015)³⁴⁹

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.

Business Location. China.

Payment.

1. **Amount of the value.** \$2,070,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Sales Agent/Consultant, Subsidiary.
4. **The foreign official.** Health care professionals at state-owned hospitals in China.

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 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 August 18, 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.

³⁴⁹ *In the Matter of Mead Johnson Nutrition Co.*, Admin. Pro. File No. 3-16704 (Jul. 28, 2015).

D. SEC Actions Relating to Foreign Bribery

135. In the Matter of BHP Billiton Ltd. and BHP Billiton Plc (2015)³⁵⁰

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.

Business Location. China.

Payment.

1. **Amount of the value.** Not Stated.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** None.
4. **The 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.

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 who received invitations despite their close relationship to BHP business interests.

According to the SEC, BHP did not require the applications 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.

³⁵⁰ *In the Matter of BHP Billiton Ltd. & BHP Billiton Plc*, Admin. Pro. File No. 3-16546 (May 20, 2015).

D. SEC Actions Relating to Foreign Bribery

134. In the Matter of Goodyear Tire & Rubber Company (2015)³⁵¹

Nature of the Business. The Goodyear Tire & Rubber Company is an Akron, Ohio based tire manufacturer with facilities in 22 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.

Business Location. Angola; Kenya.

Payment.

1. **Amount of the value.** \$3,200,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Subsidiaries.
4. **The foreign official.** Employees of various Kenyan government-owned or affiliated entities; Kenyan local city council members, police, and tax authorities; Employees of various Angolan government-owned or affiliated entities; Angolan police and tax authorities.

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 a 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 15, 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.

³⁵¹ *In the Matter of Goodyear Tire & Rubber Co.*, Admin. Pro. File No. 3-16400 (Feb. 24, 2015).

D. SEC Actions Relating to Foreign Bribery

133. SEC v. PBSJ Corporation (2015)³⁵² In the Matter of Waleed Hatoum (2015)³⁵³

Nature of the Business. PBSJ Corporation (“PBSJ”) 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 in time 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 is a former employee and President of PBS&J Int’l.

Business Location. Qatar.

Payment.

1. **Amount of the value.** \$1,390,000.
2. **Amount of business related to the payment.** \$60,600,000.
3. **Intermediary.** Local subcontractor.
4. **The foreign official.** Director of International Projects at Qatari Diar Real Estate Investment Company.

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 (“Foreign Official”). According to the SEC, as part of the arrangement, Hatoum planned to use the Local Partner as a conduit to funnel bribes to the Foreign Official, 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 Foreign Official’s wife, who worked for the Local Partner. In exchange, the Foreign Official allegedly provided PBS&J Int’l confidential bid information to assist PBS&J Int’l win both contracts.

While the SEC contends that the PBSJ officials who oversaw the bid process were never aware of the scheme, the SEC claims that the officials ignored significant red-flags, including the fact that PBS&J Int’l was being given confidential bid information; the fact that Hatoum described Foreign Official as a good friend; and the fact that a PBS&J Int’l officer 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 Foreign Official’s role as a Qatari Diar official and owner of 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 and, as a result, also caused violations of the FCPA’s books-and-records and internal controls provisions. As part of the settlement, Hatoum agreed to pay a civil penalty of \$50,000. As part of a separate enforcement action, the SEC settled charges against PBS&J through a DPA where PBS&J agreed to pay a \$3,407,875 sanction.

³⁵² Matter resolved through deferred prosecution agreement (January 2015).

³⁵³ *In the Matter of Walid Hatoum*, Admin. Pro. File No. 3-16352 (Jan. 22, 2015).

D. SEC Actions Relating to Foreign Bribery

132. SEC v. Avon Products Inc. (S.D.N.Y. 2014)³⁵⁴

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.

Business Location. China.

Payment.

1. **Amount of the value.** Approximately \$8 million.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Consultant.
4. **The foreign official.** Unspecified Chinese government officials.

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. On one occasion, the SEC claims that Avon China paid several thousands of dollars to a newspaper editor to avoid the publication of an article criticizing the Company's recruitment practices in China.

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 DOJ 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. According to an SEC press release, Avon agreed to pay approximately \$67 million in penalties including \$52,850,00 in disgorgement and \$14,515,013.13 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 and to retain an independent compliance monitor for an 18-month period.

See DOJ Digest Number B-156.

See Parallel Litigation Digest Numbers H-A13, H-B2, H-F13.

³⁵⁴ SEC v. Avon Products Inc., No. 14-cv-9956 (S.D.N.Y. 2014).

D. SEC Actions Relating to Foreign Bribery

131. In the Matter of Bruker Corporation (2014)³⁵⁵

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 (e.g., infrared spectrometers and microscopes). The company maintains a class of common stock registered on the NASDAQ exchange.

Business Location. China.

Payment.

1. **Amount of the value.** \$230,938.
2. **Amount of business related to the payment.** Profits of approximately 1.7 million.
3. **Intermediary.** None.
4. **The foreign official.** Employees of Chinese state-owned entities.

Influence to be Obtained. According to a 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 17 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.

³⁵⁵ *In the Matter of Bruker Corp.*, Admin. Pro. File No. 3-16314 (Dec. 15, 2014).

D. SEC Actions Relating to Foreign Bribery

130. [In the Matter of Stephen Timms and Yasser Ramahi \(2014\)](#)³⁵⁶ [In the Matter of FLIR Systems, Inc. \(2015\)](#)³⁵⁷

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.

Business Location. Egypt; Saudi Arabia.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** \$14.1 million.
3. **Intermediary.** None.
4. **The foreign official.** Saudi Arabian Ministry of Interior officials; Egyptian Ministry of Defense officials.

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 in the future.

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 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

³⁵⁶ *In the Matter of Stephen Timms & Yasser Ramahi*, Admin. Pro. File No. 3-16281 (Nov. 17, 2014).

³⁵⁷ *In the Matter of FLIR Systems, Inc.*, Admin. Pro. File No. 3-16478 (Apr. 8, 2015).

D. SEC Actions Relating to Foreign Bribery

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 SEC 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. \(2014\)](#)³⁵⁸

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.

Business Location. Russia, Thailand, Vietnam.

Payment.

1. **Amount of the value.** Approximately \$7.5 million.
2. **Amount of business related to the payment.** Approximately \$35.1 million.
3. **Intermediary.** Sales Agent/Consultant.
4. **The foreign official.** Russian Ministry of Health officials; Government officials in Thailand; Officials at government-owned hospitals and laboratories in Vietnam.

Influence to be Obtained. According to a 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 were 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 for 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 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 \$14.3 million criminal penalty.

See DOJ Digest Numbers B-154.

See Parallel Litigation Digest Number H-D13, H-F28 and H-F17.

³⁵⁸ *In the Matter of Bio-Rad Labs., Inc.*, Admin. Pro. File No. 3-16231 (Nov. 3, 2014).

D. SEC Actions Relating to Foreign Bribery

128. In the Matter of Layne Christensen Company³⁵⁹

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.

Business Location. Burkina Faso, Democratic Republic of Congo, Guinea, Mali, Mauritania, Tanzania.

Payment.

1. **Amount of the value.** \$1,503,186.
2. **Amount of business related to the payment.** Approximately \$3.9 million.
3. **Intermediary.** Subsidiaries; Customs brokers/agents; Local lawyers.
4. **The 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.

Influence to be Obtained. Between 2005 and 2010, 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 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.

³⁵⁹ *In the Matter of Layne Christensen*, Admin. Pro. File No. 3-16216 (Oct. 27, 2014).

D. SEC Actions Relating to Foreign Bribery

127. In the Matter of Smith & Wesson Holding Corporation (2014)³⁶⁰

Nature of the Business. Smith & Wesson Holding Corporation (“Smith & Wesson”) 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 maintains a class of publicly traded securities on the NASDAQ Stock Exchange.

Business Location. Bangladesh, Indonesia, Nepal, Pakistan, Turkey.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** \$107,852.
3. **Intermediary.** Sales Agent/Consultant.
4. **The foreign official.** Pakistani police officials; Indonesian police officials; Turkish police and military officials; Undisclosed “foreign officials” in Nepal and Bangladesh.

Influence to be Obtained. From 2007 to 2010, in an effort to increase Smith & Wesson’s international sales, the SEC accuses the company of authorizing employees and other third-party agents to bribe foreign government officials in exchange for contracts to sell firearms.

According to the SEC, 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 worth of 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 \$2,034,892 in disgorgement, prejudgment interest, and civil penalties.

³⁶⁰ *In the Matter of Smith & Wesson Holding Corp.*, Admin. Pro. File No. 3-15986 (Jul. 28, 2014).

D. SEC Actions Relating to Foreign Bribery

126. In the Matter of Hewlett-Packard Company (2014)³⁶¹

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, Russia, Poland, and Mexico. HP Co. manufactures personal computers, printers, and software and provides related information services.

Business Location. Russia, Poland, Mexico.

Payment.

1. **Amount of the value.** Approximately \$3.6 million.
2. **Amount of business related to the payment.** Approximately \$29 million.
3. **Intermediary.** Consultants and subsidiaries.
4. **The 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.

Influence to be Obtained. 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, HP Russia is accused of having funneled more than €21 million through the German agent to Russian officials, earning more than \$10.4 million in illicit profits.

In Poland, officials from Hewlett-Packard Polska, SP. Z O.O. (“HP Poland”) invited a Polish official (the “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 by 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. Around this time, HP officials are accused of giving the Polish Official bags of cash totaling more than \$600,000. The SEC argues that in exchange for these bribes, HP Poland was awarded several contracts valued at approximately \$32 million.

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.

³⁶¹ *In the Matter of Hewlett-Packard Co.*, Admin. Pro. File No. 3-15832 (Apr. 9, 2014).

D. SEC Actions Relating to Foreign Bribery

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. In the cease-and-desist order, 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 \$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)³⁶²

Nature of the Business. Alcoa 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).

Business Location. Bahrain.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Sales Agent/Consultant.
4. **The 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.

Influence to be Obtained. Between 1989 and 2009, two Alcoa subsidiaries—Alcoa of Australia (“AofA”) 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 Alba. 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. In the filing, 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.

³⁶² *In the Matter of Alcoa Inc.*, Admin. Pro. File No. 3-15673 (Jan. 9, 2014).

D. SEC Actions Relating to Foreign Bribery

124. SEC v. Archer Daniels Midland Company (C.D. Ill. 2013)³⁶³

Nature of the Business. Archer Daniels Midland Company (“ADM”), a Delaware corporation headquartered in Illinois, manufactures, processes, and sells agricultural commodities.

Business Location. Ukraine.

Payment.

1. **Amount of the value.** \$22 million.
2. **Amount of business related to the payment.** \$100 million.
3. **Intermediary.** Insurance company, third party vendor.
4. **The foreign official.** Ukrainian government officials.

Influence to be Obtained. According to the SEC’s Complaint, ADM’s subsidiaries in the Ukraine 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.

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.

³⁶³ SEC v. Archer-Daniels-Midland Co., No. 13-cv-2279 (C.D. Ill. 2013).

D. SEC Actions Relating to Foreign Bribery

123. SEC v. Weatherford International Ltd. (S.D. Tex. 2013)³⁶⁴

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.

Business Location. Angola, Algeria, Albania, Iraq.

Payment.

1. **Amount of the value.** Approximately \$14.2 million.
2. **Amount of business related to the payment.** Profits of approximately \$59.3 million.
3. **Intermediary.** Subsidiary companies; third-party distributors; third-party agents; joint ventures.
4. **The 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.

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 Oil Tool Middle East Limited ("WOTME"), a wholly-owned subsidiary of Weatherford, retained a Swiss freight-forwarding and logistics services company (the "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, pursuant to which WOTME 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, another subsidiary of Weatherford was told that if they formed a joint venture with Sonangol chosen companies they would obtain 100 percent 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, 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. 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 distributor.

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 apparently legitimate business purpose.

In Albania, from 2001 to 2006, Weatherford's Italian subsidiary "WEMESPA" 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 two members of Albania's National Petroleum Agency.

³⁶⁴ SEC v. *Weatherford Int'l Ltd.*, No. 4:13-cv-03500 (S.D. Tex. 2013).

D. SEC Actions Relating to Foreign Bribery

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 \$1.85 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 Weatherford subsidiary Weatherford Services Ltd. 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)³⁶⁵

Nature of the Business. Stryker Corporation, a Michigan corporation with its principal offices in Michigan, manufactures and distributes medical devices and products worldwide.

Business Location. Argentina, Greece, Mexico, Poland, Romania.

Payment.

1. **Amount of the value.** \$2.2 million.
2. **Amount of business related to the payment.** \$7.5 million.
3. **Intermediary.** Mexican law firm.
4. **The foreign official.** Employees at Mexican social security agency; directors of public hospitals in Poland and Greece; physicians employed by public hospitals in Romania and Argentina.

Influence to be Obtained. According to the findings in the SEC's order (which Stryker did not admit or deny), 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 made approximately \$960,000 in illicit payments to state health administrators, often in the form of travel and entertainment benefits.

In Mexico, Stryker paid state health officials a total of \$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 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.

³⁶⁵ *In Matter of Stryker Corp.*, Admin. Pro. File No. 3-15587 (Oct. 24, 2013).

D. SEC Actions Relating to Foreign Bribery

121. SEC v. Diebold, Inc. (D.D.C. 2013)³⁶⁶

Nature of the Business. Diebold, Inc., an Ohio company, is a global provider of automated teller machines and bank security systems.

Business Location. China, Indonesia, Russia.

Payment.

1. **Amount of the value.** \$1.747 million.
2. **Amount of business related to the payment.** \$281 million.
3. **Intermediary.** Third parties designated by state-owned banks, distributors.
4. **The foreign official.** Employees and officials of state-owned banks in China and Indonesia (also employees of private banks in Russia).

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.

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.

³⁶⁶ SEC v. Diebold, Inc., No. 1:13-cv-01609 (D.D.C. 2013).

D. SEC Actions Relating to Foreign Bribery

120. In the Matter of Total S.A. (2013)³⁶⁷

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.

Business Location. Iran.

Payment.

1. **Amount of the value.** Approximately \$60 million.
2. **Amount of business related to the payment.** Approximately \$150 million.
3. **Intermediary.** Unnamed third parties designated by the foreign official.
4. **The 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.

Influence to be Obtained. Beginning in 1995, to secure a contract to develop oil fields in southern Iran, Total met with an Iranian government official who headed a subsidiary of NIOC. 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 and 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.

³⁶⁷ *In the Matter of Total S.A.*, Admin. Pro. File No. 3-15338 (May 29, 2013).

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 Chinae, and Joseph DeMeneses (S.D.N.Y. 2013)³⁶⁸

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 Chinae and Joseph Demeneses are both senior executives at DAP’s New York headquarters.

Business Location. Venezuela.

Payment.

1. **Amount of the value.** \$9 million.
2. **Amount of business related to the payment.** \$66 million.
3. **Intermediary.** Shell entity.
4. **The foreign official.** Maria de los Angeles Gonzalez de Hernandez (“Gonzalez”), a senior official at BANDES.

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. Chinae 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, Chinae, 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 Chinae 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, Chinae, and DeMeneses, were each permanently enjoined from violating Section 10(b) of the Exchange Act. Furthermore, Clarke, Hurtado, Lujan, Chinae, 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 deemed satisfied by the amounts forfeited in the parallel criminal cases against the defendants.

See DOJ Digest Number B-142.

³⁶⁸ SEC v. Clarke, et al., No. 13-cv-3074 (S.D.N.Y. 2013).

D. SEC Actions Relating to Foreign Bribery

118. SEC v. Ralph Lauren Corporation (2013)³⁶⁹

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.

Business Location. Argentina.

Payment.

1. **Amount of the value.** \$538,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Customs broker.
4. **The foreign official.** Argentine customs officials and other government officials.

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 a \$734,845 civil penalty. 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.

³⁶⁹ 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)³⁷⁰

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.

Business Location. Nigeria, Mexico.

Payment.

1. **Amount of the value.** \$1.25 million.
2. **Amount of business related to the payment.** Saved \$3.05 million in fines.
3. **Intermediary.** Nigerian agent, U.S. law firm.
4. **The 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.”

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 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 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.

³⁷⁰ SEC v. Parker Drilling Co., No. 1:13-cv-461 (E.D. Va. 2013).

D. SEC Actions Relating to Foreign Bribery

116. In the Matter of Koninklijke Philips Electronics N.V. (2013)³⁷¹

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”).

Business Location. Poland.

Payment.

1. **Amount of the value.** Not stated (usually between three to eight percent of the value of the contracts awarded to Philips for the purchase of medical equipment).
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Third party agent.
4. **The foreign official.** Public officials of Polish healthcare facilities.

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 made the actual decision of 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.

³⁷¹ *In the Matter of Koninklijke Philips Elecs. N.V.*, Admin. Pro. File No. 3-15265 (April 5, 2013).

D. SEC Actions Relating to Foreign Bribery

115. SEC v. Eli Lilly and Company (D.D.C. 2012)³⁷²

Nature of the Business. Eli Lilly and Company, an Indiana corporation, is a pharmaceutical manufacturer that markets products in over 143 countries.

Business Location. China, Brazil, Poland, Russia.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Subsidiary companies; third-party distributors.
4. **The 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.

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 a government official, 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.

³⁷² SEC v. Eli Lilly & Co., No. 1:12-cv-02045 (D.D.C. 2012).

D. SEC Actions Relating to Foreign Bribery

114. In the Matter of Allianz SE (2012)³⁷³

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.

Business Location. Indonesia.

Payment.

1. **Amount of the value.** Approximately \$650,626.
2. **Amount of business related to the payment.** Profits of approximately \$5.3 million.
3. **Intermediary.** Subsidiary company.
4. **The foreign official.** Various Indonesian government officials.

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 associated with 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, by 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.

³⁷³ *In the Matter of Allianz SE*, Admin. Pro. File. No. 3-15132 (Dec. 13, 2012).

D. SEC Actions Relating to Foreign Bribery

113. SEC v. Tyco International Ltd. (D.D.C. 2012)³⁷⁴

Nature of the Business. Tyco International, Ltd. (“Tyco”), a Swiss company, manufactures and sells products related to security, fire protection, and energy.

Business Location. China, Congo, Croatia, India, Indonesia, Iran, Laos, Libya, Madagascar, Malaysia, Mauritania, Niger, Saudi Arabia, Serbia, Syria, Thailand, Turkey, United Arab Emirates, Poland, Vietnam, Georgia.

Payment.

1. **Amount of the value.** Approximately \$5 million.
2. **Amount of business related to the payment.** Approximately \$ 10.6 million.
3. **Intermediary.** Joint ventures; subsidiary companies; agents.
4. **The 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.

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 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,” and “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.

³⁷⁴ SEC v. Tyco Int’l Ltd., No. 1:12-cv-01583 (D.D.C. 2012).

D. SEC Actions Relating to Foreign Bribery

112. SEC v. Oracle Corporation (N.D. Cal. 2012)³⁷⁵

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.

Business Location. India.

Payment.

1. **Amount of the value.** Approximately \$2.2 million in Oracle India revenues were set aside as a “side fund” from which to pay bribes to Indian government officials.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Subsidiary company, local distributors.
4. **The foreign official.** Not stated.

Influence to be Obtained. According to the SEC 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 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 16, 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.

³⁷⁵ SEC v. Oracle Corp., No. 3:12-cv-04310 (N.D. Cal. 2012).

D. SEC Actions Relating to Foreign Bribery

111. SEC v. Pfizer Inc. (D.D.C. 2012)³⁷⁶

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.

Business Location. Bulgaria, Croatia, China, Czech Republic, Italy, Kazakhstan, Russia.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Subsidiary company; third-party agents.
4. **The foreign official.** Officials and publicly employed doctors in Bulgaria, Croatia, Kazakhstan, and Russia.

Influence to be Obtained. According to court documents, 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 and 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 television, mobile phones, photocopiers, 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 were 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 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.

³⁷⁶ SEC v. Pfizer Inc., No. 1:12-cv-01303 (D.D.C. 2012).

D. SEC Actions Relating to Foreign Bribery

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.

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)³⁷⁷

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. As part of its global pharmaceutical business, Wyeth allegedly made improper payments and gifts to physicians and other employees at state-owned hospitals and to a Saudi Arabian customs official.

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 wholly unrelated to the conduct alleged by the SEC in this action.

Business Location. China, Indonesia, Pakistan, Saudi Arabia.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Approximately \$17,217,831.
3. **Intermediary.** Distributor; subsidiary company.
4. **The foreign official.** Employees (including doctors) at state-owned hospitals in China, Indonesia, and Pakistan; Saudi Arabian customs official.

Influence to be Obtained. According to a complaint filed by the SEC, Wyeth 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; however, 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

³⁷⁷ SEC v. Wyeth LLC, No. 1:12-cv-01304 (D.D.C. 2012).

D. SEC Actions Relating to Foreign Bribery

auditor identified questionable reimbursement submissions, Wyeth Pakistan employees began generating 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)³⁷⁸

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, 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 is publicly traded on the NASDAQ stock exchange

Business Location. Mexico.

Payment.

1. **Amount of the value.** Approximately \$300,000.
2. **Amount of business related to the payment.** Gross revenues of \$8.7 million and net profits of approximately \$4.9 million.
3. **Intermediary.** Subsidiary company.
4. **The foreign official.** Employees of state-owned hospitals; officials from the Mexican state social-services agency, the Instituto Mexicano del Seguro Social ("IMSS").

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 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 three-year deferred prosecution agreement with the DOJ, under which it agreed to pay a \$2.22 million penalty.

See DOJ Digest Number B-133.

See Ongoing Investigation Number F-65.

³⁷⁸ SEC v. Orthofix Int'l N.V., No. 4:12-cv-00419 (E.D. Tex. 2012).

D. SEC Actions Relating to Foreign Bribery

108. SEC v. Garth Peterson (E.D.N.Y. 2012)³⁷⁹

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.

Business Location. China.

Payment.

1. **Amount of the value.** Approximately \$2.8 million.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Shell entity.
4. **The 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.

Influence to be Obtained. According to the SEC's complaint, from at least 2004 to 2007, Peterson secretly acquired millions of dollars' worth of 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 paid to himself and the Chinese Official at least \$1.8 million in what he misrepresented 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 to obtain business while personally benefitting from some of these same investments.

In 2004, MSRE was negotiating to purchase a tower 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). Peterson also consented to an administrative order by the SEC that permanently bars him 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.

³⁷⁹ SEC v. Peterson, No. 1:12-cv-00224 (E.D.N.Y. 2012).

D. SEC Actions Relating to Foreign Bribery

107. SEC v. Biomet, Inc. (D.D.C. 2012)³⁸⁰

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.

Business Location. Argentina, Brazil, China.

Payment.

1. **Amount of the value.** \$1.536 million.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Subsidiary companies, third party distributors.
4. **The foreign official.** Health care providers employed by publicly owned and operated hospitals in Argentina, Brazil, and China.

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 complaint, employees of Biomet Argentina SA paid kickbacks ranging from 15 to 20 percent of each sale to doctors in Argentina. Invoices were created used to justify the payments, which were 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 18 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 monetary penalty of \$17.28 million and to retain an independent corporate compliance monitor for a minimum period of 18 months and self-monitoring and reporting for the remainder of the DPA period.

See DOJ Digest Number B-130.
See Ongoing Investigation Numbers F-72.

³⁸⁰ SEC v. Biomet, Inc., No. 1:12-cv-00454 (D.D.C. 2012).

D. SEC Actions Relating to Foreign Bribery

106. SEC v. Mark A. Jackson and James J. Ruehlen (S.D. Tex. 2012)³⁸¹ SEC v. Thomas O'Rourke (S.D. Tex. 2012)³⁸²

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.

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.

Business Location. Nigeria.

Payment.

1. **Amount of the value.** Not stated.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Subsidiary company; customs agent.
4. **The foreign official.** Nigerian customs officials.

Influence to be Obtained. According to the SEC complaint filed against Jackson and Ruehlen, from 2003-2007, Jackson and Ruehlen allegedly bribed Nigeria Customs Service ("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.

Between 2003 and 2007, Noble-Nigeria operated oil rigs offshore in Nigeria pursuant to one-year TIPs granted by NCS. 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.

Enforcement. 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 made corruptly and were not facilitation payments, but 3) the SEC did not plausibly allege facts that support the allegation that granting the *TIPS extensions* were a matter of discretion (and thus potentially excluded from the definition of "facilitation payments").

³⁸¹ SEC v. Jackson, et al., No. 4:12-cv-00563 (S.D. Tex. 2012).

³⁸² SEC v. O'Rourke, No. 4:12-cv-00564 (S.D. Tex. 2012).

D. SEC Actions Relating to Foreign Bribery

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 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.

D. SEC Actions Relating to Foreign Bribery

105. SEC v. Smith & Nephew plc (D.D.C. 2012)³⁸³

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.

Business Location. Greece

Payment.

1. **Amount of the value.** \$9.4 million.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Shell entity; subsidiary company.
4. **The foreign official.** Healthcare providers and doctors employed by publicly-owned Greek hospitals.

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.

³⁸³ SEC v. *Smith & Nephew plc*, No. 1:12-cv-00187 (D.D.C. 2012).

D. SEC Actions Relating to Foreign Bribery

104. [SEC v. Magyar Telekom, Plc. and Deutsche Telekom, AG \(S.D.N.Y. 2011\)](#)³⁸⁴ [SEC v. Elek Straub, Andras Balogh, and Tamas Morvai \(S.D.N.Y. 2011\)](#)³⁸⁵

Nature of the Business. Magyar Telekom, Plc. (“Magyar Telekom”) is the largest telecommunications company in Hungary. 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.

Business Location. Macedonia, Montenegro.

Payment.

1. **Amount of the value.** €12,225,000.
2. **Amount of business related to the payment.** Unspecified.
3. **Intermediary.** Shell companies and a third-party intermediary.
4. **The foreign official.** Macedonia and Montenegrin government officials.

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 telecommunications services provider in Montenegro. The Government of Montenegro sold its 51% stake to Magyar Telekom through 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.

³⁸⁴ *SEC v. Magyar Telekom, Plc., et al.*, No. 11-cv-09646 (S.D.N.Y. 2011).

³⁸⁵ *SEC v. Straub, et al.*, No. 11-cv-09645 (S.D.N.Y. 2011).

D. SEC Actions Relating to Foreign Bribery

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, 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 Macedonian 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 is currently scheduled to begin in May 2017.

See DOJ Digest Number D-126.

D. SEC Actions Relating to Foreign Bribery

103. SEC v. Aon Corporation (D.D.C 2011)³⁸⁶

Nature of the Business. Aon Corporation is a Delaware corporation that provides risk management services, insurance, and reinsurance brokerage worldwide.

Business Location. Bangladesh, Costa Rica, Egypt, Indonesia, Myanmar, United Arab Emirates, Vietnam.

Payment.

1. **Amount of the value.** 3,600,000.
2. **Amount of business related to the payment.** 11,416,814 in profits.
3. **Intermediary.** A tourism company associated with a Costa Rican government official; the son of a high-ranking government official in Bangladesh; third-party facilitators.
4. **The 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; unidentified individuals associated with Vietnam Airlines; unidentified Indonesian government officials; a senior manager at Myanmar Insurance, a government-owned entity; the son of a high-ranking government official in Bangladesh.

Influence to be Obtained. The SEC alleged that, from as early as 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 pay a 1.764 million penalty.

See DOJ Digest Number D-125.

³⁸⁶ SEC v. Aon Corp., 1:11-cv-02256 (D.D.C. 2011).

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)³⁸⁷

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. 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.

Business Location. Argentina.

Payment.

1. **Amount of the value.** Approximately \$100 million.
2. **Amount of business related to the payment.** Approximately \$1 billion.
3. **Intermediary.** Business consultants and agents, shell companies.
4. **The foreign official.** Argentine government officials.

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 aiding and abetting 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 ordered by the Public Prosecutor General in Munich, Germany.

³⁸⁷ SEC v. Sharef, et al., No. 11-cv-09073 (S.D.N.Y. 2011).

D. SEC Actions Relating to Foreign Bribery

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.

D. SEC Actions Relating to Foreign Bribery

101. In the Matter of Watts Water Technologies, Inc. and Leesen Chang (2011)³⁸⁸

Nature of the Business. Watts Water Technologies, Inc. (“Watts”) is a Delaware corporation that designs, manufactures, and sells water valves and related products.

Business Location. China.

Payment.

1. **Amount of the value.** Unknown.
2. **Amount of business related to the payment.** Approximately \$2.7 million.
3. **Intermediary.** Local subsidiary.
4. **The foreign official.** Employees of design institutes owned by the Chinese government.

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.

³⁸⁸ *In the Matter of Watts Water Techs., Inc. & Leesen Chang*, Admin. Pro. File No. 3-14585 (Oct. 13, 2011).

D. SEC Actions Relating to Foreign Bribery

100. In the Matter of Diageo plc (2011)³⁸⁹

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.

Business Location. India, South Korea, Thailand.

Payment.

1. **Amount of the value.** Over \$2.7 million.
2. **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.
3. **Intermediary.** Third-party distributors, third-party sales promoters.
4. **The 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.

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.

³⁸⁹ *In the Matter of Diageo plc*, Admin Pro. File No. 3-14490 (July 27, 2011).

D. SEC Actions Relating to Foreign Bribery

99. SEC v. Armor Holdings, Inc. (2011)³⁹⁰

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.

Business Location. Indonesia, Iraq.

Payment.

1. **Amount of the value.** Approximately \$4,594,028.
2. **Amount of business related to the payment.** More than \$7.1 million in revenues and more than \$1.5 million in profits.
3. **Intermediary.** Sales Agent/Consultant.
4. **The foreign official.** Officials at the United Nations.

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.

³⁹⁰ SEC v. *Armor Holdings, Inc.*, 1:11-cv-01271 (D.D.C. 2011).

D. SEC Actions Relating to Foreign Bribery

98. SEC v. Tenaris S.A. (2011)³⁹¹

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.

Business Location. Uzbekistan.

Payment.

1. **Amount of the value.** More than \$32,140.
2. **Amount of business related to the payment.** Unknown.
3. **Intermediary.** Agent.
4. **The foreign official.** Officials at OJSC O’zashqineftgaz (“OAO”), a subsidiary of Uzbekneftegaz, the state-owned holding company of Uzbekistan’s oil and gas industry.

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’zashqineftgaz (“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 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.

³⁹¹ Matter resolved through deferred prosecution agreement (May 2011).

D. SEC Actions Relating to Foreign Bribery

97. In the Matter of Rockwell Automation, Inc. (2011)³⁹²

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.

Business Location. China.

Payment.

1. **Amount of the value.** Travel and cash payments of over \$1,500,000.
2. **Amount of business related to the payment.** Approximately \$1,771,000 in net profits.
3. **Intermediary.** Third-party intermediaries.
4. **The foreign official.** Employees of state-owned Chinese design institutes and employees of other unspecified Chinese state-owned companies.

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.

³⁹² *In the Matter of Rockwell Automation, Inc.*, Admin. Pro. File No. 3-14364 (May 3, 2011).

D. SEC Actions Relating to Foreign Bribery

96. SEC v. Johnson & Johnson (D.D.C. 2011)³⁹³

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.

Business Location. Greece, Iraq, Poland, Romania.

Payment.

1. **Amount of the value.** Unspecified.
2. **Amount of business related to the payment.** \$38,227,826.
3. **Intermediary.** Greek distributor; Lebanese agent.
4. **The 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.

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.

³⁹³ SEC v. Johnson & Johnson, 1:11-cv-00686 (D.D.C. 2011).

D. SEC Actions Relating to Foreign Bribery

95. SEC v. Comverse Technology, Inc. (E.D.N.Y. 2011)³⁹⁴

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.

Business Location. Greece, Cyprus, Israel.

Payment.

1. **Amount of the value.** \$536,000.
2. **Amount of business related to the payment.** \$1,200,000 in net profits.
3. **Intermediary.** A third-party agent and Fintron Enterprises Ltd. (“Fintron”), a shell entity incorporated in Cyprus.
4. **The foreign official.** Employees of Hellenic Telecommunications Organisation S.A. (“OTE”), which is partially owned by the Greek government, and certain of its subsidiaries.

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.

³⁹⁴ SEC v. *Comverse Tech. Inc.*, No. 11-cv-1704 (E.D.N.Y. 2011).

D. SEC Actions Relating to Foreign Bribery

94. In the Matter of Ball Corporation (2011)³⁹⁵

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.

Business Location. Argentina.

Payment.

1. **Amount of the value.** \$106,749.
2. **Amount of business related to the payment.** Unspecified.
3. **Intermediary.** Customs Agents.
4. **The foreign official.** Customs Officials.

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.

³⁹⁵ *In the Matter of Ball Corp.*, Admin. Pro. File No. 3-14305 (Mar. 24, 2011).

D. SEC Actions Relating to Foreign Bribery

93. SEC v. International Business Machines Corporation (D.D.C. 2011)³⁹⁶

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.

Business Location. China, South Korea.

Payment.

1. **Amount of the value.** \$207,157 in cash payments; entertainment, travel, and gifts of unspecified total value.
2. **Amount of business related to the payment.** Contracts worth over \$52,000,000.
3. **Intermediary.** Employees of IBM Korea and IBM-China and two key IBM-China managers.
4. **The foreign official.** Korean and Chinese government officials.

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 26, 2013.

See Ongoing Investigations Number F-86.

³⁹⁶ SEC v. *Int’l Bus. Mach. Corp.*, No. 1:11-cv-00563 (D.D.C. 2011).

D. SEC Actions Relating to Foreign Bribery

92. SEC v. Tyson Foods, Inc. (D.D.C. 2011)³⁹⁷

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.

Business Location. Mexico.

Payment.

1. **Amount of the value.** More than \$100,311.
2. **Amount of business related to the payment.** Net profits of more than \$880,000.
3. **Intermediary.** The wives of two Mexican government-employed veterinarians.
4. **The foreign official.** Veterinarians responsible for certifying meat exports under a federal inspection program in Mexico.

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.

³⁹⁷ SEC v. Tyson Foods, Inc., No. 1:11-cv-00350 (D.D.C. 2011).

D. SEC Actions Relating to Foreign Bribery

91. SEC v. Maxwell Technologies Inc. (D.D.C. 2011)³⁹⁸

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.

Business Location. China.

Payment.

1. **Amount of the value.** Over \$2,500,000.
2. **Amount of business related to the payment.** Over \$5,600,000 in profits.
3. **Intermediary.** Sales Agent/Consultant.
4. **The foreign official.** Officials at Chinese state-owned entities.

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.

³⁹⁸ SEC v. Maxwell Techs. Inc., No. 1:11-cv-00258 (D.D.C 2011).

D. SEC Actions Relating to Foreign Bribery

90. SEC v. Paul W. Jennings (D.D.C. 2011)³⁹⁹

Nature of the Business. Manufacture and sales of fuel additives and other specialty chemicals by Innospec, Inc. (“Innospec”), a U.S. corporation with principal offices in the U.S. and the U.K.

Business Location. Indonesia, Iraq.

Payment.

1. **Amount of the value.** More than \$2.24 million.
2. **Amount of business related to the payment.** More than \$17 million.
3. **Intermediary.** Sales Agent/Consultant.
4. **The 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).

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 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”). 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.

³⁹⁹ SEC v. Jennings, 1:11-cv-00144 (D.D.C. 2011).

D. SEC Actions Relating to Foreign Bribery

89. SEC v. Alcatel-Lucent, S.A. (S.D. Fla. 2010)⁴⁰⁰

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.

Business Location. Costa Rica, Honduras, Malaysia, and Taiwan.

Payment.

1. **Amount of the value.** More than \$8 million.
2. **Amount of business related to the payment.** \$463 million.
3. **Intermediary.** Consultants and subsidiaries.
4. **The 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).

Influence to be Obtained. According to a complaint filed by the SEC on December 27, 2010, 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.

⁴⁰⁰ SEC v. Alcatel-Lucent, S.A., No. 10-cv-24620 (S.D. Fla. 2010).

D. SEC Actions Relating to Foreign Bribery

88. SEC v. RAE Systems Inc. (D.D.C. 2010)⁴⁰¹

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.

Business Location. China.

Payment.

1. **Amount of the value.** Approximately \$400,000.
2. **Amount of business related to the payment.** Approximately \$3,000,000.
3. **Intermediary.** Joint-venture entities and a third-party agent.
4. **The foreign official.** Employees of Chinese state-owned entities including employees of the Dagang Oil Field.

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.

⁴⁰¹ SEC v. RAE Systems Inc., No. 1:10-cv-02093 (D.D.C. 2010).

D. SEC Actions Relating to Foreign Bribery

87. SEC v. GlobalSantaFe Corp. (D.D.C. 2010)⁴⁰²

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.

Business Location. Nigeria, Gabon, Angola, and Equatorial Guinea.

Payment.

1. **Amount of the value.** Approximately \$469,4000 in illicit payments to government officials in Nigeria, Gabon, Angola, and Equatorial Guinea.
2. **Amount of business related to the payment.** Approximately \$2.7 million in profits.
3. **Intermediary.** Customs brokers.
4. **The foreign official.** Nigerian Customs Service ("NCS") officials and unspecified Gabon, Angolan, and Equatorial Guinean government officials.

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.

⁴⁰² SEC v. GlobalSantaFe Corp., No. 1:10-cv-01890 (D.D.C. 2010).

D. SEC Actions Relating to Foreign Bribery

86. SEC v. Panalpina, Inc. (S.D. Tex. 2010)⁴⁰³

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.

Business Location. Angola, Brazil, Kazakhstan, Nigeria, Russia.

Payment.

1. **Amount of the value.** Approximately \$49 million.
2. **Amount of business related to the payment.** Approximately \$11 million.
3. **Intermediary.** Subsidiary and agent.
4. **The 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.

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.

⁴⁰³ SEC v. Panalpina, Inc., No. 4:10-cv-4334 (S.D. Tex. 2010).

D. SEC Actions Relating to Foreign Bribery

85. In the Matter of Royal Dutch Shell plc (2010)⁴⁰⁴

Nature of the Business. Royal Dutch Shell plc (“Shell”) is an English-chartered company which focuses on oil, gas, and power production and exploration. Co-respondent Shell International Exploration and Production Inc. (“SIEP”) acted on behalf of Shell to obtain and run business in Nigeria connected to Shell’s Bonga Project.

Business Location. Nigeria.

Payment.

1. **Amount of the value.** Approximately \$3.5 million.
2. **Amount of business related to the payment.** Approximately \$14 million.
3. **Intermediary.** Agents, subsidiaries, subcontractor, freight forwarder.
4. **The foreign official.** Nigerian Customs Service officials.

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 the anti-bribery, books and records, and internal controls provisions of the FCPA. Under the order, Shell must pay disgorgement of \$18,149,549.

SNEPCO settled related charges with the DOJ on November 4, 2010.

Also on November 4, 2010, Panalpina and two of Panalpina’s other 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-84, D-83, and D-82.

⁴⁰⁴ *In the Matter of Royal Dutch Shell plc & Shell Int’l Expl. & Prod. Inc.*, Admin. Pro. File No. 3-14107 (Nov. 4, 2010).

D. SEC Actions Relating to Foreign Bribery

84. SEC v. Transocean Inc. (D.D.C. 2010)⁴⁰⁵

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.

Business Location. Nigeria.

Payment.

1. **Amount of the value.** Approximately \$813,000.
2. **Amount of business related to the payment.** Approximately \$6 million.
3. **Intermediary.** Freight forwarder, agent.
4. **The foreign official.** Nigerian Customs Service officials.

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 of \$7,265,080.

On the same day, Transocean also entered into a deferred prosecution agreement with the DOJ.

Also on November 4, 2010, Panalpina and two of Panalpina’s other 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-83, and D-82.

⁴⁰⁵ SEC v. *Transocean Inc.*, No. 1:10-cv-1891 (D.D.C. 2010).

D. SEC Actions Relating to Foreign Bribery

83. SEC v. Tidewater, Inc. (E.D. La. 2010)⁴⁰⁶

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.

Business Location. Azerbaijan, Nigeria.

Payment.

1. **Amount of the value.** Approximately \$1.76 million.
2. **Amount of business related to the payment.** Approximately \$6.62 million.
3. **Intermediary.** Freight forwarder, agent.
4. **The foreign official.** Azeri tax officials; Nigerian customs officials.

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.

Also on November 4, 2010, Panalpina and two of Panalpina’s other 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-82.

⁴⁰⁶ SEC v. *Tidewater, Inc.*, No. 2:10-cv-4180 (E.D. La. 2010).

D. SEC Actions Relating to Foreign Bribery

82. SEC v. Pride International, Inc. (S.D. Tex. 2010)⁴⁰⁷

Nature of the Business. Pride International Inc. (“Pride”), a Delaware corporation, owns and operates numerous oil and gas drilling rigs throughout the world.

Business Location. India, Mexico, Venezuela, Kazakhstan, Nigeria, Saudi Arabia, Libya, Republic of Congo.

Payment.

1. **Amount of the value.** Approximately \$2 million.
2. **Amount of business related to the payment.** Approximately \$19.3 million.
3. **Intermediary.** Subsidiary company, agent, freight forwarder, consultant.
4. **The 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.

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 substantially assisted in the investigation of Panalpina World Transport (Holding) Ltd. (“Panalpina”).

⁴⁰⁷ SEC v. *Pride Int’l, Inc.*, No. 4:10-cv-4335 (S.D. Tex. 2010).

D. SEC Actions Relating to Foreign Bribery

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 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)⁴⁰⁸

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 redomesticated from the Cayman Islands and is now incorporated in Switzerland; the company is headquartered in Sugar Land, Texas.

Business Location. Nigeria.

Payment.

1. **Amount of the value.** At least \$79,026.
2. **Amount of business related to the payment.** At least \$4,294,933.
3. **Intermediary.** Customs agent.
4. **The foreign official.** Nigeria Customs Service officials.

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.

See DOJ Digest Number B-107.

See SEC Digest Number D-106.

⁴⁰⁸ SEC v. Noble Corp., No. 4:10-cv-04336 (S.D. Tex. 2010).

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)⁴⁰⁹

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.

Business Location. Kyrgyzstan and Thailand.

Payment.

1. **Amount of the value.** Over \$3.2 million.
2. **Amount of business related to the payment.** Over \$9.4 million.
3. **Intermediary.** Tobacco sales agents.
4. **The foreign official.** Tamekisi, the Kyrgyzstan governmental agency responsible for issuing tobacco export licenses, officials and Thailand Tobacco Monopoly (“TTM”) officials.

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 the anti-bribery provisions of the FCPA and aiding and abetting violations. 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.

See DOJ Digest Numbers B-105, B-104, and B-103.
See SEC Digest Numbers D-79, and D-78.

⁴⁰⁹ SEC v. Elkin, Jr., et al., No. 1:10-cv-00661 (D.D.C. 2010).

D. SEC Actions Relating to Foreign Bribery

79. SEC v. Universal Corporation (D.D.C. 2010)⁴¹⁰

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.

Business Location. Malawi, Mozambique, and Thailand.

Payment.

1. **Amount of the value.** At least \$1.8 million in improper payments by Universal.
2. **Amount of business related to the payment.** Over \$11.5 million in sales contracts.
3. **Intermediary.** Tobacco sales agents.
4. **The foreign official.** Officials of the Thailand Tobacco Monopoly (“TTM”), official of the Malawian government, and officials of the Mozambique government.

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. The parent corporations entered into non-prosecution agreements with the DOJ.

See SEC Digest Numbers B-105, B-104, and B-103.
See SEC Digest Numbers D-80 and D-78.

⁴¹⁰ SEC v. Universal Corp., No. 10-cv-1318 (D.D.C. 2010).

D. SEC Actions Relating to Foreign Bribery

78. SEC v. Alliance One International, Inc. (D.D.C. 2010)⁴¹¹

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.

Business Location. Greece, Indonesia, Kyrgyzstan, and Thailand.

Payment.

1. **Amount of the value.** At least \$4,400,000 in improper payments.
2. **Amount of business related to the payment.** Alliance One obtained over \$18.3 million in sales contracts for its subsidiaries in Brazil and Malawi.
3. **Intermediary.** Tobacco sales agents.
4. **The foreign official.** Officials of the Thailand Tobacco Monopoly (“TTM”) and tax officials in Greece and Indonesia.

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 and Universal Leaf Tabacos, Ltda., a Brazilian subsidiary of Universal Corporation, a competitor of Alliance One, charging each with conspiring to violate the anti-bribery provisions of FCPA and violating the anti-bribery provisions of the FCPA. The parent corporations entered into non-prosecution 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.

⁴¹¹ SEC v. Alliance One Int’l, Inc., No. 10-cv-01319 (D.D.C. 2010).

D. SEC Actions Relating to Foreign Bribery

77. SEC v. ABB Ltd (D.D.C. 2010)⁴¹²

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.

Business Location. Iraq and Mexico.

Payment.

1. **Amount of the value.** Approximately \$2.7 million.
2. **Amount of business related to the payment.** At least \$100 million.
3. **Intermediary.** Mexican companies purporting to act as service and support providers.
4. **The foreign official.** Officials at Comisión Federal de Electricidad (“CFE”), a Mexican state-owned utility company; regional companies of the Iraqi Electricity Commission.

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 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.

See DOJ Digest Numbers B-102 and B-92.
See SEC Digest Number D-17.

⁴¹² SEC v. ABB Ltd, No. 10-cv-01648 (D.D.C. 2010).

D. SEC Actions Relating to Foreign Bribery

76. SEC v. David P. Turner and Ousama M. Naaman (D.D.C. 2010)⁴¹³

Nature of the Business. Sale of fuel 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. 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.

Business Location. Iraq and Indonesia.

Payment.

1. **Amount of the value.** Approximately \$6,347,588.
2. **Amount of business related to the payment.** Approximately \$176,77,341 in revenues and \$60,071,613 in profits.
3. **Intermediary.** Agents.
4. **The foreign official.** Iraqi Ministry of Oil and unspecified Iraqi and Indonesian government officials.

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.

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 as “sales commissions.” Innospec’s revenues in connection with the bribes were approximately \$48,571,937 and its profits were \$21,506,610.

⁴¹³ SEC v. Turner, et al., No. 1:10-cv-01309 (D.D.C. 2010).

D. SEC Actions Relating to Foreign Bribery

Enforcement. On August 5, 2010, the SEC filed an settled 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)⁴¹⁴

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.

Business Location. Iraq.

Payment.

1. **Amount of the value.** \$3.6 million.
2. **Amount of business related to the payment.** \$18.4 million.
3. **Intermediary.** Agent.
4. **The foreign official.** Iraqi Health Ministry and Iraqi Oil Ministry officials.

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.

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

⁴¹⁴ SEC v. Gen. Elec. Co., No. 10-cv-01258 (D.D.C. 2010).

D. SEC Actions Relating to Foreign Bribery

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's jurisdictional grounds for bringing enforcement against Amersham plc was based on the company listing American Depository Receipts on the New York Stock Exchange. Similarly, Ionics, Inc. was a publicly-listed company in the United States, and was therefore, subject to the SEC jurisdiction.

The SEC took GE's prompt remediation and cooperation into account.

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)⁴¹⁵

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”).

Business Location. Nigeria.

Payment.

1. **Amount of the value.** Approximately \$180 million.
2. **Amount of business related to the payment.** Over \$6 billion.
3. **Intermediary.** Agents.
4. **The 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.

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. ENI and Snamprogetti also settled a related criminal case with the DOJ by 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.

⁴¹⁵ SEC v. ENI, S.p.A., et al., No. 4:10-cv-02414 (S.D. Tex. 2010).

D. SEC Actions Relating to Foreign Bribery

73. SEC v. Veraz Networks, Inc. (N.D. Cal. 2010)⁴¹⁶

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.

Business Location. China and Vietnam.

Payment.

1. **Amount of the value.** At least \$40,500.
2. **Amount of business related to the payment.** At least \$233,000.
3. **Intermediary.** Reseller and consultant.
4. **The foreign official.** Officials at government-controlled telecommunications companies in China and Vietnam.

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.

⁴¹⁶ SEC v. Veraz Network, Inc., No. 10-cv-2849 (N.D. Cal. 2010).

D. SEC Actions Relating to Foreign Bribery

72. SEC v. Technip (S.D. Tex. 2010)⁴¹⁷

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.

Business Location. Nigeria.

Payment.

1. **Amount of the value.** Approximately \$183.5 million.
2. **Amount of business related to the payment.** Over \$6 billion.
3. **Intermediary.** Agents.
4. **The 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.

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.

⁴¹⁷ SEC v. Technip, No. 10-cv-2289 (S.D. Tex. 2010).

D. SEC Actions Relating to Foreign Bribery

71. SEC v. Daimler AG (D.D.C. 2010)⁴¹⁸

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.

Business Location. 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.

Payment.

1. **Amount of the value.** At least \$56 million.
2. **Amount of business related to the payment.** \$1.9 billion.
3. **Intermediary.** Various.
4. **The foreign official.** Various officials involved in the purchase of vehicles around 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 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

⁴¹⁸ SEC v. Daimler AG, No. 10-cv-00473 (D.D.C. 2010).

D. SEC Actions Relating to Foreign Bribery

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)⁴¹⁹

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.

Business Location. Indonesia and Iraq.

Payment.

1. **Amount of the value.** More than \$8.6 million.
2. **Amount of business related to the payment.** More than \$176 million.
3. **Intermediary.** Sales Agent/Consultant.
4. **The 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).

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.

⁴¹⁹ SEC v. Innospec, Inc., No. 1:10-cv-0048 (D.D.C. 2010).

D. SEC Actions Relating to Foreign Bribery

69. SEC v. NATCO Group Inc. (S.D. Tex. 2010)⁴²⁰

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.

Business Location. Kazakhstan.

Payment.

1. **Amount of the value.** At least \$45,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Consultant.
4. **The foreign official.** Kazakh immigration prosecutors, Kazakh Ministry of Labor.

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 Kazakhstan with bogus invoices. With full knowledge of the invoices’ falsity, it is alleged that TEST Kazakhstan 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.

⁴²⁰ SEC v. NATCO Grp. Inc., No. 10-cv-98 (S.D. Tex. 2010).

D. SEC Actions Relating to Foreign Bribery

68. SEC v. UTStarcom, Inc. (N.D. Cal. 2009)⁴²¹

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.

Business Location. China, Mongolia, and Thailand.

Payment.

1. **Amount of the value.** \$7,000,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Consultants.
4. **The foreign official.** Employees of Chinese government-controlled telecommunications companies; employees of government customers in Thailand.

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 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.

See DOJ Digest Number B-95

See Parallel Litigation Digest Number H-A9

⁴²¹ SEC v. UTStarcom, Inc., No. 09-cv-6094 (N.D. Cal. 2009).

D. SEC Actions Relating to Foreign Bribery

67. SEC v. Bobby Benton (S.D. Tex. 2009)⁴²² SEC v. Joe Summers (S.D. Tex. 2010)⁴²³

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 .

Business Location. Mexico and Venezuela.

Payment.

1. **Amount of the value.** Approximately \$439,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Agents.
4. **The foreign official.** Official of Petróleos de Venezuela S.A. and Mexican customs officials.

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 jackup 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.

⁴²² SEC v. Benton, No. 4:09-cv-03963 (S.D. Tex. 2009).

⁴²³ SEC v. Summers, No. 4:10-cv-02786 (S.D. Tex. 2010).

D. SEC Actions Relating to Foreign Bribery

66. SEC v. AGCO Corp. (2009)⁴²⁴

Nature of the Business. AGCO Corp. (“AGCO”) is a U.S. corporation based in Duluth, Georgia that manufactures and sells agricultural machinery and equipment.

Business Location. Iraq.

Payment.

1. **Amount of the value.** Approximately \$5,900,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Jordanian agents.
4. **The foreign official.** Unspecified Iraqi ministries.

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 September 30, 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.

⁴²⁴ SEC v. AGCO Corp., No. 1:09-cv-1865 (D.D.C. 2009).

D. SEC Actions Relating to Foreign Bribery

65. SEC v. Oscar H. Meza (D.D.C. 2009)⁴²⁵

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.

Business Location. China.

Payment.

1. **Amount of the value.** \$444,492.
2. **Amount of business related to the payment.** \$4.5 million.
3. **Intermediary.** Third-party intermediary.
4. **The foreign official.** Employees of China state-owned or controlled entities.

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 \$30,000 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.

⁴²⁵ SEC v. Meza, No. 1:09-cv-01648 (D.D.C. 2009).

D. SEC Actions Relating to Foreign Bribery

64. In the Matter of Helmerich & Payne, Inc. (2009)⁴²⁶

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.

Business Location. Argentina, Venezuela.

Payment.

1. **Amount of the value.** Payments totaling approximately \$185,673.
2. **Amount of business related to the payment.** The avoidance of approximately \$320,604 in customs-related costs.
3. **Intermediary.** Customs brokers.
4. **The foreign official.** Argentine and Venezuelan customs officials.

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.

⁴²⁶ *In the Matter of Helmerich & Payne, Inc.*, Admin. Pro. File No. 3-13565 (July 30, 2009).

D. SEC Actions Relating to Foreign Bribery

63. SEC v. Nature's Sunshine Products, Inc., Douglas Faggioli, and Craig D. Huff (D. Utah 2009)⁴²⁷

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.

Business Location. Brazil.

Payment.

1. **Amount of the value.** More than \$1 million.
2. **Amount of business related to the payment.** Unspecified.
3. **Intermediary.** Customs brokers.
4. **The foreign official.** Brazilian customs officials.

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.

⁴²⁷ SEC v. Nature's Sunshine Prods., Inc., et al., No. 2:09-cv-0672 (D. Utah 2009).

D. SEC Actions Relating to Foreign Bribery

62. SEC v. Avery Dennison Corporation (C.D. Cal. 2009)⁴²⁸ In the Matter of Avery Dennison Corporation (2009)⁴²⁹

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.

Business Location. China, Indonesia.

Payment.

1. **Amount of the value.** \$81,000.
2. **Amount of business related to the payment.** \$1,250,218.
3. **Intermediary.** None.
4. **The foreign official.** Chinese government officials; Indonesian customs and tax officials.

Influence to be Obtained. The Chinese government requires authorization for all products used in road communications and safety. Between 2002 through 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.

⁴²⁸ SEC v. Avery Dennison Corp., No. 1:09-cv-5493 (C.D. Cal. 2009).

⁴²⁹ In the Matter of Avery Dennison Corp., Admin. Pro. File No. 3-13564 (July 28, 2009).

D. SEC Actions Relating to Foreign Bribery

61. SEC v. Thomas Wurzel (D.D.C. 2009)⁴³⁰

Nature of the Business. Thomas Wurzel (“Wurzel”) 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.

Business Location. Egypt.

Payment.

1. **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.”
2. **Amount of business related to the payment.** A contract with gross revenues of approximately \$5.3 million and net profits of \$267,000.
3. **Intermediary.** A retired Egyptian Air Force (“EAF”) general enlisted as an agent.
4. **The foreign official.** EAF officials.

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.

⁴³⁰ SEC v. Wurzel, No. 1:09-cv-1005 (D.D.C. 2009).

D. SEC Actions Relating to Foreign Bribery

60. In the Matter of United Industrial Corporation (2009)⁴³¹

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.

Business Location. Egypt.

Payment.

1. **Amount of the value.** Unspecified. 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.”
2. **Amount of business related to the payment.** A contract with gross revenues of approximately \$5.3 million and net profits of \$267,000.
3. **Intermediary.** A retired Egyptian Air Force (“EAF”) general enlisted as an agent.
4. **The foreign official.** EAF officials.

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.

⁴³¹ *In the Matter of United Indus. Corp.*, Admin. Pro. File No. 3-13495 (May 29, 2009).

D. SEC Actions Relating to Foreign Bribery

59. SEC v. Novo Nordisk A/S (D.D.C. 2009)⁴³²

Nature of the Business. Novo Nordisk is an international manufacturer of insulin, medicines, and other pharmaceutical supplies headquartered in Denmark.

Business Location. Iraq.

Payment.

1. **Amount of the value.** \$1.4 million.
2. **Amount of business related to the payment.** €22 million.
3. **Intermediary.** Agent.
4. **The foreign official.** Kickbacks were paid to Kimadia, a state-owned company that was part of the Iraqi Ministry of Health.

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.
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.

⁴³² SEC v. Novo Nordisk A/S, No. 1:09-cv-00862 (D.D.C. 2009).

D. SEC Actions Relating to Foreign Bribery

58. SEC v. ITT Corp. (D.D.C. 2009)⁴³³

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.

Business Location. China.

Payment.

1. **Amount of the value.** Approximately \$200,000.
2. **Amount of business related to the payment.** More than \$4 million.
3. **Intermediary.** Agents and employees.
4. **The foreign official.** Officials of Chinese government design institutes.

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.

⁴³³ SEC v. ITT Corp., No. 1:09-cv-00272 (D.D.C. 2009).

D. SEC Actions Relating to Foreign Bribery

57. SEC v. Halliburton Co. and KBR, Inc. (S.D. Tex. 2009)⁴³⁴

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.

Business Location. Nigeria.

Payment.

1. **Amount of the value.** Approximately \$180 million.
2. **Amount of business related to the payment.** Over \$6 billion.
3. **Intermediary.** Agents.
4. **The 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.

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 \$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 of conspiracy and other related charges on December 3, 2011 and March 11, 2012 respectively. Sentencing of both individuals took place in February 2012.

⁴³⁴ SEC v. Halliburton Co., et al., No. 4:09-cv-00399 (S.D. Tex. 2009).

D. SEC Actions Relating to Foreign Bribery

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)⁴³⁵

Nature of the Business. Development of a new national identity card in Argentina; creation of nationwide digital cellular telephone network in Bangladesh; development of trains and signaling devices in China; 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; construction of power plants in Israel; construction of refineries in Mexico; telecommunications projects in Nigeria; traffic control systems in Russia; design and construction of mass transit systems in Venezuela; and sales of medical devices in Vietnam, China, and Russia.

Business Location. Argentina, Bangladesh, China, Germany, Iraq, Israel, Mexico, Nigeria, Russia Venezuela, and Vietnam.

Payment.

1. **Amount of the value.** Approximately \$1.4 billion plus approximately \$391 million in payments that were not properly controlled that were used, at least in part, for bribery.
2. **Amount of business related to the payment.** More than \$4.2 billion.
3. **Intermediary.** Business consultants, agents, and other payment intermediaries.
4. **The foreign official.** 1) Current and former government officials in Venezuela, including a former Defense Minister and diplomat; 2) officials of the Chinese government; 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) officials of the government of Argentina, including the President, the Minister of the Interior, and the Immigration Chief, as well as additional unspecified Argentine cabinet ministers and a member of Argentina's congress; 7) officials of the Vietnamese health ministry; 8) officials of Chinese state-owned hospitals as well as doctors employed by 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) unspecified officials at government-owned medical entities in Russia; and 12) officials at the Vietnamese defense ministry and state-owned telecommunications company.

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.

⁴³⁵ SEC v. Siemens Aktiengesellschaft, No. 08-CV-02167 (D.D.C. 2008).

D. SEC Actions Relating to Foreign Bribery

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 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 Viettel 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 Wiegler, 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 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)⁴³⁶

Nature of the Business. Sales of trucks and parts, agricultural and construction equipment, and construction vehicles and spare parts, and other equipment to Iraq under the U.N. Oil-for-Food Program.

Business Location. Iraq.

Payment.

1. **Amount of the value.** \$4.3 million.
2. **Amount of business related to the payment.** \$59,000,000.
3. **Intermediary.** Distributors and agents.
4. **The foreign official.** None.

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 S.p.A. (“Fiat”) and CNH Global N.V. (“CNH Global”), which is 90% owned by Fiat, 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 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.

See DOJ Digest Number B-74.

⁴³⁶ SEC v. Fiat S.p.A., et al., No. 1:08-cv-02211 (D.D.C. 2008).

D. SEC Actions Relating to Foreign Bribery

54. SEC v. Albert Jackson Stanley (S.D. Tex. 2008)⁴³⁷

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”), that was during part of the relevant period a subsidiary of Halliburton.

Business Location. Nigeria.

Payment.

1. **Amount of the value.** \$182 million.
2. **Amount of business related to the payment.** \$6 billion.
3. **Intermediary.** Two agents.
4. **The foreign official.** Officials of the Nigerian Government

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.

⁴³⁷ SEC v. Stanley, No. 08-cv-2680 (S.D. Tex. 2008).

D. SEC Actions Relating to Foreign Bribery

53. SEC v. Con-way Inc. (D.D.C. 2008)⁴³⁸ In the Matter of Con-way Inc. (2008)⁴³⁹

Nature of the Business. Shipping logistics.

Business Location. Philippines.

Payment.

1. **Amount of the value.** \$417,000.
2. **Amount of business related to the payment.** Not specified.
3. **Intermediary.** None.
4. **The foreign official.** Officials of the Philippines Bureau of Customs, officials at the Philippine Economic Zone Area and officials and fourteen state-owned airlines.

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-weight 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.

⁴³⁸ SEC v. Con-Way Inc., No. 1:08-cv-01478 (D.D.C. 2008).

⁴³⁹ In the Matter of Con-way Inc., Admin. Pro. File No. 3-13148 (Aug. 27, 2008).

D. SEC Actions Relating to Foreign Bribery

52. In the Matter of Faro Technologies, Inc. (2008)⁴⁴⁰

Nature of the Business. Procurement of contracts for the sale of portable computerized measurement devices and software for the manufacturing sector.

Business Location. China.

Payment.

1. **Amount of the value.** \$444,492.
2. **Amount of business related to the payment.** \$4.5 million.
3. **Intermediary.** Agent.
4. **The foreign official.** Employees of Chinese state-owned or controlled entities.

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 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.

⁴⁴⁰ *In the Matter of Faro Techs., Inc.*, Admin. Pro. File No. 3-13059 (June 5, 2008).

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)⁴⁴¹

Nature of the Business. Procurement of contracts for oil and gas construction projects by Willbros International Inc. (“Willbros International”), a wholly-owned subsidiary of Willbros Group, Inc. (“Willbros Group”), both Panama corporations.

Business Location. Nigeria, Ecuador, Bolivia.

Payment.

1. **Amount of the value.** Approximately \$11.7 million.
2. **Amount of business related to the payment.** More than \$490 million.
3. **Intermediary.** Consultants and employees.
4. **The foreign official.** 1) Nigerian National Petroleum Corporation (“NNPC”) officials; 2) officials of NNPC’s wholly-owned subsidiary National Petroleum Investment Management Services (“NAPIMS”); 3) officials of NNPC’s majority-owned joint venture operator, Shell Petroleum Development Company of Nigeria (“SPDC”); 4) a senior official in the executive branch of the Nigerian federal government; 5) officials in the dominant political party in Nigeria from 1999 to present; and 6) officials of PetroEcuador and PetroComercial in Ecuador.

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 with respect to 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, Jansen, a Canadian National, was in Nigeria with Willbros International from 1993-1995 and was most recently with Willbros International as Administrator and General Manager – Finance. The SEC alleged that he was responsible for submitting consultants’ invoices for payment to Willbros Group headquarters in Houston, Texas. Biggers was another U.S. employee in Nigeria. 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, an employee in an accounting and administrative supervisory role in Bolivia, used the fictitious invoices to further the scheme by, among other things, preparing false returns and related records. 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.

⁴⁴¹ SEC v. Willbros Grp., Inc., et al., No. 4:08-cv-01494 (S.D. Tex. 2008).

D. SEC Actions Relating to Foreign Bribery

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.

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.

D. SEC Actions Relating to Foreign Bribery

50. SEC v. AB Volvo (D.D.C. 2008)⁴⁴²

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.

Business Location. Iraq.

Payment.

1. **Amount of the value.** \$8,594,750 in kickbacks to the Iraqi government.
2. **Amount of business related to the payment.** Not specified.
3. **Intermediary.** Distributors and agents.
4. **The foreign official.** None.

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 scandal. They could face jail sentences if convicted.

See DOJ Digest Number B-65.
See Ongoing Investigation Number F-2.

⁴⁴² SEC v. AB Volvo, No. 1:08-cv-00473 (D.D.C. 2008).

D. SEC Actions Relating to Foreign Bribery

49. SEC v. Flowserve Corp. (D.D.C. 2008)⁴⁴³

Nature of the Business. Sale of pumps and other oil refinery equipment to Iraq under the U.N. Oil-for-Food Program.

Business Location. Iraq.

Payment.

1. **Amount of the value.** \$820,246 in paid and authorized kickbacks to the Iraqi government.
2. **Amount of business related to the payment.** Not specified.
3. **Intermediary.** Jordanian agents.
4. **The foreign official.** None.

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: 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.

The government did not allege bribery of any individual foreign governmental officials.

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.

See DOJ Digest Number D-64.

See Ongoing Investigation Number F-87 and F-2.

⁴⁴³ SEC v. Flowserve Corp., No. 1:08-cv-00294 (D.D.C. 2008).

D. SEC Actions Relating to Foreign Bribery

48. [SEC v. Westinghouse Air Brake Technologies Corp. \(E.D. Pa. 2008\)](#)⁴⁴⁴ [In the Matter of Westinghouse Air Brake Technologies Corporation \(2008\)](#)⁴⁴⁵

Nature of the Business. Sales of railway equipment.

Business Location. India.

Payment.

1. **Amount of the value.** \$137,400.
2. **Amount of business related to the payment.** \$259,000.
3. **Intermediary.** Marketing Agents.
4. **The foreign official.** Officials of the Indian Railway Board.

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 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 for a 60 day review.

See DOJ Digest Number B-63.

⁴⁴⁴ *SEC v. Westinghouse Air Brake Techs. Corp.*, No. 08-cv-706 (E.D. Pa. 2008).

⁴⁴⁵ *In the Matter of Westinghouse Air Brake Techs. Corp.*, Admin. Pro. File No. 3-12957 (Feb. 14, 2008).

D. SEC Actions Relating to Foreign Bribery

47. [In the Matter of Immucor, Inc. and Gioacchino De Chirico \(September 27, 2007\)](#)⁴⁴⁶ [SEC v. Gioacchino De Chirico \(N.D. GA 2007\)](#)⁴⁴⁷

Nature of the Business. Manufacture and marketing of blood-testing supplies and equipment. 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.

Business Location. Italy.

Payment.

1. **Amount of the value.** \$16,119 (€13,500).
2. **Amount of business related to the payment.** Not specified.
3. **Intermediary.** Agent.
4. **The foreign official.** The director of a public hospital in Milan, Italy.

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.

⁴⁴⁶ *In the Matter of Immucor, Inc. & Giacchino de Chirico*, Admin. Pro. File No. 3-12846 (Sept. 27, 2007).

⁴⁴⁷ *SEC v. De Chirico*, No. 1:07-cv-2367 (N.D. Ga 2007).

D. SEC Actions Relating to Foreign Bribery

46. SEC v. Lucent Technologies Inc. (D.D.C. 2007)⁴⁴⁸

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.

Business Location. China.

Payment.

1. **Amount of the value.** In excess of \$10 million.
2. **Amount of business related to the payment.** Approximately \$ 3-4 billion.
3. **Intermediary.** None specified.
4. **The foreign official.** Officials of the Chinese government who were employees of state-owned or state-controlled telecommunications enterprises.

Influence to be Obtained. Between at least 2000-2003, 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, 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. 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.

⁴⁴⁸ SEC v. Lucent Techs. Inc., No. 07-cv-02301 (D.D.C. 2007).

D. SEC Actions Relating to Foreign Bribery

45. SEC v. Ingersoll-Rand Co. Ltd. (D.D.C. 2007)⁴⁴⁹

Nature of the Business. Procurement of humanitarian contracts to sell industrial equipment to Iraqi government entities under the United Nations Oil-for-Food Program. Ingersoll-Rand Co. Ltd. (“Ingersoll-Rand”) is a Bermuda corporation.

Business Location. Iraq.

Payment.

1. **Amount of the value.** \$1,515,845 in kickbacks to the Iraqi government.
2. **Amount of business related to the payment.** \$2.27 million in profits.
3. **Intermediary.** Distributor.
4. **The foreign official.** Unspecified Iraqi government officials.

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 3-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.

⁴⁴⁹ SEC v. Ingersoll-Rand Co., No. 07-cv-1955 (D.D.C. 2007).

D. SEC Actions Relating to Foreign Bribery

44. SEC v. Akzo Nobel, N.V. (D.D.C. 2007)⁴⁵⁰

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.

Business Location. Iraq.

Payment.

1. **Amount of the value.** \$279,491 in kickbacks to the Iraqi government.
2. **Amount of business related to the payment.** \$1,647,363 in profits.
3. **Intermediary.** Agents.
4. **The foreign official.** None.

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 deferred-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, it will pay \$800,000 to the U.S. Treasury.

See DOJ Digest Number B-60.

⁴⁵⁰ SEC v. Akzo Nobel, N.V., No. 07-cv-02293 (D.D.C. 2007).

D. SEC Actions Relating to Foreign Bribery

43. SEC v. Robert W. Philip (D. Or. 2007)⁴⁵¹

Nature of the Business. Sale of scrap metal by Schnitzer Steel Industries (“Schnitzer”) to steel mills. Robert Philip (“Philip”) is the former President, CEO, and Chairman of Schnitzer, a U.S. corporation.

Business Location. South Korea and China.

Payment.

1. **Amount of the value.** \$205,000 (foreign officials) and \$1.7 million (private parties).
2. **Amount of business related to the payment.** \$500 million.
3. **Intermediary.** None specified.
4. **The foreign official.** Managers of private and government-owned steel mills.

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.

⁴⁵¹ SEC v. Philip, No. 07-cv-1836 (D. Or. 2007).

D. SEC Actions Relating to Foreign Bribery

42. SEC v. Chevron Corp. (S.D.N.Y. 2007)⁴⁵²

Nature of the Business. Purchase of Iraqi oil by Chevron Corporation, a U.S. corporation.

Business Location. Iraq.

Payment.

1. **Amount of the value.** Approximately \$20 million.
2. **Amount of business related to the payment.** Unspecified.
3. **Intermediary.** Oil trading companies.
4. **The foreign official.** None.

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.

⁴⁵² SEC v. Chevron Corp., No. 07-cv-10299 (S.D.N.Y. 2007).

D. SEC Actions Relating to Foreign Bribery

41. SEC v. York Int'l Corp. (D.D.C. 2007)⁴⁵³

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.

Business Location. Iraq, United Arab Emirates, India, China, Nigeria, as well as multiple other unspecified locations in the Middle East and Europe.

Payment.

1. **Amount of the value.** \$647,110 by York FZE in connection with the Iraqi U.N. Oil-for-Food Program; approximately \$550,000 by York Inc. in connection with a project in the United Arab Emirates; over \$7.5 million comprising 854 improper payments by various York International subsidiaries in connection with 774 different contracts on several continents.
2. **Amount of business related to the payment.** \$931,318 in net profits in connection with the Iraqi U.N. Oil-for-Food Program; \$3.7 million in total sales revenue in connection with the UAE project; approximately \$8,017,814 in net profits in connection with 774 other contracts on several continents.
3. **Intermediary.** Unnamed intermediaries were used in connection with the UAE and other projects.
4. **The foreign official.** UAE government appointees; officials responsible for over 300 government contracts in various countries.

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.

⁴⁵³ SEC v. York Int'l Corp., 07-cv-1750 (D.D.C. 2007).

D. SEC Actions Relating to Foreign Bribery

40. SEC v. Monty Fu (D.D.C. 2007)⁴⁵⁴

Nature of the Business. The sale of radiopharmaceutical products to and the referral of patients to medical imaging centers by state-owned hospitals. 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.

Business Location. Taiwan.

Payment.

1. **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.
2. **Amount of business related to the payment.** Unspecified.
3. **Intermediary.** The commission payments for radiopharmaceuticals were made directly by Syncor Taiwan, in cash, and the referral fees for the medical imaging centers were hand-delivered, in cash, by a bookkeeper at the imaging center with funds that had been wired to the center by Syncor Taiwan for that purpose.
4. **The foreign official.** Doctors at state-owned hospitals in Taiwan.

Influence to be Obtained. From 1985 through 1996, 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.

See DOJ Digest Number B-28.

See SEC Digest Number D-15.

See Parallel Litigation Digest Numbers H-A2 and H-B1.

⁴⁵⁴ SEC. v. Fu, No. 07-cv-01735 (D.D.C. 2007).

D. SEC Actions Relating to Foreign Bribery

39. In the Matter of Bristow Group Inc. (2007)⁴⁵⁵

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.

Business Location. Nigeria.

Payment.

1. **Amount of the value.** \$423,000.
2. **Amount of business related to the payment.** Savings of \$873,940.
3. **Intermediary.** None.
4. **The foreign official.** Two state tax officials in the Delta and Lagos states of Nigeria.

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.

⁴⁵⁵ *In the Matter of Bristow Grp. Inc.*, Admin. Pro. File No. 3-12833 (Sept. 26, 2007).

D. SEC Actions Relating to Foreign Bribery

38. SEC v. Chandramowli Srinivasan (D.D.C. 2007)⁴⁵⁶

Nature of the Business. Provision of management consulting services by Electronic Data Systems Corporation (“Electronic Data”), a U.S. corporation, and its India-based subsidiary, A.T. Kearney Ltd. – India (“Kearney Ltd.”). Chandramowli Srinivasan was the founder and president of Kearney Ltd.

Business Location. India.

Payment.

1. **Amount of the value.** \$720,000.
2. **Amount of business related to the payment.** Over \$7.5 million.
3. **Intermediary.** None specified, though some payments were identified as indirect.
4. **The foreign official.** Senior employees of two Indian energy companies that were partly government-owned.

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.

⁴⁵⁶ SEC v. Srinivasan, 07-cv-1699 (D.D.C. 2007); see also *In the Matter of Elec. Data Sys. Corp.*, Admin. Pro. File No. 3-12825 (Sept. 25, 2007).

D. SEC Actions Relating to Foreign Bribery

37. SEC v. Si Chan Wooh (D. Or. 2007)⁴⁵⁷

Nature of the Business. Sale of scrap metal to Chinese government instrumentalities and Chinese and South Korean private customers by SSI International, Inc. ("SSI"), which was until 2006 a wholly-owned U.S. subsidiary of Schnitzer Steel Industries, Inc. ("Schnitzer Steel"), a U.S. corporation.

Business Location. China and South Korea.

Payment.

1. **Amount of the value.** Approximately \$205,000 to foreign officials and approximately \$1.7 million to private parties.
2. **Amount of business related to the payment.** Approximate gross revenue of \$96 million and net profits of approximately \$6.3 million from government entities and approximately \$504 million in gross revenue from private entities.
3. **Intermediary.** None.
4. **The foreign official.** Managers of government and private customers.

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 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.

⁴⁵⁷ SEC v. Wooh, No. 07-cv-957 (D. Or. 2007).

D. SEC Actions Relating to Foreign Bribery

36. SEC v. Delta & Pine Land Co. and Turk Deltapine, Inc. (D.D.C. 2007)⁴⁵⁸

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.

Business Location. Turkey.

Payment.

1. **Amount of the value.** Approximately \$43,000.
2. **Amount of business related to the payment.** Unspecified.
3. **Intermediary.** None.
4. **The foreign official.** Officials of the Turkish Ministry of Agricultural and Rural Affairs.

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 settled civil action 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.

⁴⁵⁸ SEC v. *Delta & Pine Land Co.*, 07-cv-1352 (D.D.C. 2007).

D. SEC Actions Relating to Foreign Bribery

35. SEC v. Textron Inc. (D.D.C. 2007)⁴⁵⁹

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.

Business Location. Iraq, UAE, Bangladesh, Indonesia, Egypt, and India.

Payment.

1. **Amount of the value.** \$650,539 in Iraq; \$114,995 in the other countries.
2. **Amount of business related to the payment.** Alleged profits of \$1,936,926 from Iraq, and \$328,939 from the other countries.
3. **Intermediary.** Two “consultants” for the Iraq payments, one in Lebanon and one in Jordan.
4. **The 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.

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.

⁴⁵⁹ SEC v. Textron Inc., No. 07-cv-01505 (D.D.C. 2007).

D. SEC Actions Relating to Foreign Bribery

34. SEC v. Baker Hughes Inc. and Roy Fearnley (S.D. Tex 2007)⁴⁶⁰

Nature of the Business. Provision of oilfield development services by Baker Hughes Inc. (“Baker Hughes”), a U.S. corporation. Roy Fearnley is a former Kazakhstan-based Baker Hughes business executive.

Business Location. Kazakhstan, Angola, Nigeria, Indonesia, Russia, and Uzbekistan.

Payment.

1. **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.
2. **Amount of business related to the payment.** At least \$208 million in Kazakhstan; undisclosed amounts in Angola, Nigeria, Indonesia, Russia, and Uzbekistan.
3. **Intermediary.** Unidentified agents in Kazakhstan, Angola, Russia, and Uzbekistan; a tax consultant and customs brokers in Nigeria; freight forwarders in Indonesia.
4. **The 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.

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.

⁴⁶⁰ SEC v. Baker Hughes Inc., No. 4:07-cv-01408 (S.D. Tex. 2007).

D. SEC Actions Relating to Foreign Bribery

33. SEC v. Charles Michael Martin (D.D.C. 2007)⁴⁶¹

Nature of the Business. Cultivation of genetically modified crops in Indonesia by Monsanto Co. (“Monsanto”), a U.S. corporation. Charles Michael Martin (“Martin”), a U.S. citizen, was a former employee of Monsanto.

Business Location. Indonesia.

Payment.

1. **Amount of the value.** \$50,000.
2. **Amount of business related to the payment.** Unknown.
3. **Intermediary.** An Indonesian consulting firm.
4. **The foreign official.** local Indonesian government official.

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.

⁴⁶¹ SEC v. *Martin*, No. 07-cv-00434 (D.D.C. 2007).

D. SEC Actions Relating to Foreign Bribery

32. SEC v. The Dow Chemical Co. (D.D.C. 2007)⁴⁶²

Nature of the Business. Sale of crop protection products by the Dow Chemical Company (“Dow”), a U.S. corporation.

Business Location. India.

Payment.

1. **Amount of the value.** Approximately \$200,000.
2. **Amount of business related to the payment.** Unspecified.
3. **Intermediary.** Various third party contractors.
4. **The 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.

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.

⁴⁶² SEC v. Dow Chemical Co., No. 07-cv-00336 (D.D.C. 2007).

D. SEC Actions Relating to Foreign Bribery

31. SEC v. El Paso Corp. (S.D.N.Y. 2007)⁴⁶³

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.

Business Location. Iraq.

Payment.

1. **Amount of the value.** Approximately \$5.5 million.
2. **Amount of business related to the payment.** Approximately \$420 million in oil purchases.
3. **Intermediary.** Third-party Iraqi oil companies.
4. **The foreign official.** None.

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 SOMO 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 under provisions of the ‘34 Act, as well as to a civil penalty of \$2.25 million and disgorgement in the amount of \$5,482,363.00. 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.

⁴⁶³ SEC v. El Paso Corp., No. 07-cv-00899 (S.D.N.Y. 2007).

D. SEC Actions Relating to Foreign Bribery

30. In the Matter of Schnitzer Steel Industries, Inc. (2006)⁴⁶⁴

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.

Business Location. South Korea and China.

Payment.

1. **Amount of the value.** \$204,537 (foreign officials) and \$1,683,672 (private parties).
2. **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.
3. **Intermediary.** None.
4. **The foreign official.** Managers of government customers.

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 and 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.

⁴⁶⁴ *In the Matter of Schnitzer Steel Indus., Inc.*, Admin. Pro. File No. 3-12456 (Oct. 16, 2006).

D. SEC Actions Relating to Foreign Bribery

29. In the Matter of Statoil ASA (2006)⁴⁶⁵

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.

Business Location. Iran.

Payment.

1. **Amount of the value.** \$5.2 million.
2. **Amount of business related to the payment.** Undetermined.
3. **Intermediary.** Offshore intermediary company consultant.
4. **The foreign official.** Head of a subsidiary organization of the national oil company.

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.

⁴⁶⁵ *In the Matter of Statoil ASA*, Admin. Pro. File No. 3-12453 (Oct. 13, 2006).

D. SEC Actions Relating to Foreign Bribery

28. SEC v. Jim Bob Brown (S.D. Tex. 2006)⁴⁶⁶

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.

Business Location. Nigeria and Ecuador.

Payment.

1. **Amount of the value.** \$2.255 million.
2. **Amount of business related to the payment.** Revenue of \$243,400,000.
3. **Intermediary.** Outside consultants and employees.
4. **The foreign official.** Officials of Nigerian Petroleum Corporation and its subsidiaries and joint ventures, Nigerian tax officials, Nigerian tax and court officials, officials of PetroEcuador.

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.

⁴⁶⁶ SEC v. Brown, No. 4:06-cv-02919 (S.D. Tex. 2006).

D. SEC Actions Relating to Foreign Bribery

27. SEC v. David M. Pillor (N.D. Cal. 2006)⁴⁶⁷

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.

Business Location. Thailand, China, and the Philippines.

Payment.

1. **Amount of the value.** \$203,000.
2. **Amount of business related to the payment.** \$41,300,000.
3. **Intermediary.** Third party distributors of InVision’s products and InVision’s own sales agents.
4. **The foreign official.** Unknown.

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.

⁴⁶⁷ SEC v. Pillor, No. 1:06-cv-4906 (N.D. Cal. 2006).

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)⁴⁶⁸

Nature of the Business. Provision of upstream oil and gas products and services by wholly-owned subsidiaries of Vetco International. 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.

Business Location. Nigeria.

Payment.

1. **Amount of the value.** Approximately \$1,000,000.
2. **Amount of business related to the payment.** \$180,000,000.
3. **Intermediary.** None.
4. **The foreign official.** Officials of the National Petroleum Investment Management Services (“NAPIMS”), the state-owned agency which oversees investment in petroleum.

Influence to be Obtained. According to the complaint filed by the SEC on July 5, 2006, during the period 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.

⁴⁶⁸ SEC v. Samson, No. 1:06-cv-01217 (D.D.C. 2006).

D. SEC Actions Relating to Foreign Bribery

25. [In the Matter of Oil States Int'l, Inc. \(2007\)](#)⁴⁶⁹

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.

Business Location. Venezuela.

Payment.

1. **Amount of the value.** \$348,350.
2. **Amount of business related to the payment.** Unspecified.
3. **Intermediary.** Consultant and employees of the subsidiary, HWC.
4. **The foreign official.** Employees of Petróleos de Venezuela, S.A. (“PDVSA”), an energy company owned by the government of Venezuela.

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.

⁴⁶⁹ *In the Matter of Oil States Int'l, Inc.*, Admin. Pro. File No. 3-12280 (Apr. 27, 2006).

D. SEC Actions Relating to Foreign Bribery

24. SEC v. Tyco Int'l Ltd. (S.D.N.Y. 2006)⁴⁷⁰

Nature of the Business. Construction and provision of engineered products and services in government projects by Tyco International Ltd. ("Tyco"), a Bermuda corporation. Tyco is listed on the New York Stock Exchange.

Business Location. Brazil and South Korea.

Payment.

1. **Amount of the value.** Unspecified.
2. **Amount of business related to the payment.** Unspecified.
3. **Intermediary.** Lobbyists.
4. **The 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.

Influence to be Obtained. Payments were made to secure construction and other service contracts for government-controlled projects.

Enforcement. In April 2006, Tyco and the SEC reached a settlement with respect to a host of alleged violations of the securities laws and other laws, including a single count alleging an FCPA violation. Tyco agreed to pay a \$50 million fine and \$1 in disgorgement as part of the settlement, which allows Tyco to avoid admitting any of the allegations.

⁴⁷⁰ SEC v. Tyco Int'l Ltd., No. 06-cv-2942 (S.D.N.Y. 2006).

D. SEC Actions Relating to Foreign Bribery

23. In the Matter of Diagnostic Products Corp. (2005)⁴⁷¹

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.

Business Location. China.

Payment.

1. **Amount of the value.** \$1.6 million.
2. **Amount of business related to the payment.** Unspecified.
3. **Intermediary.** Unknown.
4. **The foreign official.** Foreign official’s physicians and laboratory workers at government-owned hospitals.

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.

⁴⁷¹ *In the Matter of Diagnostic Prods. Corp.*, Admin. Pro. File No. 3-11933 (May 20, 2005).

D. SEC Actions Relating to Foreign Bribery

22. [SEC v. Yaw Osei Amoako \(D.N.J. 2005\)](#)⁴⁷² [SEC v. Steven J. Ott and Roger Michael Young \(D.N.J. 2006\)](#)⁴⁷³

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.

Business Location. Nigeria, Rwanda, and Senegal.

Payment.

1. **Amount of the value.** \$267,468.95.
2. **Amount of business related to the payment.** \$11,509,733.
3. **Intermediary.** None specified.
4. **The foreign official.** Senior officials of government-owned telephone companies.

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.

⁴⁷² *SEC v. Amoako*, No. 3:05-cv-01122 (D.N.J. 2005).

⁴⁷³ *SEC v. Ott, et al.*, No. 3:06-cv-04195 (D.N.J. 2006).

D. SEC Actions Relating to Foreign Bribery

21. SEC v. Monsanto Co. (D.D.C. 2005)⁴⁷⁴

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.

Business Location. Indonesia.

Payment.

1. **Amount of the value.** \$50,000.
2. **Amount of business related to the payment.** Unknown.
3. **Intermediary.** An Indonesian consultant.
4. **The foreign official.** A local Indonesian government official.

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.

⁴⁷⁴ SEC v. Monsanto Co., No. 05-cv-14 (D.D.C. 2005).

D. SEC Actions Relating to Foreign Bribery

20. SEC v. GE InVision, Inc. (N.D. Cal. 2005)⁴⁷⁵

Nature of the Business. Sales of explosives detection products by InVision Technologies, Inc.⁴⁷⁶ (“InVision”), a U.S. corporation.

Business Location. Thailand, China, and the Philippines.

Payment.

1. **Amount of the value.** More than \$95,000.
2. **Amount of business related to the payment.** More than \$589,000.
3. **Intermediary.** Unknown.
4. **The foreign official.** Unknown.

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.

⁴⁷⁵ SEC v. GE InVision, Inc., No. 3:05-cv-00660 (N.D. Cal. 2005).

⁴⁷⁶ 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)⁴⁷⁷

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.

Business Location. Benin.

Payment.

1. **Amount of the value.** More than \$3.5 million.
2. **Amount of business related to the payment.** Approximately \$98 million.
3. **Intermediary.** The business advisor of the President of Benin.
4. **The foreign official.** President of Benin.

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.

⁴⁷⁷ SEC v. Titan Corp., No. 05-cv-0411 (D.D.C. 2005).

D. SEC Actions Relating to Foreign Bribery

18. In the Matter of BJ Services Co. (2004)⁴⁷⁸

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.

Business Location. Argentina.

Payment.

1. **Amount of the value.** Several payments totaling 72,000 Argentine pesos.
2. **Amount of business related to the payment.** Undetermined.
3. **Intermediary.** None.
4. **The foreign official.** Argentine customs officials and an employee of Argentina’s Secretary of Industry and Commerce.

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.

⁴⁷⁸ *In the Matter of BJ Servs. Co.*, Admin. Pro. File No. 3-11427 (Mar. 10, 2004).

D. SEC Actions Relating to Foreign Bribery

17. SEC v. ABB Ltd. (D.D.C. 2004)⁴⁷⁹

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”).

Business Location. Nigeria, Angola, and Kazakhstan.

Payment.

1. **Amount of the value.** Over \$1.1 million.
2. **Amount of business related to the payment.** At least \$5,501,157 in profits.
3. **Intermediary.** See below.
4. **The foreign official.** See below.

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.

⁴⁷⁹ SEC v. ABB Ltd., No. 1:04-cv-01141 (D.D.C. 2004).

D. SEC Actions Relating to Foreign Bribery

16. SEC v. Schering-Plough Corp. (D.D.C. 2004)⁴⁸⁰

Nature of the Business. Sale of pharmaceutical products by Schering-Plough Corp., a U.S.-based global health care company.

Business Location. Poland.

Payment.

1. **Amount of the value.** Approximately \$76,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** None.
4. **The foreign official.** Polish government official, who is also the president of the Chudow Castle Foundation.

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.

⁴⁸⁰ SEC v. Schering-Plough Corp., No. 1:04-cv-00945 (D.D.C. 2004).

D. SEC Actions Relating to Foreign Bribery

15. SEC v. Syncor Int'l Corp. (D.D.C. 2002)⁴⁸¹

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.

Business Location. Multiple countries.

Payment.

1. **Amount of the value.** At least \$600,000.
2. **Amount of business related to the payment.** Unspecified.
3. **Intermediary.** Payments made by subsidiaries of Syncor, with the knowledge and approval of the subsidiaries' senior officials, and sometimes with the knowledge and approval of the chairman of Syncor.
4. **The foreign official.** Physicians employed by hospitals owned by the foreign government in which the hospital is located.

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.

⁴⁸¹ SEC v. Syncor Int'l Corp., No. 1:02-cv-2421 (D.D.C. 2002).

D. SEC Actions Relating to Foreign Bribery

14. SEC v. BellSouth Corp. (N.D. Ga. 2002)⁴⁸²

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 Telefonía Celular de Nicaragua, S.A. (“Telefonía”), a Nicaraguan corporation.

Business Location. Venezuela and Nicaragua.

Payment.

1. **Amount of the value.** \$60,000.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Not stated.
4. **The foreign official.** Payments in the form of consulting and lobbying fees paid to the wife of the chairman of the Nicaraguan legislative committee.

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 Telefonía. 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 Telefonía. BellSouth also agreed to pay a civil penalty of \$150,000.

⁴⁸² SEC v. BellSouth Corp., No. 1:02-cv-00113 (N.D. Ga. 2002).

D. SEC Actions Relating to Foreign Bribery

13. SEC v. Douglas A. Murphy, David G. Kay and Lawrence H. Theriot (S.D. Tex. 2002)⁴⁸³

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.

Business Location. Haiti.

Payment.

1. **Amount of the value.** The alleged bribes ranged from \$25,000 to \$72,000 and totaled more than \$528,000.
2. **Amount of business related to the payment.** The alleged bribes saved the company more than \$1.5 million dollars in Haitian import tax.
3. **Intermediary.** None.
4. **The foreign official.** Haitian customs and tax officials.

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 an \$11,000 fine, 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.

⁴⁸³ SEC v. Murphy, No. 4:02-cv-02908) (S.D. Tex. 2002).

D. SEC Actions Relating to Foreign Bribery

12. [In the Matter of Chiquita Brands International, Inc. \(2001\)](#)⁴⁸⁴ [SEC v. Chiquita Brands International, Inc. \(D.D.C. 2001\)](#)⁴⁸⁵

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.

Business Location. Colombia.

Payment.

1. **Amount of the value.** \$30,000.
2. **Intermediary.** Comercio Exterior Asesores Limitada (“CEA”), Banadex’s customs broker.
3. **The foreign official.** Colombian customs officials.

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.

Related Investigation. Chiquita Brands International.

⁴⁸⁴ *In the Matter of Chiquita Brands Int’l, Inc.*, Admin. Pro. File No. 3-10613 (Oct. 3, 2001).

⁴⁸⁵ *SEC v. Chiquita Brands Int’l, Inc.*, No. 1:01-cv-02079 (D.D.C. 2001).

D. SEC Actions Relating to Foreign Bribery

11. [In the Matter of Baker Hughes Inc. \(2001\)](#)⁴⁸⁶
[SEC v. KPMG Siddharta Siddharta & Harsono, and Sonny Harsono \(S.D. Tex. 2001\)](#)⁴⁸⁷
[SEC v. Eric L. Mattson and James W. Harris \(S.D. Tex. 2001\)](#)⁴⁸⁸

Nature of the Business. KPMG Siddharta Siddharta & Harsono, a public accounting firm in Indonesia (“KPMG”), and Sonny Harsono (“Harsono”), 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.

Business Location. Indonesia.

Payment.

1. **Amount of the value.** \$75,000.
2. **Amount of business related to the payment.** \$2.93 million.
3. **Intermediary.** KPMG-SSH.
4. **The foreign official.** Indonesian tax official.

Influence to be Obtained. Reduction of tax assessment for PT Eastman Christensen (“PTEC”), an Indonesian company beneficially owned by BHI, from \$3.2 million to \$270,000.

Enforcement. Action against KPMG and Harsono was the first joint civil injunctive action by the SEC and DOJ. Eric Mattson and James Harris authorized Harsono and KPMG to pay the bribe to significantly reduce the tax assessment against PTEC. 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 defendants consented to the entry of a final judgment that permanently enjoins both defendants from violating and aiding and abetting the violation of the anti-bribery provisions of the FCPA and the internal controls and books and records provisions of the Exchange Act.

The administrative order against Baker Hughes also finds that Baker Hughes 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. Baker Hughes consented to a cease-and-desist order as to the internal controls and books and records provision of the Exchange Act, but did not impose a financial penalty.

Recent Activity. Mattson and Harris challenged the SEC alleging that the payment was not in contravention of the FCPA and claimed 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. Relying on *U.S. v. Kay* (S.D. Tex. 2001) (see DOJ Digest Number 26), the court in this case 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. They claim that the payment was due to extortion by a corrupt government official. The SEC has appealed the District Court’s decision to the United States Court of Appeals for the 5th Circuit. That appeal was stayed pending the 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.

⁴⁸⁶ *In the Matter of Baker Hughes Inc.*, Admin. Pro. File No. 3-10572 (Sept. 12, 2001).

⁴⁸⁷ *SEC v. KPMG, et al.*, No. 01-cv-3105 (S.D. Tex. 2001).

⁴⁸⁸ *SEC v. Mattson, et al.*, No. 01-cv-3106 (S.D. Tex. 2001).

D. SEC Actions Relating to Foreign Bribery

10. **In the Matter of American Bank Note Holographics, Inc. (2001)**⁴⁸⁹
SEC v. American Bank Note Holographics, Inc. (S.D.N.Y. 2001)⁴⁹⁰
SEC v. Joshua C. Cantor (S.D.N.Y. 2003)⁴⁹¹

Nature of the Business. Origination, production, and marketing of mass-produced secure holograms by American Bank Note Holographics (“American Bank Note”), a Delaware corporation.

Business Location. Saudi Arabia.

Payment.

1. **Amount of the value.** \$239,000.
2. **Amount of business related to the payment.** Approximately \$597,500 (bribe was 40% of the contract’s value).
3. **Intermediary.** Foreign agent of American Bank Note.
4. **The foreign official.** Saudi Arabian government officials.

Influence to be Obtained. Awarding of contract to produce holograms for foreign government by depositing \$239,000 into a Swiss bank account.

Enforcement. American Bank Note consented to a \$75,000 civil penalty for violation of the anti-bribery provisions of the federal securities laws. American Bank Note 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.

American Bank Note settled the SEC’s injunctive action consenting to the order permanently restraining it from violating the anti-fraud, periodic reporting, recordkeeping and internal controls provisions of the federal securities laws. Certain other officers of American Bank Note not directly involved in the FCPA violations settled SEC civil actions against them, consenting to permanent restraint 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 10 year probation from acting as an officer or director of a public company.

See DOJ Digest Number B-23.

⁴⁸⁹ *In the Matter of Am. Bank Note Holographics, Inc.*, Admin. Pro. File No. 3-10532 (July 18, 2001).

⁴⁹⁰ *SEC v. Am. Bank Note Holographics, Inc.*, No. 01-6453 (S.D.N.Y. 2001).

⁴⁹¹ *SEC v. Cantor*, No. 03-cv-2488 (S.D.N.Y. 2003).

D. SEC Actions Relating to Foreign Bribery

9. SEC v. Int'l Business Machines Corp. (D.D.C. 2000)⁴⁹²

Nature of the Business. IBM-Argentina, an indirectly wholly-owned subsidiary of IBM, a U.S. corporation, entered into a systems integration contract with Banco de La Nación Argentina, a government-owned commercial bank.

Business Location. Argentina.

Payment.

1. **Amount of the value.** At least \$4.5 million.
2. **Amount of business related to the payment.** \$250 million.
3. **Intermediary.** Capacitacion Y Computacion Rural, S.A., a subcontractor for an alternative banking software system.
4. **The foreign official.** Several directors of Banco de La Nation Argentina.

Influence to be Obtained. Awarding of the systems integration contract to IBM Argentina.

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 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 books and records provision and paid a civil fine of \$300,000. There are related proceedings in Argentina and Switzerland to recover the \$4.5 million payment.

⁴⁹² SEC v. IBM Corp., No. 00-cv-3040 (D.D.C. 2000).

D. SEC Actions Relating to Foreign Bribery

8. SEC v. Triton Energy Corp., Philip W. Keever and Richard L. McAdoo (D.D.C. 1997)⁴⁹³

Nature of the Business. Operation of an oil and gas recovery project in Indonesia by Triton Indonesia, Inc. (“Triton Indonesia”), a wholly-owned subsidiary of Triton Energy Corp. (“Triton Energy”), a Delaware corporation and an issuer.

Business Location. Indonesia.

Payment.

1. **Amount of the value.** \$287,500.
2. **Amount of business related to the payment.** Not stated.
3. **Intermediary.** Roland Siouffi, Triton Indonesia’s business agent, acted as an intermediary between the company and Indonesian government agencies.
4. **The foreign official.** Various officials of the Indonesian government, including government auditors and tax collectors.

Influence to be Obtained. To, among other things, (i) obtain a favorable decision from tax auditors reducing Triton Indonesia’s tax liability relating to technical service fees, (ii) obtain from auditors a favorable final report and cost certification for the 1988 and 1989 annual audits, (iii) obtain 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) obtain a refund on previous value added tax payments, and (v) obtain a favorable decision to revise rates paid under a pipeline tariff and procure a refund of the purported overpayment.

Enforcement. The SEC filed a civil injunction action against Triton Energy Corp. and Philip Keever and Robert McAdoo, two former senior officers of Triton Indonesia. 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 consented to a similar injunction and to pay a \$50,000 penalty. In addition, four other former Triton Energy Corp. executives consented to a cease-and-desist order enjoining them from causing any further violations.

⁴⁹³ SEC v. Triton Energy Corp. et al., No. 1:97-cv-00401 (D.D.C. 1997).

D. SEC Actions Relating to Foreign Bribery

7. SEC v. Montedison, S.p.A. (D.D.C. 1996)⁴⁹⁴

Nature of the Business. Agro-industry, chemical, energy and engineering industries by Montedison, S.P.A. (“Montedison”), an Italian corporation and a U.S. issuer.

Business Location. Italy.

Payment.

1. **Amount of the value.** Approximately \$272 million.
2. **Amount of business related to the payment.** Not stated.
3. **The intermediary payor.** Offshore subsidiary companies of Montedison in Curacao and the British Virgin Islands.
4. **Intermediary.** A Rome real estate developer.
5. **The foreign official.** Italian politicians.

Influence to be Obtained. To secure political backing to either change the terms of a contract or overturn the decision of a judge.

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 30, 2002, a settlement was entered into under which Montedison was ordered to pay a civil penalty of \$3,000,000 for violating the anti-fraud, financial reporting and books and records provision of the federal securities law. Injunctive relief was not imposed.

⁴⁹⁴ SEC v. Montedison, S.p.A., No. 1:96-cv-02631 (D.D.C. 1996).

D. SEC Actions Relating to Foreign Bribery

6. SEC v. Ashland Oil, Inc., Orin E. Atkins (D.D.C. 1986)⁴⁹⁵

Nature of the Business. Refining, transporting and marketing crude oil products by Ashland Oil, Inc. (“Ashland Oil”), a Kentucky corporation and an issuer.

Business Location. Oman.

Payment.

1. **Amount of the value.** Purchase of a nearly worthless chromite mine owned by the foreign official for \$25 million.
2. **Amount of business related to the payment.** Not stated.
3. **The foreign official.** Equerry to the Sultan of Oman and an official of the Omani government.

Influence to be Obtained. To obtain crude oil contracts with the Oman Refining Company, an instrumentality of the government of Oman.

Enforcement. Ashland Oil and Atkins, chairman and chief executive officer of Ashland Oil, both 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.

⁴⁹⁵ SEC v. Ashland Oil, Inc., et al., No. 86-cv-1904 (D.D.C. 1986).

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. 1981)⁴⁹⁶

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 portion of the Caroni Racetrack project in Trinidad.

Enforcement. Wallace Co. 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.

⁴⁹⁶ SEC v. Sam P. Wallace Co., et al., No. 81-cv-1915 (D.D.C. 1981).

D. SEC Actions Relating to Foreign Bribery

4. SEC v. Tesoro Petroleum Corp. (D.D.C. 1980)⁴⁹⁷

Nature of the Business. Exploration, development, production, purchase and sale of oil and gas by Tesoro Petroleum Corp. (“Tesoro”), a Delaware corporation and an issuer.

Business Location. Worldwide.

Payment.

1. **Amount of the value.** In excess of \$200,000.
2. **Amount of business related to the payment.** Multimillion dollar contracts.
3. **Intermediary.** A foreign finder/consultant, who assisted Tesoro in negotiating agreements with foreign governments.
4. **The foreign official.** Foreign government officials or political leaders.

Influence to be Obtained. Foreign oil and gas concessions from foreign governments.

Enforcement. Tesoro consented to the entry of a permanent injunction prohibiting future violations of the FCPA. In addition, Tesoro agreed to appoint a new director who would be satisfactory to the SEC and undertook to keep accurate books and records.

⁴⁹⁷ SEC v. Tesoro Petroleum Corp., No. 80-cv-2961 (D.D.C. 1980).

D. SEC Actions Relating to Foreign Bribery

3. SEC v. Int'l Systems & Controls Corp. (D.D.C. 1979)⁴⁹⁸

Nature of the Business. Provision of services and products for the development of energy, agriculture, and forestry resources and the processing, storage and handling of natural resource and agricultural products by International Systems & Controls Corp. ("International Systems"), a Delaware corporation and an issuer.

Business Location. Saudi Arabia, Iran, Algeria, Ivory Coast, Nicaragua, Chile and other countries.

Payment.

1. **Amount of the value.** In excess of \$23 million.
2. **Amount of business related to the payment.** \$750 million in business.
3. **Intermediary.** Payments were effected through International Systems' subsidiaries and foreign entities owned and controlled by foreign officials.
4. **The foreign official.** Senior foreign government officials (and associates of such officials), including a Saudi government official, Iranian government officials, a senior Algerian military official, the Iranian Ambassador to the U.S. and the Iranian Minister of Finance, the President of Nicaragua and members of the Chilean Junta.

Influence to be Obtained. To secure certain contracts.

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.

⁴⁹⁸ SEC v. Int'l Sys. & Controls Corp., No. 79-cv-1760 (D.D.C 1979).

D. SEC Actions Relating to Foreign Bribery

2. SEC v. Katy Industries, Inc., Wallace E. Carroll, Melvan M. Jacobs (N.D. Ill. 1978)⁴⁹⁹

Nature of the Business. Oil production by Katy Indus., Inc. ("Katy"), a [state] corporation and an issuer.

Business Location. Indonesia.

Payment.

1. **Amount of the value.** \$250,000, amounting to 13.33% of the annual net profit from the contract.
2. **Amount of business related to the payment.** \$10 million contract.
3. **Intermediary.** Payments were made through an offshore Cayman Island corporation, owned by a consultant of Katy and a representative of the foreign official (who was a close friend of the foreign official).
4. **The foreign official.** A high-level Indonesian government official able to assist Katy in obtaining an oil production-sharing contract.

Influence to be Obtained. To obtain a 30-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.

Enforcement. Consent judgments were entered with respect to Katy and two individual defendants (who were directors of Katy). 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.

⁴⁹⁹ SEC v. Katy Indus., Inc., et al., No. 78-cv-03476 (N.D. Ill. 1978).

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)⁵⁰⁰

Nature of the Business. Sale and servicing of aircraft by Page Airways, Inc. (“Page”), a New York corporation and an issuer.

Business Location. The Republic of Gabon, Malaysia, Ivory Coast, Morocco, Saudi Arabia and Uganda.

Payment.

1. **Amount of the value.** In excess of \$2.5 million.
2. **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).
3. **Intermediary.** Foreign entities owned by some of the Asian and African foreign officials.
4. **The 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.

Influence to be Obtained. To sell Gulfstream II aircraft and other aircraft, products and services throughout the world.

Enforcement. Page consented to the entry of a permanent injunction prohibiting future violations of the FCPA. Charges against six of Page’s officers and directors were dismissed.

⁵⁰⁰ SEC v. Page Airways, Inc., et al., No. 78-cv-0645 (D.D.C. 1978).



E. Department of Justice FCPA Opinion Procedure Releases⁵⁰¹

⁵⁰¹ 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 (November 7, 2014)

Nature of the Business. An unspecified, multinational company headquartered in the United States.

Business Location. Unspecified.

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.

1. **Amount of payment.** Unspecified.
2. **Intended recipients.** Unspecified.

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.

E. Department of Justice FCPA Opinion Procedure Releases

59. FCPA Review Opinion Procedure Release 14-01 (March 17, 2014)

Nature of the Business. United States financial services company, investment bank, and majority shareholder of a foreign financial services company.

Business Location. Unspecified.

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 requestor 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 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

E. Department of Justice FCPA Opinion Procedure Releases

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.

1. **Amount of payment.** Unspecified.
2. **Intended recipients.** A foreign official by directly purchasing the foreign official's minority interest in a foreign financial services company.

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 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 (December 19, 2013)

Nature of the Business. Partner at unspecified U.S. law firm, which represents a foreign country in various international arbitrations.

Business Location. Unspecified.

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.

1. **Amount of payment.** Approximately between \$13,500 and \$20,500.
2. **Intended recipients.** A foreign official, via payment to the treatment facility for the official's daughter.

Reason for Payment. Humanitarian reasons.

Opinion. Department of Justice 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."

E. Department of Justice FCPA Opinion Procedure Releases

57. FCPA Review Opinion Procedure Release 12-02 (October 18, 2012)

Nature of the Business. Nineteen non-profit adoption agencies.

Business Location. United States.

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.

1. **Amount of payment.** Unspecified, but the amount spent on hotels and meals will not exceed General Services Administration (“GSA”) rates.
2. **Intended recipients.** Eighteen government officials from an unspecified Foreign Country.

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.”

E. Department of Justice FCPA Opinion Procedure Releases

56. FCPA Opinion Procedure Release 12-01 (September 18, 2012)

Nature of the Business. An unspecified U.S. lobbying firm.

Business Location. Unspecified.

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.

1. **Amount of payment.** Approximately \$2,000 a month for the life of the consultancy agreement.
2. **Intended recipients.** Member of the royal family of the foreign country.

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.

E. Department of Justice FCPA Opinion Procedure Releases

55. FCPA Review Opinion Procedure Release 11-01 (June 30, 2011)

Nature of the Business. An unspecified U.S. adoption service provider.

Business Location. Unspecified.

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 requestor invited another adoption service provider to participate in the visit.

1. **Amount of payment.** Unspecified.
2. **Intended recipients.** Officials from two foreign governments.

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.”

E. Department of Justice FCPA Opinion Procedure Releases

54. FCPA Review Opinion Procedure Release 10-02 (July 16, 2010)

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.

Business Location. Unspecified Eurasian country.

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.

1. **Amount of payment.** \$1.42 million.
2. **Intended recipients.** A local microfinance institution in the Eurasian country.

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.

E. Department of Justice FCPA Opinion Procedure Releases

53. FCPA Review Opinion Procedure Release 10-01 (April 19, 2010)

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.

Business Location. Unspecified.

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.

1. **Amount of payment.** \$60,000 (employment salary of \$5,000 per month for one year).
2. **Intended recipients.** Foreign government official.

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.

E. Department of Justice FCPA Opinion Procedure Releases

52. FCPA Review Opinion Procedure Release 09-01 (August 3, 2009)

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.

Business Location. Unspecified.

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.

1. **Amount of payment.** 100 units of the medical device, accessories and services, valued at a total of \$ 1.9 million.
2. **Intended recipients.** Medical centers participating in the foreign government’s program, who in turn will distribute to end-user patients.

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.

E. Department of Justice FCPA Opinion Procedure Releases

51. FCPA Review Opinion Procedure Release 08-03 (July 11, 2008)

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.

Business Location. 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.

1. **Amount of payment.** Travel and per diem expenses.
2. **Intended recipients.** Journalists employed by state-owned media outlets.

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.

E. Department of Justice FCPA Opinion Procedure Releases

50. FCPA Review Opinion Procedure Release 08-02 (June 13, 2008)

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.

Business Location. United States, United Kingdom, and various other countries.

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.

1. **Amount of payment.** Unspecified.

2. **Intended recipients.** Unspecified.

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.

E. Department of Justice FCPA Opinion Procedure Releases

49. FCPA Review Opinion Procedure Release 08-01 (January 15, 2008)

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.

Business Location. Unspecified.

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.

1. **Amount of payment.** Unspecified.
2. **Intended recipients.** Foreign company with a minority stake in a majority government-owned company.

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.

E. Department of Justice FCPA Opinion Procedure Releases

48. FCPA Review Opinion Procedure Release 07-03 (December 21, 2007)

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.

Business Location. Unspecified Asian country.

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.

1. **Amount of payment.** Approximately \$9,000.
2. **Intended recipients.** Court clerk's office.

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.

E. Department of Justice FCPA Opinion Procedure Releases

47. FCPA Review Opinion Procedure Release 07-02 (September 11, 2007)

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.

Business Location. Unspecified.

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).

1. **Amount of payment.** Unspecified, but including domestic economy class airfare, lodging, transportation, meals, and a fixed *per diem* amount for incidental expenses.
2. **Intended recipients.** Foreign government officials.

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.

E. Department of Justice FCPA Opinion Procedure Releases

46. FCPA Review Opinion Procedure Release 07-01 (July 24, 2007)

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.

Business Location. Unspecified.

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.

1. **Amount of payment.** Unspecified, but including domestic economy class airfare, lodging, transportation, and meals.
2. **Intended recipients.** Foreign government officials.

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.

E. Department of Justice FCPA Opinion Procedure Releases

45. FCPA Review Opinion Procedure Release 06-02 (December 31, 2006)

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.

Business Location. Unspecified.

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.

1. **Amount of payment.** Unspecified, but approximately 0.6% of the total value of the foreign exchange sought each month.
2. **Intended recipients.** Local 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.

E. Department of Justice FCPA Opinion Procedure Releases

44. FCPA Opinion Procedure Release 06-01 (October 16, 2006)

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.

Business Location. Unspecified.

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.

1. **Amount of payment.** \$25,000.
2. **Intended recipients.** Foreign Customs department or Ministry of Finance.

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.

E. Department of Justice FCPA Opinion Procedure Releases

43. FCPA Review Opinion Procedure Release 04-04 (September 3, 2004)

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.

Business Location. Unspecified.

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.

1. **Amount of payment.** Approximately \$16,875.
2. **Intended recipients.** Foreign officials responsible for lawmaking.

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.”

E. Department of Justice FCPA Opinion Procedure Releases

42. FCPA Review Opinion Procedure Release 04-03 (June 14, 2004)

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.

Business Location. Beijing, China.

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.

1. **Amount of payment.** Unspecified.
2. **Intended recipients.** Ministry officials.

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.

E. Department of Justice FCPA Opinion Procedure Releases

41. FCPA Review Opinion Procedure Release 04-02 (July 12, 2004)

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.

Business Location. Nigeria, Angola, and Kazakhstan.

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.

1. **Amount of payment.** Unspecified.
2. **Intended recipients.** Purchasers of subsidiaries convicted of FCPA violations.

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.

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 (January 6, 2004)

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.

Business Location. Beijing, 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.

1. **Amount of payment.** Unspecified.
2. **Intended recipients.** Seminar attendees and presenters.

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.

E. Department of Justice FCPA Opinion Procedure Releases

39. FCPA Opinion Procedure Release 03-01 (January 15, 2003)

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.

Business Location. Unspecified.

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.

1. **Amount of payment.** Unspecified.
2. **Intended recipients.** Foreign individuals employed by state-owned entities.

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.

E. Department of Justice FCPA Opinion Procedure Releases

38. FCPA Review Opinion Procedure Release 01-03 (December 11, 2001)

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.

Business Location. Unspecified foreign country.

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.

1. **Amount of payment.** Unspecified.
2. **Intended recipients.** Officials of foreign government.

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.

E. Department of Justice FCPA Opinion Procedure Releases

37. FCPA Opinion Procedure Release 01-02 (July 18, 2001)

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.

Business Location. Unspecified foreign country.

Proposed Arrangement.

1. **Amount of the value.** Unspecified.
2. **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.

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.

E. Department of Justice FCPA Opinion Procedure Releases

36. FCPA Opinion Procedure Release 01-01 (May 24, 2001)

Nature of the Business. Unspecified American company (“U.S. Co.”) to enter into 50/50 joint venture with a French company (“French Co.”).

Business Location. Unspecified foreign country.

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.

1. **Amount of payment.** Unspecified.

2. **Intended recipients.** Unspecified.

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.

E. Department of Justice FCPA Opinion Procedure Releases

35. FCPA Opinion Procedure Release 00-01 (March 29, 2000)

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).

Business Location. Unspecified foreign country (“Country X”).

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.

1. **Amount of the value.** 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.
2. **Intended recipient.** Foreign Government Official.

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.

E. Department of Justice FCPA Opinion Procedure Releases

34. FCPA Opinion Procedure Release 98-02 (August 5, 1998)

Nature of the Business. U.S. company with a wholly-owned subsidiary engaged in the sale and service of military training programs.

Business Location. Unspecified foreign country.

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.

- 1. 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.
- 2. Intended recipient.** Privately-held, non-governmental entity.

Reason for Payment. See above.

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 (February 23, 1998)

Nature of the Business. U.S.-based industrial and service company.

Business Location. Nigeria.

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.

1. **Amount of the value.** \$30,000.
2. **Intended recipients.** Nigerian FEPA and Ports Authority officials.

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.

E. Department of Justice FCPA Opinion Procedure Releases

32. FCPA Review Opinion Procedure Release 97-02 (November 5, 1997)

Nature of the Business. U.S.-based utility company.

Business Location. Country in Asia.

Proposed Payment.

1. **Amount of the value.** \$100,000.
2. **Intended recipient.** Government entity.

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.

E. Department of Justice FCPA Opinion Procedure Releases

31. FCPA Review Opinion Procedure Release 97-01 (February 27, 1997)

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.

Business Location. Unspecified foreign country.

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.

1. **Amount of the value.** Unspecified.
2. **Intended recipient.** Privately-held foreign company.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

30. FCPA Opinion Procedure Release 96-02 (November 25, 1996)

Nature of the Business. U.S. corporation engaged in the manufacture and sale of equipment used in commercial and military aircraft.

Business Location. Unspecified foreign country.

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.

1. **Amount of the value.** Unspecified.
2. **Intended recipient.** State-owned enterprise of the foreign country.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

29. FCPA Review Opinion Procedure Release 96-01 (November 25, 1996)

Nature of the Business. Unspecified nonprofit corporation established to protect a particular world region from the dangers posed by environmental accidents (“Nonprofit”).

Business Location. Nations in an unspecified region of the world.

Proposed Arrangement. Nonprofit proposes to sponsor and provide funding for up to 10 government representatives to attend environmental training in the U.S..

1. **Amount of the value.** \$10,000 to \$15,000 per year.
2. **Intended recipients.** Up to 10 government representatives.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

28. FCPA Opinion Procedure Release 95-03 (September 14, 1995)

Nature of the Business. Unspecified American company.

Business Location. Unspecified foreign country.

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.

1. **Amount of the value.** Annual payments of \$100,000 to \$250,000, plus percentage of profits received as a result of government projects awarded to the joint venture.
2. **Intended recipient.** Joint venture partner who is related to the foreign country’s leader and who is a “foreign government official in his own right.”

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

27. FCPA Review Opinion Procedure Release 95-02 (September 14, 1995)

Nature of the Business. Two unspecified American companies that seek to enter into two transactions in a foreign country.

Business Location. Unspecified 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.

1. **Amount of the value.** Unspecified.
2. **Intended recipient.** Foreign government officials.

Reason for Arrangement. 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).

E. Department of Justice FCPA Opinion Procedure Releases

26. FCPA Review Opinion Procedure Release 95-01 (January 11, 1995)

Nature of the Business. Unspecified U.S.-based energy company (“Company”).

Business Location. Unspecified country in South Asia.

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.

1. **Amount of the value.** \$10 million.
2. **Intended recipient.** Medical facility that is open to the public.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

25. FCPA Review Opinion Procedure Release 94-01 (May 13, 1994)

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.

Business Location. Unspecified 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.

1. **Amount of the value.** \$20,000 over twelve months.
2. **Intended recipient.** General Director of a state-owned enterprise.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

24. FCPA Review Opinion Procedure Release 93-02 (May 11, 1993)

Nature of the Business. Unspecified American company (“Company”) that sells defense equipment.

Business Location. Unspecified foreign country.

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.

1. **Amount of the value.** Unspecified.
2. **Intended recipient.** Government-owned business.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

23. FCPA Review Opinion Procedure Release 93-01 (April 20, 1993)

Nature of the Business. Unspecified major commercial organization with its principal place of business in Texas (“Organization”).

Business Location. Unspecified former eastern bloc country.

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.

1. **Amount of the value.** Directors’ fees of approximately \$1,000 per month.
2. **Intended recipient.** Foreign directors of the joint venture partnership.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

22. FCPA Review Procedure Release 92-01 (February 1992)

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.

Business Location. 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.

1. **Amount of the value.** At least \$200,000 annually.
2. **Intended recipient.** Pakistani government personnel.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

21. FCPA Review Procedure Release 88-01 (May 12, 1988)

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.

Business Location. Baja California, 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.

1. **Amount of the value.** Approximately \$362,000.
2. **Intended recipients.** Government of Mexico and its designated financial agent.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

20. FCPA Review Procedure Release 87-01 (December 17, 1987)

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.

Business Location. Unspecified.

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.

1. **Amount of the value.** Unspecified.
2. **Intended recipient.** International marketing organization.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

19. FCPA Review Procedure Release 86-01 (July 18, 1986)

Nature of the Business. Three unspecified U.S. corporations.

Business Location. Great Britain and Malaysia.

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.

1. **Amount of the value.** \$36,000; salary of \$40,000 to \$60,000 per year; and \$48,000 plus 30% of the profits generated by member's representation.
2. **Intended recipients.** Two members of the British Parliament and one member of the Malaysian Parliament.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

18. FCPA Opinion Procedure Release 85-03 (January 20, 1987)

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."

Business Location. Unspecified.

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.

1. **Amount of the value.** \$40 per hour, plus expenses, up to a limit of \$5,000.
2. **Intended recipient.** Former foreign government official.

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.

E. Department of Justice FCPA Opinion Procedure Releases

17. FCPA Review Procedure Release 85-02 (December 1985)

Nature of the Business. Unspecified American business entity.

Business Location. Unspecified foreign country.

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.

1. **Amount of the value.** \$40 per hour, plus expenses, up to a limit of \$5,000.
2. **Intended recipient.** Former official of the foreign government who currently holds no government position.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

16. FCPA Review Procedure Release 85-01 (July 16, 1985)

Nature of the Business. Atlantic Richfield Co. ("ARCO") has announced plans for the construction of a chemical plant in France.

Business Location. 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.

1. **Amount of the value.** Unspecified.
2. **Intended recipients.** French government officials.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

15. FCPA Review Procedure Release 84-02 (August 20, 1984)

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.

Business Location. Unspecified foreign country.

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.

1. **Amount of the value.** Unspecified.
2. **Intended recipients.** Low-level foreign government employees.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

14. FCPA Review Procedure Release 84-01 (August 16, 1984)

Nature of the Business. Unspecified American firm seeks to engage a foreign company as its marketing representative in a foreign country.

Business Location. Unspecified 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.

1. **Amount of the value.** Unspecified.
2. **Intended recipient.** Foreign company with close ties to head of state.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

13. FCPA Review Procedure Release 83-03 (July 26, 1983)

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.

Business Location. Missouri/Singapore.

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.

1. **Amount of the value.** Unspecified.
2. **Intended recipient.** Singapore government official.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

12. FCPA Review Procedure Release 83-02 (July 26, 1983)

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.

Business Location. Unspecified 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.

1. **Amount of the value.** No more than \$5,000.
2. **Intended recipients.** Foreign government entity general manager and his wife.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

11. FCPA Review Procedure Release 83-01 (May 12, 1983)

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.

Business Location. Sudan.

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.

1. **Amount of the value.** Unspecified.
2. **Intended recipient.** Sudanese corporation.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

10. FCPA Review Procedure Release 82-04 (November 11, 1982)

Nature of the Business. Thompson & Green Machinery Co. ("T&G"), a generator manufacturer and producer.

Business Location. Unspecified foreign country.

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.

1. **Amount of the value.** Unspecified.

2. **Intended recipient.** Foreign businessman who acted as T&G's agent in promoting generator sale to foreign government.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

9. FCPA Review Procedure Release 82-03 (April 22, 1982)

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.

Business Location. Yugoslavia.

Proposed Arrangement. The company proposes to pay the government-controlled trade organization a percentage of the total contract price as well as additional payments.

1. **Amount of the value.** Unspecified.
2. **Intended recipient.** Government-controlled trade organization.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

8. FCPA Review Procedure Release 82-02 (February 18, 1982)

Nature of the Business. Ransom F. Shoup & Co. (“Shoup”), a closely held Pennsylvania corporation in the business of selling, repairing and designing voting machines.

Business Location. Nigeria.

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.

1. **Amount of the value.** Unspecified.
2. **Intended recipient.** Ogirri.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

7. FCPA Review Procedure Release 82-01 (January 27, 1982)

Nature of the Business. Department of Agriculture of the State of Missouri.

Business Location. Mexico/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.

1. **Amount of the value.** Unspecified.
2. **Intended recipients.** Mexican government officials and individuals representing Mexican private sector agricultural businesses.

Reason for Arrangement. To promote sales of Missouri agricultural products in Mexico.

Opinion. Arrangement does not implicate the FCPA.

E. Department of Justice FCPA Opinion Procedure Releases

6. FCPA Review Procedure Release 81-02 (December 11, 1981)

Nature of the Business. Iowa Beef Packers, Inc. ("IBP").

Business Location. Soviet Union.

Proposed Arrangement. IBP intends to furnish samples of its packaged beef products to officials of the Soviet Ministry of Foreign Trade ("MVT").

1. **Amount of the value.** Less than \$2,000.

2. **Intended recipients.** MVT officials.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

5. FCPA Review Procedure Release 81-01 (November 25, 1981)

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.

Business Location. Philippines.

Proposed Arrangement. See above.

1. **Amount of the value.** Unspecified.
2. **Intended recipients.** Companies involved.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

4. FCPA Review Procedure Release 80-04 (October 29, 1980)

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”).

Business Location. Saudi Arabia.

Proposed Arrangement. Suliman S. Olayan (“Olayan”), the Chairman of the Olayan Group, is also an outside director of Saudia.

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.

E. Department of Justice FCPA Opinion Procedure Releases

3. FCPA Review Procedure Release 80-03 (October 29, 1980)

Nature of the Business. Unspecified domestic concern.

Business Location. West Africa.

Proposed Arrangement. Contract with attorney domiciled and functioning in West Africa.

1. **Amount of the value.** Unspecified.
2. **Intended recipient.** Attorney domiciled and functioning in West Africa.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

2. FCPA Review Procedure Release 80-02 (October 29, 1980)

Nature of the Business. Castle & Cooke, Inc. ("Castle & Cooke") and two subsidiaries.

Business Location. Unspecified foreign country.

Proposed Arrangement. Employee of a Castle & Cooke subsidiary would like to run for public office while retaining his private employment.

1. **Amount of the value.** Public office to be held by Castle & Cooke subsidiary employee.
2. **Intended recipient.** Employee of Castle & Cooke subsidiary.

Reason for Arrangement. 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.

E. Department of Justice FCPA Opinion Procedure Releases

1. FCPA Review Procedure Release 80-01 (October 29, 1980)

Nature of the Business. American law firm (“Law Firm”).

Business Location. Unspecified foreign country.

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.

1. **Amount of the value.** \$10,000 per annum.
2. **Intended recipients.** Two individuals who are 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.



F. Ongoing Investigations Under the FCPA

F. Ongoing Investigations Under the FCPA

118. 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.

F. Ongoing Investigations Under the FCPA

117. 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 a 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.

See Ongoing Investigation Number F-54.

See Parallel Litigation Number H-C29.

F. Ongoing Investigations Under the FCPA

116. Amaya Inc.

Background. 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.

F. Ongoing Investigations Under the FCPA

115. 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.

F. Ongoing Investigations Under the FCPA

114. 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's internal investigation is ongoing and has not revealed evidence of other potentially improper payments. The company intends to fully cooperate with the SEC and DOJ.

F. Ongoing Investigations Under the FCPA

113. 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. 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 self-reported the issues to the “appropriate government entities” and stated that the matters are continuing to be investigated.

F. Ongoing Investigations Under the FCPA

112. SBM Offshore NV

Background. SBM Offshore NV is a Dutch-based global group of companies that market systems and services to the offshore oil and gas industry.

The Investigation. In a November 12, 2014 announcement, SBM Offshore stated that it had agreed to pay \$240 million to Dutch authorities to settle allegations that the company bribed government officials in Angola, Brazil, and Equatorial Guinea. The company had previously self-disclosed its internal investigation to the Dutch authorities and the DOJ. According to the November 2014 announcement, the DOJ informed SBM Offshore that it had closed its inquiry and would not be prosecuting the company. On February 10, 2016, SBM Offshore announced that the DOJ had reopened its earlier inquiry and had made information requests in connection with the inquiry.

F. Ongoing Investigations Under the FCPA

111. 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, and continues to cooperate with the SEC and DOJ.

F. Ongoing Investigations Under the FCPA

110. Platform Specialty Products Corporation

Background. Platform Specialty Products Corporation is a U.S. corporation that produces specialty chemical products for the agricultural, animal health, electronics, graphic arts, plating, water treatment, and offshore oil production and drilling industries.

The Investigation. In a Form 10-K filed on March 11, 2016, Platform disclosed an internal investigation into third-party payments in West Africa by Arysta, a company that Platform acquired in 2015. The payments were made in connection with Arysta's government tender business in West Africa. According to a Form 10-Q filed on November 7, 2016, the company reported the matter to the DOJ and SEC, and is continuing to conduct an investigation.

F. Ongoing Investigations Under the FCPA

109. Newmont Mining Corporation

Background. Newmont Mining Corporation is a U.S. corporation based in Greenwood Village, Colorado and one of the world's leading gold producers.

The Investigation. In a Form 10-Q filed on April 20, 2016, Newmont disclosed an internal investigation into business activities outside the United States involving FCPA compliance. The company reported that it was working with the DOJ and SEC with respect to the investigation. In March 2016, it entered into an agreement with the SEC to toll the statute of limitations relating to the investigation, and in September 2016, extended the agreement through April 2017. Newmont entered into a similar agreement with the DOJ in April 2016, and agreed to a similar extension in October 2016. According to a Form 10-Q filed on October 26, 2016, the investigation is ongoing.

F. Ongoing Investigations Under the FCPA

108. Odebrecht S.A. Braskem S.A.

Background. Odebrecht S.A. is a Brazilian holding company, that through various operating entities, conducted business in multiple industries, including engineering, construction, infrastructure, energy, chemicals, utilities, and real estate. Odebrecht maintains its headquarters in Salvador, Brazil and operates in 27 other countries around the world. Braskem S.A. is a Latin American petrochemical company with its headquarters located in São Paulo, Brazil and additional operations in both the United States and Germany. Odebrecht indirectly owned 38.1% of Braskem's total shares and controlled Braskem through ownership of 50.11% of Braskem's voting shares. Braskem maintained a class of American depository shares on the New York Stock Exchange and was subject to regular SEC filings.

The Investigation. According to a Form 20-F filed on April 24, 2015, Braskem disclosed that in March 2015, allegations of bribery involving Braskem and two of its former executives surfaced after court documents pertaining to a series of lawsuits (to which neither Braskem nor its executives were a party) were made public. The documents alleged that Braskem was involved in making improper payments between 2006 and 2012 to assist the company in securing raw-material supply contracts with Petrobras. In response to the allegations, Braskem stated that it retained outside counsel to conduct an internal investigation to work with an ad hoc committee formed by members of the board of directors to review for possible anti-bribery law violations. The company voluntarily reported its investigation to Brazilian and U.S. authorities, and in a Form 20-F filed on May 5, 2016, Braskem indicated that it had voluntarily produced documents to the SEC and DOJ. In a press release on October 4, 2016, Braskem announced that it has entered into discussions with the DOJ and the SEC to resolve the allegations of bribery. Later, on December 14, 2016, Braskem announced that it had entered into a leniency agreement with the Brazilian Federal Prosecutors Office.

On December 21, 2016, U.S., Brazilian, and Swiss authorities announced a global enforcement against Braskem and its controlling shareholder, Odebrecht, for violations of multiple criminal statutes, including the FCPA.

According to the DOJ, Braskem agreed to plead guilty to conspiracy to violate the FCPA's anti-bribery provision. As part of the plea agreement, Braskem would pay a total criminal penalty of \$632,625,336.81. Of that total penalty, \$94,983,800.52 would be paid to the U.S. Treasury, \$94,983,800.52 would be paid to Swiss authorities, and \$442,837,735.77 would be paid to Brazilian authorities. Braskem separately resolved an FCPA enforcement action against it by the SEC wherein the company agreed to disgorge \$365 million in illicit profits. Of the total disgorgement, \$60 million would be paid to the U.S. Treasury and \$260 million would be paid to Brazilian authorities.

Separately, the DOJ charged Odebrecht with conspiracy to violate the FCPA's anti-bribery provisions. Odebrecht agreed to plead guilty to the charge and was required to pay a total criminal penalty of \$4,503,600,000. However, Odebrecht represented that it was only able to pay \$2.6 billion, which U.S. and Brazilian authorities accepted subject to further investigation. According to the DOJ, of the \$2.6 billion, 10% would be paid to the U.S. Treasury, 10% would be paid to Swiss authorities, and the remaining 80% would be paid to Brazilian authorities.

See DOJ Digest Number B-178.
See SEC Digest Number D-164.

F. Ongoing Investigations Under the FCPA

107. Fairmount Santrol Holdings Inc.

Background. U.S.-based Fairmount Santrol Holdings Inc. is one of the world's largest providers of sand-based proppant solutions and develops high performance proppants used by exploration and production companies to enhance the productivity of their oil and gas wells.

The Investigation. According to a Form 8-K filed on November 17, 2016, in December 2015 Fairmount was notified by the SEC that it was undertaking an investigation of the company for possible FCPA violations "relating to matters concerning certain of the Company's internal operations." Fairmount reported in its filing that the SEC notified the company in November that the agency's investigation was complete and that the agency did not intend to bring an enforcement action against the company.

F. Ongoing Investigations Under the FCPA

106. 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."

F. Ongoing Investigations Under the FCPA

105. Core Laboratories NV

Background. Core Laboratories NV, a Netherlands limited liability company, is one of the world's leading providers of proprietary and patented reservoir description, production enhancement and reservoir management services to the oil and gas industry.

The Investigation. In its Form 10-Q filed on October 21, 2016, Core Laboratories disclosed that the DOJ had contacted the company in connection with the Department's investigation of UnaoilCore. Core Laboratories reported that it intends to cooperate with the DOJ.

F. Ongoing Investigations Under the FCPA

104. FMC Technologies, Inc.

Background. FMC Technologies, Inc., which is incorporated under Delaware law, is a global provider of technology solutions for the energy industry. It designs, manufactures and services technologically sophisticated systems and products, including subsea production and processing systems, surface wellhead production systems, high pressure fluid control equipment, measurement solutions and marine loading systems for the energy industry.

The Investigation. In its Form 10-Q filed in April 2016, FMC Technologies disclosed that the company had received an inquiry from the DOJ in March concerning the agency's investigation of possible FCPA violations in connection with Unaoil. The company stated it is continuing to cooperate with the DOJ and reported that it is conducting an internal investigation.

F. Ongoing Investigations Under the FCPA

103. 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 the company's latest SEC filing in November 2016, the investigation is ongoing.

F. Ongoing Investigations Under the FCPA

102. Innodata, Inc.

Background. Innodata, Inc. is a global digital services and solutions company serving publishers, media and information companies, digital retailers, banks, insurance companies, government agencies, and other industries.

The Investigation. In a Form 10-Q filed on May 10, 2016, Innodata disclosed that it had become aware of potentially improper payments and related transactions by former employees of a foreign subsidiary in connection with the inspection of the subsidiary's compliance with local employment-related tax requirements. Innodata reported that its Audit Committee has launched an internal investigation and hired outside counsel and forensic accountants. The company also disclosed that it had voluntarily reported its investigation to the DOJ and SEC.

According to its Form 10-Q filed on November 8, 2016, the company anticipates spending \$1.6 million in legal, professional, and related costs and expenses during 2016 in connection with the investigation.

F. Ongoing Investigations Under the FCPA

101. 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 has also been delayed by the investigation.

F. Ongoing Investigations Under the FCPA

100. Alere Inc.

Background. Alere Inc. delivers reliable and actionable health information through rapid diagnostic tests. Alere is a Delaware corporation that was formed in 2001.

The Investigation. According to a Form 10-Q filed on November 4, 2016, Alere had received a subpoena in August 2015 from the SEC indicating that the Commission had opened a formal investigation into Alere and its interactions with foreign government officials and distributors in Africa in connection with its sales to government entities. Alere disclosed that it had received a second subpoena from the SEC in January 2016 requesting further information related to its sales practices in Africa and also that it had received “from time to time, requests in connection with the investigation to voluntarily produce additional information to the SEC, including information pertaining to certain other countries in Asia and Latin America.”

Additionally, the DOJ issued a grand jury subpoena to Alere in March 2016 seeking documents relating to the sales, sales practices, and dealings with third parties—including with foreign government officials—in Asia, Africa, and Latin America and “other matters related to the U.S. Foreign Corrupt Practices Act.”

According to the filing, Alere has provided information in response to the subpoenas and voluntary requests and continues to cooperate with the U.S. agencies.

See Parallel Litigation Digest Number H-A22.

F. Ongoing Investigations Under the FCPA

99. Aegerion Pharmaceuticals, Inc.

Background. Aegerion Pharmaceuticals, Inc. is a U.S. biopharmaceutical company dedicated to the development and commercialization of innovative therapies for patients with debilitating rare diseases.

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. This investigation is ongoing.

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.

F. Ongoing Investigations Under the FCPA

98. 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 has appointed a special committee to review the matter and it will cooperate fully with the relevant government authorities.

F. Ongoing Investigations Under the FCPA

97. 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.

See Parallel Litigation Digest Number H-A23.

F. Ongoing Investigations Under the FCPA

96. **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.

F. Ongoing Investigations Under the FCPA

95. **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.

F. Ongoing Investigations Under the FCPA

94. Sociedad Química y Minera de Chile S.A.

Background. Sociedad Química y Minera de Chile S.A. (“SQM”) is a Chilean chemical company that supplies plant nutrients, iodine, lithium, and other industrial chemicals.

The Investigation. In February 2015, SQM engaged outside counsel to investigate potential FCPA violations arising out of payments made by SQM’s former CEO, Patricio Contesse González. In a Form 6-K filed on December 16, 2015, SQM stated that the investigation (i) identified payments by SQM’s former CEO but failed to locate sufficient documentation to support the legitimacy of the payments; (ii) did not find evidence demonstrating that payments were made to induce a public official to provide improper assistance to the company in obtaining business; (iii) concluded that the payments were not accurately recorded on the company’s books and records; and (iv) found that the company’s internal controls were not sufficient to supervise the expenses. SQM reported that it will continue to strengthen its corporate governance and internal controls and take remediation measures, including dismissing Contesse from his position as CEO.

In its Form 20-F for the fiscal year ended December 31, 2015, the company stated that it had provided the findings of the ad-hoc Committee’s investigation to authorities in the United States, including the SEC and the DOJ. It also noted that the investigation remains ongoing and that the company continues to cooperate with requests for information.

F. Ongoing Investigations Under the FCPA

93. 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. The company stated it is continuing to cooperate with authorities but has made no indication of how, if at all, the DOJ or SEC will respond to the company's self-disclosure. The company made no additional disclosures as of the filing of its Form 10-Q on November 7, 2016.

F. Ongoing Investigations Under the FCPA

92. 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 July 29, 2016, the company stated it is continuing to cooperate with the DOJ's and SEC's investigations.

F. Ongoing Investigations Under the FCPA

91. 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. However, the company noted that as of September 30, 2016, the matter was still subject to an ongoing investigation by U.S. authorities.

F. Ongoing Investigations Under the FCPA

90. 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.

F. Ongoing Investigations Under the FCPA

89. 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.

F. Ongoing Investigations Under the FCPA

88. 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 2016 makes no reference to the ongoing investigation by the SEC and German prosecutors.

F. Ongoing Investigations Under the FCPA

87. 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. As of its most recent quarterly report in October 2016, the company stated that it has completed its response to the SEC's subpoena and that it continues to cooperate with the U.S. authorities.

See DOJ Digest Number B-64.
See SEC Digest Number D-49.

F. Ongoing Investigations Under the FCPA

86. 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.⁵⁰² 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. As of December 2016, no updates on the investigation have been made publicly available.

See DOJ Digest Number B-163.

⁵⁰² *United States v. Daren Condrey*, 15-cr-00336 (D. Md. 2015).

F. Ongoing Investigations Under the FCPA

85. Nike Inc.⁵⁰³

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.

⁵⁰³ 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.

F. Ongoing Investigations Under the FCPA

84. 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.⁵⁰⁴ 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.⁵⁰⁵ 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.⁵⁰⁶ On November 25, 2013, Charles Blazer, a former FIFA official, waived indictment and pleaded guilty to a total of ten counts of 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.⁵⁰⁷ 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.⁵⁰⁸ 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.⁵⁰⁹ 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.⁵¹⁰ 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

⁵⁰⁴ 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).

⁵⁰⁵ *United States v. Daryll Warner*, 13-cr-402 (WFK) (E.D.N.Y. 2013).

⁵⁰⁶ *United States v. Daryan Warner*, 13-cr-584 (WFK) (E.D.N.Y. 2013).

⁵⁰⁷ *United States v. Charles Blazer*, 13-cr-602 (RJD) (E.D.N.Y. 2013).

⁵⁰⁸ *United States v. José Hawilla*, 14-cr-609 (RJD) (E.D.N.Y. 2014).

⁵⁰⁹ *United States v. Traffic Sports International, Inc.*, 14-cr-609 (RJD) (E.D.N.Y. 2015).

⁵¹⁰ *United States v. Jeffrey Webb et al.*, 15-cr-252 (RJD) (E.D.N.Y. 2015).

F. Ongoing Investigations Under the FCPA

FIFA vice presidents and Executive Committee members, and current presidents of constituent FIFA confederations.⁵¹¹ 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 Davis, the co-founder and owner of International Soccer Marketing, Inc., waived indictment and pleaded guilty to wire fraud conspiracy and filing false tax returns.⁵¹² 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 \$600,000.⁵¹³ On November 12, 2015, Luis Bedoya, a FIFA official, waived indictment and pleaded guilty to racketeering conspiracy and wire fraud conspiracy.⁵¹⁴ 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.⁵¹⁵ 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 \$600,000.⁵¹⁶ On November 23, 2015, Jeffrey Webb pleaded guilty to racketeering conspiracy, wire fraud, and money laundering conspiracy and agreed to forfeit \$6.7 million.⁵¹⁷ On the same day, Sergio Jadue, a FIFA official, waived indictment and pleaded guilty to racketeering conspiracy and wire fraud conspiracy.⁵¹⁸ 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.⁵¹⁹ 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.⁵²⁰ 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.⁵²¹

As of December 2, 2016, the trial for the five remaining defendants is scheduled to begin on November 6, 2017, and the DOJ investigation remains ongoing.⁵²² According to news reports throughout 2015 and 2016, Australia, Colombia, Costa Rica, Germany, and Switzerland have opened or continued separate investigations in connection with the alleged corruption scheme at FIFA.

⁵¹¹ The FIFA officials are: Alfred Hawit, Ariel Alvarado, Rafael Callejas, Brayan Jiménez, Rafael Salguero, Héctor Trujillo, Juan Ángel Napout, Manuel Burga, Carlos Chávez, Luis Chiriboga, Marco Polo del Nero, Eduardo Deluca, José Luis Meiszner, Romer Osuna, and Ricard Teixeira.

⁵¹² *United States v. Zorana Danis*, 15-cr-240 (RJD) (E.D.N.Y. 2015).

⁵¹³ *United States v. Fabio Tordin*, 15-cr-564 (RJD) (E.D.N.Y. 2015).

⁵¹⁴ *United States v. Luis Bedoya*, 15-cr-569 (RJD) (E.D.N.Y. 2015).

⁵¹⁵ *United States v. Jeffrey Webb et al.*, 15-cr-252 (RJD) (E.D.N.Y. 2015).

⁵¹⁶ *United States v. Roger Huguet*, 15-cr-585 (RJD) (E.D.N.Y. 2015).

⁵¹⁷ *United States v. Jeffrey Webb et al.*, 15-cr-252 (RJD) (E.D.N.Y. 2015).

⁵¹⁸ *United States v. Sergio Jadue*, 15-cr-570 (RJD) (E.D.N.Y. 2015).

⁵¹⁹ *United States v. Alfredo Hawit, et al.*, 15-cr-252 (S-1) (PKC).

⁵²⁰ *United States v. Alfredo Hawit, et al.*, 15-cr-252 (S-1) (PKC).

⁵²¹ *United States v. Alfredo Hawit, et al.*, 15-cr-252 (S-1) (PKC).

⁵²² *United States v. Alfredo Hawit, et al.*, 15-cr-252 (S-1) (PKC).

F. Ongoing Investigations Under the FCPA

83. Centrais Elétricas Brasileiras S.A. (Eletrobras)

Background. Centrais Elétricas Brasileiras 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 Eletrobras shares as a result of the company’s regular failure to file its SEC filings on time. As a result, there are no further updates on the matter from 2016.

See Parallel Litigation Digest Number H-A20.

F. Ongoing Investigations Under the FCPA

82. Nu Skin Enterprises, Inc.

Background. Nu Skin Enterprises, Inc. is a U.S.-based multilevel marketing company that develops and sells personal care products and dietary supplements.

The Investigation. On May 6, 2015, in a Form 10-Q, Nu Skin disclosed that it had voluntarily provided the SEC, at the Commission's request, with information relating to the company's business in China. In April 2015, the SEC informed Nu Skin that it was initiating an investigation and requested information relating to charitable donations made in China in 2013. Nu Skin stated that it is cooperating with the SEC's investigation and intends to provide the requested information.

On September 20, 2016, the SEC announced that it resolved an FCPA enforcement action against Nu Skin through an administrative proceeding for violating the internal controls and books-and-records provisions of the FCPA. As alleged by the SEC, Nu Skin's Chinese subsidiary gave money to a charity in order to influence a high-ranking Communist Party official. As part of the settlement, without admitting or denying liability, Nu Skin agreed to disgorge \$431,088 plus \$34,600 in prejudgement interest, and pay a civil penalty of \$300,000.

See SEC Digest Number D-158.

F. Ongoing Investigations Under the FCPA

81. Akamai Technologies Inc.

Background. Akamai Technologies Inc. is a content delivery network services provider with headquarters in Cambridge, Massachusetts. Akamai uses a cloud platform to help businesses manage their online services and quickly deliver content to users.

The Investigation. On March 2, 2015, Akamai disclosed in a Form 10-K that it was conducting an internal investigation, with the assistance of outside counsel, into sales practices in an unnamed country outside the United States. According to Akamai, the investigation included a review of the company's compliance efforts with the FCPA. The company stated that it voluntarily disclosed this investigation to the SEC and DOJ in February 2015. In a November 9, 2015 Form 10-Q, the company has stated it is continuing to cooperate with the SEC and DOJ.

On May 3, 2016, the SEC entered into a non-prosecution agreement with Akamai regarding the agency's investigation into possible violations of the books-and-records and internal accounting controls provisions of the FCPA from 2012 to 2015. According to the Statement of Facts, Akamai paid bribes in the form of gifts, money, and entertainment to its end users, including Chinese officials, to obtain or retain business and the company recorded these expenses as legitimate business expenses. As outlined in the agreement, the company agreed to disgorge \$652,452 plus \$19,433 in prejudgment interest. A month thereafter, on June 6, 2016, the DOJ sent Akamai a declination letter indicating that it was closing its inquiry into the company's possible violations of the FCPA. Amongst the reasons listed for declining to prosecute was the company's prompt voluntary self-disclosure and Akamai's commitment to disgorge to the amount determined by the SEC.

See SEC Digest Number D-151.

F. Ongoing Investigations Under the FCPA

80. Xylem Inc.

Background. Xylem Inc. is a global water technology provider headquartered in New York. Xylem provides water transportation, treatment, testing, and efficiency use in public utility, residential, commercial, agricultural, and industry settings.

The Investigation. On February 26, 2015, in its annual report, Xylem disclosed that it had commenced an internal investigation relating to bid-rigging allegations from the South Korea Fair Trade Commission from 2014. The internal investigation concluded that members of the company's South Korean subsidiary had participated in activities that violated South Korean antitrust laws.

In late 2014, the company expanded the scope of the investigation to determine whether certain employees of the company potentially violated the FCPA. The company engaged outside counsel to conduct the investigation, and by January 2015, notified the DOJ and SEC. On October 29, 2015, in a Form 10-Q, the company disclosed that the SEC declined to bring an enforcement action. In its Annual Report for the fiscal year ended December 31, 2015, Xylem reported that the DOJ had declined to prosecute the company in connection with this matter.

F. Ongoing Investigations Under the FCPA

79. 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.

F. Ongoing Investigations Under the FCPA

78. Nortek, Inc.

Background. Nortek, Inc., based in Providence, Rhode Island, designs and manufactures technology systems for air-quality management and home security improvement.

The Investigation. In a Form 8-K filed on January 15, 2015, Nortek stated that it found “certain questionable hospitality, gift, and payment practices” by a Chinese subsidiary, Linear Electronics Co. Ltd., after conducting routine internal audit reviews. Following an internal investigation, Nortek voluntarily reported its findings to both the SEC and DOJ in early January 2015.

In a Form 10-Q filed on November 3, 2015, Nortek disclosed that it had incurred approximately \$2.2 million in fees in connection with its ongoing internal investigation of FCPA compliance.

On June 3, 2016, the DOJ sent Nortek a declination letter explaining that it had closed the inquiry into possible FCPA violations by the company and would not bring charges. Among the reasons cited were the company’s prompt voluntary self-disclosure and its commitment to disgorge to the amount determined by the SEC. A month later, the company signed a non-prosecution agreement with the SEC under which Nortek agreed to pay \$291,403 plus \$30,655 in prejudgement interest for violations of the FCPA’s books-and-records and internal controls provisions.

See SEC Digest Number D-152.

F. Ongoing Investigations Under the FCPA

77. **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. According to news reports in August 2015, Petrobras expects penalties in the range of \$1.6 billion, the largest amount ever incurred for an FCPA investigation.

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 Delcídio 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. As of December 2016, no updates of the investigation had been made public.

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 2016, 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 7, 2016, 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

F. Ongoing Investigations Under the FCPA

the U.S. authorities. The company stated that it did not anticipate U.S. authorities would commence an enforcement action related to the matter.

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 December 2016, no updates on the investigation had been made publicly available.

See Parallel Litigation Digest Number H-A19, H-C-32, and H-C31.

F. Ongoing Investigations Under the FCPA

76. International Business Machines Corporation

Background. International Business Machines Corporation (“IBM”) is a U.S. multinational technology and consulting corporation. IBM manufactures and markets computer hardware and software, along with offering various infrastructure and consulting services.

The Investigation. In a Form 10-Q filed on October 28, 2014, IBM disclosed that in early 2012, the company notified the SEC of an investigation by the Polish Central Anti-Corruption Bureau into allegations of illegal activity by a former IBM Poland employee in connection with sales to the Polish government. IBM further disclosed that in April 2013, it learned that the DOJ was also investigating the allegations related to the company’s operations in Poland, as well as in Argentina, Bangladesh, and Ukraine. The DOJ is also seeking information regarding the company’s global FCPA compliance program and its public sector business.

According to a Form 10-Q filed in October 2016, IBM stated that it continues to cooperate with the investigations by the SEC and DOJ, as well as Polish authorities.

See SEC Digest Number D-93.

F. Ongoing Investigations Under the FCPA

75. 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 2012, 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.

F. Ongoing Investigations Under the FCPA

74. General Cable Corporation

Background. General Cable Corporation is a U.S. wire and cable manufacturer. The company serves its customers through a global network of 57 manufacturing facilities in 26 countries and has worldwide sales distributions.

The Investigation. On September 22, 2014, General Cable disclosed in a Form 8-K filing that it was investigating certain commission payments involving the company's Angolan subsidiary. According to the company, payments to agents in Thailand and India were also being investigated and "may have implications under the FCPA." The investigations were voluntarily disclosed to the SEC and DOJ, and the company continued to cooperate with the agencies' investigations and provide information in response to various requests, including a subpoena by the SEC.

In a Form 10-Q filed on November 9, 2015, General Cable disclosed that it had determined that certain employees at its subsidiaries in Portugal and Angola also had made improper payments to officials of government-owned public utilities in Angola. General Cable also indicated that it has reviewed, with the assistance of external counsel, its operations in Thailand and India, along with certain business transactions in Egypt and China in connection with potential FCPA violations. The company self-reported the results of the internal investigations to the DOJ and SEC and received additional requests for information from the agencies. In a Form 10-Q filed on August 4, 2016, General Cable estimated that approximately \$33 million in profits derived from the sales made to these government officials would be subject to disgorgement in the future.

On December 29, 2016, the DOJ and SEC announced that the agencies had resolved separate FCPA enforcement actions against General Cable in connection with the company's operations in Angola, Thailand, Bangladesh, Indonesia, China, and Egypt. As part of a non-prosecution agreement the company entered into with the DOJ, General Cable was required to pay a criminal penalty of approximately \$20 million. Through an administrative proceeding, the SEC ordered General Cable to pay approximately \$55 million in disgorgement and prejudgment interest.

See DOJ Digest Number B-181.
See SEC Digest Number D-166.

F. Ongoing Investigations Under the FCPA

73. 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 2016, no updates to the investigation have been publicly announced.

F. Ongoing Investigations Under the FCPA

72. **Biomet, Inc.** **Zimmer Biomet Holdings Inc.**

Background. Biomet, Inc. is a U.S. corporation that designs, manufactures, and markets products used primarily by musculoskeletal medical specialists in both surgical and non-surgical therapy, and is a subsidiary of LBV Acquisition, Inc., a U.S. holding company. Zimmer Holdings, Inc. is a U.S. company that designs, manufactures, and markets orthopaedic products, including artificial joints and dental prostheses. In 2015, Zimmer and LBV Acquisition merged to become Zimmer Biomet Holdings, Inc.

The Investigation. In a July 2, 2014 Form 8-K filing, Biomet disclosed that the SEC issued a subpoena requiring the production of documents relating to “certain alleged improprieties” in the company’s Brazilian and Mexican operations. The July 2014 disclosure comes after Biomet settled FCPA related charges by the DOJ and SEC in 2012, agreeing to pay a total sanction of \$22.5 million and to appoint an independent compliance monitor for a three-year term. According to the July 2014 10-K, Biomet learned of the possible new violations in October 2013 and disclosed them to the SEC and DOJ in April 2014 in accordance with the terms of its 2012 DPA. On March 13, 2015, the DOJ informed Biomet that the DPA and an independent compliance monitor’s appointment would be extended for an additional year.

On June 3, 2016, the DOJ filed a status report in the District Court for the District of Columbia, stating that “Biomet had breached the DPA” due to its failure to implement and maintain the compliance program required by the DPA. According to a September 2016 SEC filing, Biomet reported that it was probable that the company would incur additional liabilities as a result of the alleged FCPA violations that occurred after Biomet’s 2012 DPA. Later, in early December 2016, the DOJ filed a status report with the court stating that settlement negotiations were ongoing and that the government expected to resolve the matter of weeks.

See DOJ Digest Number B-130.
See SEC Digest Number D-107.

F. Ongoing Investigations Under the FCPA

71. 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.

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 2016, no updates to the investigation have been publicly announced.

F. Ongoing Investigations Under the FCPA

70. Key Energy Services Inc.

Background. Key Energy Services, Inc. is a U.S. corporation that provides various well services. It operates as an onshore rig-based well servicing contractor both in the U.S. and internationally.

The Investigation. In a May 2014 Form 10-Q filing, Key Energy reported that the SEC had initiated an investigation into potential FCPA violations involving the company's Russian business. On June 4, 2014, Key Energy reported in a Form 8-K that it disclosed additional potential FCPA violations to the SEC and DOJ involving the company's Mexican operations. Key Energy has formed a special committee to oversee the investigations of both its Mexican and Russian operations and has retained outside legal counsel.

In a Form 10-Q filed on November 9, 2015, Key Energy stated that it continues to cooperate with the SEC and DOJ and that the company was conducting an independent review of FCPA compliance at its operations in Russia, Colombia, and other international locations.

Key Energy reported in its Form 8-K filed on April 28, 2016 that the DOJ had notified the company that it had closed its investigation and would not prosecute the company. On August 11, 2016, the SEC announced that it had resolved an FCPA enforcement action against Key Energy through an administrative proceeding for violating the internal controls and books-and-records provisions of the FCPA. As alleged by the SEC, Key Mexico, Key Energy's Mexican subsidiary, made improper payments through an intermediary to an employee at Mexico's state-owned oil company, Petróleos Mexicanos (Pemex) in exchange for information the company then utilized when negotiating contracts with Pemex. As part of the settlement, without admitting or denying liability, Key Energy agreed to disgorge \$5,000,000.

See SEC Digest Number D-155.
See Parallel Litigation Number H-A16.

F. Ongoing Investigations Under the FCPA

69. Johnson Controls, Inc.

Background. Johnson Controls, Inc. is a U.S. corporation that offers products and services to optimize energy and operational efficiencies of buildings, automotive batteries, electronics, and interior systems for automobiles.

The Investigation. On May 2, 2014, Johnson Controls disclosed in a Form 10-K that in June 2013, it reported alleged FCPA violations relating to its “Building Efficiency” marine business in China to the SEC and DOJ. The company hired outside counsel and forensic accountants to assist with the investigations. In a Form 10-K filed on November 18, 2015, Johnson Controls stated that was continuing to cooperate fully with the SEC and DOJ.

On July 11, 2016, the SEC announced that it had resolved an FCPA enforcement action against Johnson Controls through an administrative proceeding for violating the internal controls and books-and-records provisions of the FCPA. As alleged by the SEC, Johnson Controls’ wholly-owned Chinese subsidiary made improper payments through an intermediary to Chinese officials employed at government-owned shipyards and other individuals to obtain and retain business and profit personally. As part of the settlement, without admitting or denying liability, Johnson Controls agreed to disgorge \$11,800,000 plus \$1,382,561 in prejudgement interest, and pay a civil penalty of \$1,180,000. The DOJ separately declined to bring charges against the company as part of the FCPA Pilot Program.

See SEC Digest Number D-154.

F. Ongoing Investigations Under the FCPA

68. 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 to cooperate with the SEC and DOJ investigations. As of December 2016, no updates in the investigation have been made publicly available.

F. Ongoing Investigations Under the FCPA

67. 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.

F. Ongoing Investigations Under the FCPA

66. 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 2016, no updates on the SEC's investigation were made publicly available.

F. Ongoing Investigations Under the FCPA

65. Orthofix International NV

Background. Orthofix International NV, a Curaçao corporation, is an international global medical device company focused on providing reconstructive and regenerative orthopedic and spine solutions to physicians worldwide.

The Investigation. On July 10, 2012, the DOJ and SEC announced that they had jointly resolved an FCPA enforcement action against Orthofix wherein Orthofix agreed to pay \$7.4 million in sanctions after its Mexican subsidiary allegedly bribed Mexican foreign officials. In its 2014 annual report, the company disclosed that in August 2013, the company became aware of allegations involving potential improper payments with respect to the company's Brazilian subsidiary, Orthodix do Brasil Ltda. After hiring outside counsel to review the matter, the company disclosed the allegations to the DOJ and SEC.

In a Form 10-Q for the quarter ending June 30, 2016, Orthofix disclosed that on June 15, 2015 and September 17, 2015, the DOJ extended the term of the initial 2012 DPA for two and ten months, respectively, citing that the company's efforts to comply with the DPA's internal control and compliance provisions were "insufficient." The DPA expired on July 17, 2016 and the DOJ formally sought to dismiss the case on July 28, 2016. The Form 10-Q also disclosed that the SEC investigation remains ongoing, and Orthofix expressed that it expects to pay up to \$6.1 million to settle the matter.

See DOJ Digest Number B-133.

See SEC Digest Number D-107.

F. Ongoing Investigations Under the FCPA

64. **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 prosecutors 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. However, no further developments in the negotiations have been publicly announced as of December 2016. In a Form 20-F filed on April 20, 2016, MTS has indicated that it continues to cooperate with the U.S. agencies’ requests.

See DOJ Digest Number B-166.

See SEC Digest Number D-146.

See Parallel Litigation Digest Numbers H-A21 and H-H3.

F. Ongoing Investigations Under the FCPA

63. Quanta Services Inc.

Background. Quanta Services Inc. is a U.S. corporation that provides outsourced construction, maintenance, and technology services for electric power, telecommunications, broadband cable, and gas pipeline industries.

The Investigation. Quanta disclosed in a March 10, 2014 Form 10-Q filing that the SEC was investigating certain aspects of Quanta's activities in South Africa and the United Arab Emirates, and had asked Quanta to preserve documents tied to its FCPA compliance program. Quanta stated that it complied with the preservation request and would continue cooperating with the SEC. In a Form 10-Q filed on November 8, 2016, the company disclosed that the SEC had concluded its investigation as of October 27, 2016 and would not take further action on the matter.

F. Ongoing Investigations Under the FCPA

62. Rolls-Royce plc

Background. Rolls-Royce plc, a British multinational public holding company, is the world's second largest manufacturer of aircraft engines. The company also maintains major businesses in the marine propulsion and energy sectors.

The Investigation. In December 2013, Rolls-Royce indicated that it was under formal investigation by the U.K. Serious Fraud Office for allegations of bribery and corruption. In its annual report filed on March 5, 2014, the company disclosed that it was under investigation by the DOJ in connection with allegations that its executives bribed government officials in Indonesia, China, and India. As of December 2016, no new updates on the status of the investigation have been made public.

F. Ongoing Investigations Under the FCPA

61. **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 SA

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.

See DOJ Digest Number B-173.

See SEC Digest Number D-160.

See Parallel Litigation Digest Number H-F26.

F. Ongoing Investigations Under the FCPA

60. Cisco Systems Inc.

Background. Cisco Systems Inc. is a U.S. corporation that designs, manufactures and sells networking equipment for companies and individuals around the world.

The Investigation. On February 20, 2014, Cisco disclosed in a Form 10-Q filing that the SEC and DOJ requested that the company launch an internal investigation into potential FCPA violations involving “the Company’s Russian operations and certain of the Commonwealth of Independent States, and by certain resellers of the company’s products in those countries.” The DOJ and SEC are independently carrying out investigations into possible FCPA violations. According to a Form 10-Q filed on November 19, 2015, Cisco stated that it is fully cooperating with and would share results of its internal investigation with the SEC and DOJ. On a Form 10-K filed on September 8, 2016, Cisco stated that the SEC and DOJ had informed it of their decisions to not bring enforcement actions against the company.

F. Ongoing Investigations Under the FCPA

59. 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 2016, no further updates about the investigation have been made public.

F. Ongoing Investigations Under the FCPA

58. 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 New York-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 2016, no further developments related to the DOJ's investigation have been made public.

F. Ongoing Investigations Under the FCPA

57. Anheuser-Busch InBev SA/NV

Background. Anheuser-Busch InBev SA/NV is a Belgian-Brazilian multinational beverage and brewing company that engages in production, marketing, distribution, and sale of beer.

The Investigation. As previously disclosed, and restated in a Form 6-K filed on July 31, 2013, the SEC had initiated an investigation into the company's affiliates in India, including a non-consolidated Indian joint venture, InBev Indian International Private Ltd. The DOJ was also carrying out a parallel investigation.

On September 28, 2016, Anheuser-Busch entered into a settlement with the SEC for \$6 million. The DOJ separately declined to bring charges against the company.

See SEC Digest Number D-159.

F. Ongoing Investigations Under the FCPA

56. 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 February 2013, a São Paulo State Prosecutor filed civil and criminal charges against Brookfield Gestão de Empreendimentos 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 its 2015 second quarter report, 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 makes no reference to the DOJ investigation, and no public updates have been made as of December 2016.

F. Ongoing Investigations Under the FCPA

55. 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 and 2016 Form 10-Ks make no reference to a pending FCPA investigation by the SEC.

F. Ongoing Investigations Under the FCPA

54. 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 2016, 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.

F. Ongoing Investigations Under the FCPA

53. 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.

The company has stated that it is cooperating with the investigation. 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. The company did not provide further details about the investigation.

F. Ongoing Investigations Under the FCPA

52. 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.

F. Ongoing Investigations Under the FCPA

51. **JPMorgan Chase & Co.**
Citigroup Inc.
Credit Suisse Group AG
Deutsche Bank AG
Goldman Sachs Group, Inc.
Morgan Stanley
UBS AG
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 unknown, it noted that any possible impact “could be significant.” Barclays followed soon thereafter, announcing in March that it was being investigated by the SEC and DOJ for its hiring practices in Asia.

As of December 2016, neither the SEC nor the remaining banks have announced any further details about the ongoing investigations.

See DOJ Digest Number B-175.
See SEC Digest Number D-138.

F. Ongoing Investigations Under the FCPA

50. 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. Juniper's SEC filings have declined to include any details into the potential FCPA violations. In a Form 10-Q filed on November 8, 2016, Juniper Networks disclosed that it continues to cooperate with the SEC and DOJ regarding these matters.

See Parallel Litigation Digest Number H-A15.

F. Ongoing Investigations Under the FCPA

49. 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 28, 2016, the company disclosed that it is continuing to cooperate with both investigations.

F. Ongoing Investigations Under the FCPA

48. 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 2016, 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.

F. Ongoing Investigations Under the FCPA

47. 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. As of December 2016, no updates to the investigation have been publicly announced.

F. Ongoing Investigations Under the FCPA

46. **Optimer Pharmaceuticals, Inc.** **Cubist Pharmaceuticals, Inc.** **Merck & Co., Inc.**

Background. Cubist Pharmaceuticals, Inc. is a U.S. biopharmaceutical company focused on the research and commercialization of pharmaceutical products. Optimer Pharmaceuticals, Inc. is a biopharmaceutical company focused on discovering, developing, and commercializing anti-infective products. Merck & Co., Inc., a New Jersey company, is one of the largest companies that researches, develops, and manufactures pharmaceutical products.

The Investigation. In July 2013, Cubist signed a merger agreement to acquire Optimer Pharmaceuticals, Inc. According to an August 2014 Form 10-Q, Cubist reported that Optimer may have violated the FCPA. As has been reported in previous filings and press reports, in March 2012, Optimer first became aware of an attempted grant in September 2011 to Dr. Michael Chang (then chairman of Optimer Pharmaceuticals Board of Directors) of 1.5 million technical shares of OBI. Upon determining that the attempted grant may have violated the FCPA, in April 2012, Optimer self-reported the results of its preliminary findings to the SEC and the DOJ, including the attempted grant matter and certain related matters of which there was a potentially improper \$300,000 payment in July 2011 to a research laboratory involving an individual associated with the OBI share grant.

As a remedial step, Optimer terminated the employment of its then-Chief Financial Officer, its then-Vice President of Clinical Development, and Dr. Michael Chang. According to a Form 10-Q filed on August 7, 2013, independent members of the Board of Directors determined in February 2013 that additional remedial action should be taken in light of prior compliance, record keeping, and conflict-of-interest issues. Following this decision, on February 26, 2013, Optimer's then-President and Chief Executive Officer, and its then-General Counsel and Chief Compliance Officer resigned at the request of the independent members of the Board of Directors.

On January 21, 2015, Cubist was acquired by Merck. In a Form 10-K filed on February 26, 2016, Merck disclosed that it was continuing to cooperate with U.S. authorities in their ongoing review, but could not predict the length or outcome of the investigation.

F. Ongoing Investigations Under the FCPA

45. 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. As of December 2016, no updates on the investigation have been publicly announced.

F. Ongoing Investigations Under the FCPA

44. 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 9, 2016, the company stated that it would continue to cooperate with the SEC's and DOJ's investigations.

F. Ongoing Investigations Under the FCPA

43. 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 2016.

F. Ongoing Investigations Under the FCPA

42. **Wynn Resorts, Ltd.** **Universal Entertainment Corporation**

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.

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, but it had not received a target letter or subpoena in connection with the investigation. In a Form 10-K filed on February 29, 2016, the company stated that it intends to fully cooperate with the government in response to any inquiry related to the matter.

See Parallel Litigation Digest Number H-C28.

F. Ongoing Investigations Under the FCPA

41. 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-Q filed on September 8, 2016, the DOJ's and SEC's investigations are ongoing and the company is continuing to cooperate.

F. Ongoing Investigations Under the FCPA

40. Analogic Corporation

Background. Analogic Corporation is a technology company that designs and manufactures advanced medical imaging and security systems for healthcare and airport security markets.

The Investigation. According to a Form 10-Q filed December 7, 2012, Analogic began an internal investigation regarding transactions of a Danish subsidiary, BK Medical, and certain foreign distributors. At the completion of the investigation, Analogic terminated the implicated employees and is now in the process of curtailing its association with BK Medical and the distributors.

Following the investigation, the company voluntarily disclosed its findings to the SEC, DOJ, and the Danish government. According to a Form 10-Q filed on December 10, 2014, the company stated that the SEC and DOJ have “substantially completed” their investigations and it is likely that one or both of the agencies may seek to penalize the company.

In a press release on September 16, 2015, Analogic announced that it had offered approximately \$1.6 million to settle a potential enforcement action. The company also disclosed that it had spent \$1.4 million in relation to the investigation. The SEC has declined to comment on the proposed settlement. The DOJ has not commented on whether it will impose sanctions on the company in connection with its parallel investigation.

On June 21, 2016, the SEC announced that it had resolved an FCPA enforcement action against Analogic whereby Analogic agreed to pay a total sanction of \$11.5 million. On the same day, the DOJ entered into a non-prosecution agreement with Analogic’s subsidiary, BK Medical ApS. According to the non-prosecution agreement, BK Medical agreed to pay a criminal penalty of \$3.4 million.

See DOJ Digest Number B-168.

See SEC Digest Number D-153.

F. Ongoing Investigations Under the FCPA

39. 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 Services 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 Form 20-F filed on March 1, 2016, Barclays noted that the DOJ and SEC investigations were ongoing, and affirmed that the company was continuing to cooperate with their investigations.

F. Ongoing Investigations Under the FCPA

38. Beam Inc.

Background. Beam 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.

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. As of December 2016, there have been no updates on the status of the investigation.

F. Ongoing Investigations Under the FCPA

37. **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 the U.S. agencies. As of December 2016, there were no publicly disclosed developments in this investigation.

F. Ongoing Investigations Under the FCPA

36. 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. As of a Form 10-Q filed on November 3, 2016, the company stated that it continues to cooperate with the DOJ in its ongoing investigation.

See Parallel Litigation Digest Number H-A18.

F. Ongoing Investigations Under the FCPA

35. **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
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.

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. The remaining investigations are ongoing. As of December 2016, no updates on the investigations of these companies had been made publicly available.

See Parallel Litigation Digest Number H-F20.

F. Ongoing Investigations Under the FCPA

34. 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, 2016, the investigations remain ongoing.

F. Ongoing Investigations Under the FCPA

33. 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 2016, there are no additional updates pertaining to the status of this investigation.

F. Ongoing Investigations Under the FCPA

32. 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 20-F filed on February 24, 2016, the company reported that the investigations by the SEC and DOJ remain ongoing and that it is still cooperating with the agencies.

F. Ongoing Investigations Under the FCPA

31. Halliburton Company

Background. Halliburton Company is a U.S. and U.A.E.-based provider of goods and services to oil and gas industries.

The Investigation. According to a Form 10-Q filed October 23, 2012, the company received an anonymous email in December 2010 alleging violations of the FCPA through the use of an Angolan vendor. Halliburton divulged this information to the DOJ and began an internal investigation. Since the third quarter of 2011, the company has been cooperating with DOJ and SEC inquiries into this matter through meetings and document productions in response to SEC subpoenas.

During the second quarter of 2012, the company advised the SEC and DOJ of an unrelated investigation it was conducting into customs matters in Angola and third-party agents relating to certain customs and visa matters in Iraq.

According to a 10-Q filed on October 28, 2016, the company is continuing to provide the SEC and DOJ information on the status of their internal investigation, for which they have acquired outside counsel and independent forensic accountants.

F. Ongoing Investigations Under the FCPA

30. Harris Corporation

Background. Harris Corporation is a U.S.-based telecommunications equipment company that produces wireless equipment, electronic systems, and both terrestrial and spaceborne antennas for use in the government, defense, and commercial sectors.

The Investigation. According to a Form 10-Q dated October 31, 2012, the company disclosed its ongoing investigation into potential FCPA violations as a result of a recent acquisition. On April 4, 2011, the company acquired Carefx along with its subsidiary Carefx China. Over the course of an audit of Carefx China's financials, the company's Audit Committee discovered that certain entertainment, travel, and other expenses in connection with the Carefx China operations may have been incurred or recorded improperly. Additionally, the investigation revealed that certain employees of the Carefx China operations had provided pre-paid gift cards, and other gifts and payments to certain customers and potential customers.

As a result of the investigation, the company contacted the DOJ and the SEC to inform them of the investigation's findings. According to a Form 10-Q filed May 1, 2013, the SEC and DOJ both began investigations into the matter. On April 23, 2013, the SEC issued a formal order of investigation. Since the start of these investigations, Harris stated that it has terminated its China-based sales operations and made remedial efforts to improve its internal controls and FCPA compliance policies.

On September 12, 2016, the SEC announced that it had resolved an FCPA enforcement action against a former Harris Corporation executive, Jun Ping Zhang for violations of the FCPA's anti-bribery and books-and-records provisions. According to the SEC's order, Ping was required to pay a civil penalty of \$46,000.

In a Form 10-Q filed on November 2, 2016, Harris disclosed that the DOJ and SEC had closed their investigations and would decline to bring charges against the company.

F. Ongoing Investigations Under the FCPA

29. 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 8, 2016, the company indicated that the investigations were ongoing and stated that it intends to continue to cooperate with U.S. authorities.

F. Ongoing Investigations Under the FCPA

28. 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-Q filed on October 28, 2016 noted that NCR's last production to the DOJ occurred in 2014, but 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

27. Net1 UEPS Technologies, Inc.

Background. Net1 UEPS Technologies, Inc., a company based in South Africa, is a provider of payment solutions and transaction processing services across multiple industries and in a number of emerging economies in Africa.

The Investigation. According to an 8-K filed December 4, 2012, Net1 received a letter from the DOJ on November 30, 2012, indicating that the DOJ and FBI were conducting an investigation into potential violations of the FCPA and other U.S. criminal laws by the company. The alleged violations include violations of the FCPA through the company's engagement in a scheme to make corrupt payments to officials of the government of South Africa in connection with securing a contract and violations of the federal securities laws regarding statements made about this contract by Net1 in its SEC filings. On the same date, Net1 received a letter from the SEC notifying the company of the initiation of an investigation.

On June 8, 2015, Net1 reported in a Form 8-K that the SEC had concluded its investigation without recommending any enforcement action against the company. The company disclosed that separate investigations by the company and the South African Police's Commercial Crimes unit concluded shortly thereafter.

According to a Form 10-K filed on August 25, 2016, the parallel investigation by the DOJ remains ongoing.

F. Ongoing Investigations Under the FCPA

26. Nordion Inc.

Background. Nordion Inc. is a Canadian global health science company that provides market-leading products used for the prevention, diagnosis, and treatment of disease. The company provides medical isotopes, targeted therapies, and sterilization technologies and is active in more than 60 countries around the world.

The Investigation. According to a Form 6-K filed September 5, 2012, the company discovered potential compliance irregularities. Nordion launched an internal investigation into a foreign supplier and other third parties related to potential improper payments made to facilitate Russian government approval for its liver cancer treatment.

The company engaged outside legal counsel and external forensic accounting consultants to assist in the investigation. The company disclosed the results of its findings to relevant regulatory entities. In a Form 6-K filed September 5, 2013, the company reiterated that it intended to cooperate with any future inquiry into the matter. In August 2014, the company delisted its shares from the Toronto Stock Exchange and the New York Stock Exchange. On March 3, 2016, the SEC announced that it had resolved an enforcement action against Nordion for violations of the FCPA. According to the order, Nordion would be required to pay a \$375,000 sanction..

F. Ongoing Investigations Under the FCPA

25. Olympus Corp.

Background. Olympus Corp., a Japanese company, is the world's largest maker of endoscopes. The medical unit is Olympus's biggest profit generator, accounting for 68 billion yen (\$870 million) of operating income in the year ended March 31, 2012.

The Investigation. In August 2012, Olympus disclosed that it uncovered "irregularities" at a doctor-training program in Brazil that may have violated U.S. law, and subsequently reported the irregularities to the DOJ. According to press reports, the DOJ is seeking information to determine whether the company's handling doctors' expenses for travel, meals, or entertainment violated the FCPA.

In a press release dated August 6, 2015, the company acknowledged that it had spent approximately \$19.4 million for the first quarter of 2015 in connection with the ongoing investigations.

On March 1, 2016, the DOJ announced that it had resolved charges against Olympus through a deferred prosecution agreement for violations of the FCPA. According to the deferred prosecution agreement, Olympus would pay a total sanction of \$22.8 million. In addition, in a separate proceeding, Olympus agreed to pay a \$312.4 million criminal penalty plus \$310.8 million in civil claims for violations of the federal anti-kickback statute.

See DOJ Digest Number B-167.

F. Ongoing Investigations Under the FCPA

24. 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. As reported in the company's May 13, 2016 Form 10-K, the SEC's investigation is ongoing.

F. Ongoing Investigations Under the FCPA

23. Qualcomm Incorporated

Background. Qualcomm Incorporated, a U.S.-based technology company, is the first producer of Code Division Multiple Access (“CDMA”), which is one of the main technologies used in wireless networks. Qualcomm continues to be the leading developer of CDMA technology, as well as Orthogonal Frequency Division Multiple Access (“OFDMA”) and Long Term Evolution (“LTE”) technology.

The Investigation. According to a Form 10-K filed November 7, 2012, the Los Angeles Regional office of the SEC issued a formal order of private investigation due to whistleblower allegations. These allegations were originally made in December 2009 to the company’s Audit Committee of the Board of Directors and to the SEC. Following these whistleblower accusations, the company conducted an internal investigation into the accounting practices and did not identify any potential violations to the FCPA.

On January 27, 2012, the DOJ informed Qualcomm that it was investigating potential violations of the FCPA, which the company believes is a direct result of the SEC investigation. The company has recommenced an internal review and has hired outside counsel and independent forensic accountants in response to these allegations.

As a result of the SEC, DOJ, and internal investigations, the company uncovered instances of bribery in relation to Chinese state-owned companies or agencies. They believe the aggregate monetary gain to be less than \$250,000, excluding employment compensation.

On March 13, 2014, the company received a “Wells Notice” from the SEC indicating that it had made a preliminary determination to recommend that the SEC file an enforcement action against the company for violations of the FCPA. On April 4, 2014, the company made a Wells submission to the staff of the Los Angeles Regional Office of the SEC explaining why the company believes it has not violated the FCPA and therefore enforcement action is not warranted.

On March 1, 2016, the SEC issued a cease-and-desist order against Qualcomm in which it stated that Qualcomm had agreed to pay a \$7.5 million penalty to settle the charges against it for the violations. In a press release issued on the same day, Qualcomm stated that the DOJ had closed its investigation into the company and would decline to bring charges.

See SEC Digest Number D-147.

F. Ongoing Investigations Under the FCPA

22. 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 latest 10-Q filing on May 3, 2016 makes no mention of a parallel investigation by the SEC, and no updates have been made publicly available.

F. Ongoing Investigations Under the FCPA

21. Teva Pharmaceutical Industries Ltd.

Background. Teva Pharmaceutical Industries Ltd., a company based in Israel, is the largest generic drug manufacturer in the world, specializing in generic and proprietary pharmaceuticals and active ingredients. Teva has facilities located in Israel, North America, Europe, and South America.

The Investigation. According to a Form 6-K filed November 1, 2012, Teva received a subpoena from the SEC on July 9, 2012. The subpoena indicated that the company must produce documents in relation to possible violations of the FCPA in Latin America. The DOJ served informal document requests on October 10 and October 26.

Additionally, Teva stated that it was conducting an internal investigation into potentially improper business practices and engaged independent counsel to assist in its investigation. The company's investigation has reportedly identified business practices in Russia, certain Eastern European countries, and certain Latin American countries that could potentially result in FCPA violations.

On December 22, 2016, the DOJ and SEC announced that the agencies had separately resolved an FCPA enforcement action against Teva in connection with its operations in Russia, Ukraine, and Mexico. According to a deferred prosecution agreement entered into with the DOJ, Teva was required to pay a criminal penalty of approximately \$283 million. Separately, according to an agreed final judgment in the SEC's case against the company, Teva was required to pay more than \$236 million in disgorgement and prejudgment interest.

See DOJ Digest Number B-179.

See SEC Digest Number D-165.

See Parallel Litigation Digest Number D-14.

F. Ongoing Investigations Under the FCPA

20. 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. A Form 10-Q filed on October 28, 2016 makes no reference to any ongoing investigation by the SEC.

F. Ongoing Investigations Under the FCPA

19. 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 August 2015, Wal-Mart indicated that costs in connection with the ongoing FCPA investigations have totaled over \$650 million. A Form 10-Q filed on December 1, 2016 states that Wal-Mart continues to cooperate with the investigation, which has forced it to continue expending funds to cover associated expenses.

See Parallel Litigation Digest Numbers H-A14 and H-F22.

F. Ongoing Investigations Under the FCPA

18. 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 2016, 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.

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. In a Form 10-Q filed on June 15, 2016, the company stated that it continues to fully cooperate with the review.

F. Ongoing Investigations Under the FCPA

17. Las Vegas Sands Corporation

Background. Las Vegas Sands Corporation is a U.S.-based corporation that owns casino resorts worldwide.

The Investigation. According to a Form 10-Q filed November 9, 2011, Las Vegas Sands received a subpoena from the SEC on February 9, 2011 mandating that the company produce documents related to an ongoing investigation into potential FCPA violations. The DOJ additionally announced that it was conducting an investigation. The company believes that the investigations stem from allegations regarding a lawsuit filed against the former Chief Executive Officer, Steven C. Jacobs. After the Board of Directors ordered the Audit Committee to investigate the matter, the Audit Committee informed the company that it had discovered there were likely violations of the books and records and internal controls provisions of the FCPA.

In a Form 10-Q filed November 5, 2015, Las Vegas Sands stated that it is continuing to cooperate with the SEC and DOJ. On April 7, 2016, the SEC announced that it had resolved an enforcement action against Las Vegas Sands for violations of the FCPA. According to the SEC's order, Las Vegas Sands had agreed to pay a penalty of \$9 million to settle the charges. In a Form 10-Q filed on November 4, 2016, Las Vegas Sands disclosed the settlement with the SEC, but did not provide an update on the status of the DOJ investigation.

See SEC Digest Number D-150.

See Parallel Litigation Digest Number s H-D16 and H-F16.

F. Ongoing Investigations Under the FCPA

16. Embraer S.A.

Background. Embraer S.A., a Brazil-based commercial aircraft company, develops and provides technical support for commercial, executive, and military aircraft.

The Investigation. According to a Form 6-K dated November 3, 2011, the company disclosed that it had retained outside counsel after receiving a subpoena from the SEC in September 2010 in connection with potential FCPA violations related to certain sales made outside of Brazil. In an April 30, 2014 Form 6-K filing, the company reported that it voluntarily expanded the scope of the investigation to include additional countries in response to requests for additional information from the DOJ and SEC.

According to a Form 20-F filed on March 27, 2015, Embrarer stated that its own investigation, as well as those being conducted by the DOJ and SEC, are still ongoing. On October 24, 2016, the SEC announced a settlement with Embraer in which the company agreed to pay \$98 million in disgorgement and interest. On the same day, the DOJ announced it had entered into a deferred prosecution agreement with the company that required the company to pay \$107 million in penalties.

See DOJ Digest Number B-174.

See SEC Digest Number D-162.

F. Ongoing Investigations Under the FCPA

15. 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 2016.

F. Ongoing Investigations Under the FCPA

14. Mondelēz International, Inc. (formerly known as Kraft Foods Inc.)

Background. Kraft Foods Inc. was a U.S. corporation that produced, packaged, marketed, and sold packaged food products to an international consumer base. In 2012, it spun off its North American grocery business into a new company called Kraft Foods Group, Inc., and the remainder of Kraft Foods Inc. was renamed Mondelēz International, Inc.

The Investigation. According to a Form 10-K filed on February 28, 2011, Kraft was issued a subpoena from the SEC in connection with an investigation into possible FCPA violations by a Cadbury facility in India that it had acquired in 2010. Specifically, the Cadbury facility worked with the Indian governmental agencies and officials to obtain approvals regarding the company's operations.

On October 13, 2015, the press reported that the SEC was preparing to bring civil charges against Mondelēz but that the company was unlikely to face criminal charges. Neither the SEC nor the company had confirmed the report.

In a Form 10-K filed on February 19, 2016, Mondelēz disclosed that it had received a "Wells Notice" on February 11, 2016. In the notice, the SEC stated that it intended to file an enforcement action against the company in connection with potential violations of the FCPA stemming from this matter. Mondelēz stated that it intends to submit a response to the SEC and would continue to cooperate with the investigation.

F. Ongoing Investigations Under the FCPA

13. PTC, Inc. (formerly known as Parametric Technology Corporation)

Background. PTC, Inc. is a U.S.-based company that focuses on marketing, development, and supporting software production, including engineering calculations, product lifecycle management, and CAD/CAM.

The Investigation. In a Form 10-Q filed August 10, 2011, Parametric disclosed its investigation into potentially illegal payments made in the People's Republic of China by business partners. Following the identification of these payments, Parametric conducted an internal investigation and voluntarily disclosed the information to the SEC and DOJ.

In a May 6, 2014 Form 10-Q, the company reported that it received a subpoena from the SEC in connection with the Commission's ongoing investigation. The company's 2014 annual report filed on November 26, 2014 stated that the company was continuing to cooperate with the SEC and DOJ in support of the pending investigations. In a Form 10-K filed on November 23, 2015, the company indicated that it had set aside \$28.2 million for a potential settlement with the DOJ and SEC but did not state the likelihood of settlement or whether the settlement would cost more than \$28.2 million.

On February 16, 2016, the DOJ announced that it had entered into a non-prosecution agreement with two subsidiaries of PTC to resolve an FCPA enforcement action. As part of the settlement, the companies agreed to pay a total penalty of \$14.53 million. On the same day, the SEC announced a settlement with PTC in which it agreed to pay a total sanction of \$13.62 million.

See DOJ Digest Number B-165.

See SEC Digest Number D-145.

F. Ongoing Investigations Under the FCPA

12. 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 2016, no additional information related to the ongoing FCPA investigations into Motorola has been reported.

F. Ongoing Investigations Under the FCPA

11. 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.

F. Ongoing Investigations Under the FCPA

10. 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 2016, there are no publicly available updates on the status of this investigation.

F. Ongoing Investigations Under the FCPA

9. 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 2016, 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

8. 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 2016.

F. Ongoing Investigations Under the FCPA

7. SciClone Pharmaceuticals, Inc.

Background. SciClone Pharmaceuticals, Inc., a U.S. corporation, is a China-centric pharmaceutical company. The company specializes in pharmaceutical development and production related to oncology, nervous system disorders, and vaccine development, among other ailments.

The Investigation. In a November 9, 2011 Form 10-Q, SciClone reported that on August 5, 2010 the company was contacted by the SEC about a formal investigation. The SEC issued a subpoena asking SciClone for documents regarding interactions with regulators and government-owned entities and sales in the People's Republic of China. On August 6, 2010, SciClone received a letter from the DOJ informing the company that it was conducting a general pharmaceutical industry-wide investigation and that it had received information suggesting possible violations by SciClone. SciClone Pharma appointed a Special Committee of independent directors to guide the company in its response to the DOJ.

According to a Bloomberg press release dated May 10, 2011, the Special Committee largely concluded its investigation and reported its findings to the SEC and DOJ. The internal investigation concluded that the company lacked internal controls, transparency, and the proper professionals with FCPA compliance experience to educate employees and adopt new policies.

On February 4, 2016, the SEC announced that it had resolved an FCPA enforcement action against SciClone. According to the SEC's order, SciClone would be required to pay a total sanction of \$12 million. On the same day, SciClone announced that the DOJ had informed the company that it had closed its investigation and would decline to pursue charges.

See SEC Digest Number D-144.

See Parallel Litigation Digest Number H-A12.

F. Ongoing Investigations Under the FCPA

6. Talecris Biotherapeutics Holdings Corp. Grifols, S.A.

Background. Talecris Biotherapeutics Holdings Corp., a U.S. corporation, designs and produces critical care medical treatments. Talecris was spun off from Bayer AG in 2005. Grifols, S.A., is a Spanish multinational pharmaceutical and chemical company, and a European leader in producing blood plasma-based and plasma-derived products. Grifols acquired Talecris due to a desire to combine the operations of the two plasma-producing companies. The acquisition took place in June 2011.

The Investigation. In a Form 10-Q filed on April 27, 2011, Talecris updated their shareholders regarding an internal investigation into possible FCPA violations. Talecris engaged outside counsel to assist in the internal investigation at the direction of its Board of Directors. The company's investigation focused on sales practices within certain Eastern European and Middle Eastern countries. As a result, the company suspended shipments to some of these countries while safeguards were put into place. Talecris reported that it voluntarily disclosed the possible FCPA violations to the DOJ in July 2009.

These allegations were also disclosed in a Form 10-Q filed by Grifols on November 9, 2011. On December 7, 2012, Grifols disclosed that the DOJ issued an "official declination to all inquiries related to the possible violation of the FCPA that were underway since July 2009."

In a separate matter, Grifols disclosed in a Form 6-K filed on November 5, 2013, that it was carrying out an internal investigation led by an external legal advisor regarding sales to certain Central and Eastern European countries, specifically Belarus and Russia, and trading practices in Brazil, China, Georgia, Iran, and Turkey, in addition to other countries, as considered necessary.

According to the company's 2014 annual report, Grifols also opened an internal investigation in Italy, in relation to a criminal prosecution in Naples against five employees of the company. In May 2015, Grifols disclosed in a 6-K filing that a court in Naples, Italy ruled that there were no charges against employees of the company, including the former general manager, except for two employees who will face minor charges. Further, on September 29, 2016, the DOJ announced it had closed its inquiry into Grifols and would decline to prosecute, citing the company's full cooperation in the investigation.

F. Ongoing Investigations Under the FCPA

5. 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 2016, no updates on the investigation have been made publicly available.

F. Ongoing Investigations Under the FCPA

4. AstraZeneca plc

Background. AstraZeneca plc, a U.K. corporation and U.S. issuer, is one of the world's leading pharmaceutical companies.

The Investigation. In a February 2007 SEC filing, AstraZeneca disclosed that it received a written document request from the SEC in October 2006. The request related to the company's operations in Italy, Croatia, Russia, and Slovakia, and also asked for information relating to FCPA compliance. In 2008, the company produced documents in response to the SEC's request. According to a Form 6-K filed on November 5, 2015, the company reported that it is cooperating with the DOJ and SEC and is investigating indications of inappropriate conduct in "certain countries," including China.

On August 30, 2016, the SEC announced that it had resolved an FCPA enforcement action against AstraZeneca. According to the SEC's order, AstraZeneca was required to pay a total sanction of \$5 million to settle the charges. It has separately been reported that the DOJ officially declined to bring charges against the company.

See SEC Digest Number D-156.

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 2016, 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.

F. Ongoing Investigations Under the FCPA

2.	Wyeth	ABB Ltd.
	DaimlerChrysler AG	Novo Nordisk A/S
	Beckman Coulter, Inc.	Ingersoll-Rand Co. Ltd.
	Innospec Inc.	Total S.A.
	AGCO Corp.	Fiat S.p.A.
	GlaxoSmithKline plc	Johnson & Johnson
	St. Jude Medical, Inc.	Tyco Int'l Ltd.
	Weatherford 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 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.

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

F. Ongoing Investigations Under the FCPA

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. Novo Nordisk consented to entry of judgment against it in May 2009. In April 2006, Novo Nordisk disclosed that the Danish Public Prosecutor had instituted proceedings against the company in this connection. 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. GlaxoSmithKline is also under investigation by the U.K. Serious Fraud Office for the same allegations. All of the companies have stated that they are cooperating with the various investigations. GlaxoSmithKline's Annual Report filed March 4, 2011 states that the investigation is ongoing. 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.

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 states that it continues to cooperate in the matter.

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

F. Ongoing Investigations Under the FCPA

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.

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.⁵²³ 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.⁵²⁴ 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 \$250,000.⁵²⁵ 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.

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.

⁵²³ *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).

⁵²⁴ *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).

⁵²⁵ *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 this 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. Amerada Hess also reported in July 2005 that the SEC had commenced a formal investigation, requesting documents and information. According to a December 2006 SEC filing, the company continues to cooperate with the SEC in this investigation.

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 aforementioned issue. 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 states that it is continuing to cooperate with the SEC 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 states that it is committed to cooperating with relevant authorities in the event that it receives additional inquiries.

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

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H. Parallel Litigation

A. Securities Cases

23. [Park v. Cognizant Tech. Solutions Corp., et al. \(D.N.J. 2016\)](#)⁵²⁶
[Lee v. D'Souza, et al. \(N.J. Super. 2016\)](#)⁵²⁷

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. Litigation in both the state and federal cases is pending.

See Ongoing Investigation Number F-97.

⁵²⁶ *Park v. Cognizant Tech. Solutions Corp., et al.*, No. 2:16-cv-06509 (D.N.J. 2016).

⁵²⁷ *Lee v. D’Souza, et al.* No. L-8103-16 (N.J. Super. 2016).

H. Parallel Litigation

A. Securities Cases

22. Godinez v. Alere Inc., et al. (D. Mass. 2016)⁵²⁸

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. As of December 2016, the motion to dismiss remains pending.

See Ongoing Investigation Number F-100.

⁵²⁸ *Godinez v. Alere Inc., et al.*, No. 1:16-cv-10766 (D. Mass. 2016).

H. Parallel Litigation

A. Securities Cases

21. [Kux-Kardos v. Vimpelcom, LTD. \(S.D.N.Y. 2015\)](#)⁵²⁹ [Westway Alliance Corp. v. Vimpelcom, Ltd., et al. \(S.D.N.Y. 2015\)](#)⁵³⁰

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 *Westway Alliance Corp. v. Vimpelcom, Ltd., et al.* (S.D.N.Y. 2015) and appointed Westway Alliance Corp. as lead plaintiff. Plaintiffs filed their amended complaint on December 9, 2016 and the defendants are scheduled to file an answer or motion to dismiss by January 20, 2017.

See DOJ Digest Number B-166.
See SEC Digest Number D-146.
See Ongoing Investigation Number F-64.
See Parallel Litigation Number H-H3

⁵²⁹ *Kux-Kardos v. Vimpelcom, Ltd. et al.*, No. 1:15-cv-08672 (S.D.N.Y. 2015).

⁵³⁰ *Westway Alliance Corp. v. Vimpelcom, Ltd., et al.*, No. 1:15-cv-09492 (S.D.N.Y. 2015).

H. Parallel Litigation

A. Securities Cases

20. In re Eletrobras Securities Litigation (S.D.N.Y. 2015)⁵³¹

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.⁵³² 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. Litigation remains ongoing.

See Ongoing Investigation Number F-83.

⁵³¹ *In re Eletrobras Sec. Litig.*, No. 1:15-cv-05754 (S.D.N.Y. 2015).

⁵³² *City of Providence, R.I., et al. v. Centrais Elétricas Brasileiras, et al.*, No. 1:15-cv-06434 (S.D.N.Y. 2015).

H. Parallel Litigation

A. Securities Cases

19. In re Petrobras Securities Litigation (S.D.N.Y. 2014)⁵³³

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. 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 has subsequently dismissed additional claims and defendants in the course of the litigation, the central securities claims remain pending.

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, has been stayed pending resolution of the appeal.

See Ongoing Investigation Number F-77.

See Parallel Litigation Digest Numbers H-C32 and H-C31.

⁵³³ *In re Petrobras Sec. Litig.*, No. 1:14-cv-09662 (S.D.N.Y. 2014).

H. Parallel Litigation

A. Securities Cases

18. **St. Lucie Cnty. Fire Dist. Firefighters' Pension Trust Fund, et al. v. Bryant, et al. (S.D. Tex. 2014)**⁵³⁴

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*.⁵³⁵ The case has since entered the discovery stage. Plaintiffs moved for class certification on November 2, 2016 and the court has set a deadline for responsive briefings of January 27, 2017.

See Ongoing Investigation Number F-36.

⁵³⁴ *St. Lucie Cnty. Fire Dist. Firefighters' Pension Trust Fund, et al. v. Bryant, et al.*, 14-cv-03428 (S.D. Tex. 2014).

⁵³⁵ *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. \(S.D. Tex. 2012\)](#)⁵³⁶
[Gerami v. Hyperdynamics Corp. \(S.D. Tex. 2014\)](#)⁵³⁷
[Stahelin v. Hyperdynamics Corporation, et al. \(S.D. Tex. 2014\)](#)⁵³⁸

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 *Gerami* 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.

⁵³⁶ *Parker v. Hyperdynamics Corp.*, 4:12-cv-00999 (S.D. Tex. 2012).

⁵³⁷ *Gerami v. Hyperdynamics Corp.*, 4:14-cv-00641 (S.D. Tex. 2014).

⁵³⁸ *Stahelin v. Hyperdynamics Corp.*, 4:14-cv-00649 (S.D. Tex. 2014).

H. Parallel Litigation

A. Securities Cases

16. ***Cady v. Key Energy Services, Inc., et al. (S.D. Tex. 2014)***⁵³⁹
Davidson v. Key Energy Services, Inc., et al. (S.D. Tex. 2014)⁵⁴⁰

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.

See Ongoing Investigation Number F-70.

⁵³⁹ *Cady v. Key Energy Servs., Inc., et al.*, No. 4:14-cv-02368 (S.D. Tex. 2014).

⁵⁴⁰ *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. \(N.D. Cal. 2013\)](#)⁵⁴¹ [Washtenaw County Employees Retirement System v. Kriens, et al. \(N.D. Cal. 2013\)](#)⁵⁴²

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 *Washtenaw County Employees Retirement System*, the parties reached a settlement and the case was voluntarily dismissed on March 12, 2014.

See Ongoing Investigation Number F-50.

⁵⁴¹ *Avery v. Juniper Networks, Inc.*, No. 13-cv-3733 (N.D. Cal. 2013).

⁵⁴² *Washtenaw Cnty. Emps Ret. Sys. v. Kriens*, 3:13-cv-04829 (N.D. Cal. 2013).

H. Parallel Litigation

A. Securities Cases

14. [City of Pontiac General Employees Retirement System v. Wal-Mart Stores, Inc. \(W.D. Ark 2012\)](#)⁵⁴³ [Fogel v. Vega \(S.D.N.Y. 2013\)](#)⁵⁴⁴

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. Discovery in the case is ongoing.

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.* The defendant moved to dismiss on May 6, 2016 and the motion remains pending as of December 2016.

See Ongoing Investigation Number F-19.
See Parallel Litigation Digest Number H-F22.

⁵⁴³ *City of Pontiac Gen. Emps Ret. Sys.*, No. 5:12-cv-05162 (W.D. Ark. 2012).

⁵⁴⁴ *Fogel v. Vega*, No. 1:13-cv-02282 (S.D.N.Y. 2013).

H. Parallel Litigation

A. Securities Cases

13. [City of Brockton Retirement System v. Avon Products, Inc. \(S.D.N.Y. 2011\)](#)⁵⁴⁵

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.

See DOJ Digest Number B-156.

See SEC Digest Number D-132.

See Parallel Litigation Digest Numbers H-B2 and H-F13.

⁵⁴⁵ *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)⁵⁴⁶

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.

See Ongoing Investigation Number F-7.

⁵⁴⁶ *In re SciClone Pharm. Sec. Litig.*, No. 5:10-cv-03584 (N.D. Cal. 2010).

H. Parallel Litigation

A. Securities Cases

11. [Johnson v. Siemens AG \(E.D.N.Y. 2009\)](#)⁵⁴⁷

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.

⁵⁴⁷ *Christine Johnson v. Siemens AG*, No. 1:09-cv-05310 (E.D.N.Y. 2009).

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)**⁵⁴⁸

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.

⁵⁴⁸ *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).

H. Parallel Litigation

A. Securities Cases

9. *In re* UTStarcom, Inc. Securities Litigation⁵⁴⁹

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.

⁵⁴⁹ *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)⁵⁵⁰

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.

⁵⁵⁰ *In re Willbros Grp., Inc. Sec. Litig.*, No. 4:05-cv-01778 (S.D. Tex. 2007).

H. Parallel Litigation

A. Securities Cases

7. In the Matter of InVision Techs. Securities Litigation (N.D. Cal. 2006)⁵⁵¹

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.

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.

⁵⁵¹ *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

6. **In the Matter of Immucor, Inc. Securities Litigation (N.D. Ga. 2006)**⁵⁵²

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.

⁵⁵² *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)⁵⁵³

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.

⁵⁵³ *In re Nature's Sunshine Prods. Sec. Litig.*, No. 2:06-cv-267 (D. Utah 2006).

H. Parallel Litigation

A. Securities Cases

4. In the Matter of FARO Techs., Inc. Securities Litigation (M.D. Fla. 2005)⁵⁵⁴

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.

⁵⁵⁴ *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)**⁵⁵⁵

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.

⁵⁵⁵ *McBride v. Titan Corp.*, No. 3:04-cv-00676 (S.D. Cal. 2004).

H. Parallel Litigation

A. Securities Cases

2. In the Matter of Syncor Int'l Corp. Securities Litigation (C.D. Cal. 2004)⁵⁵⁶

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.

⁵⁵⁶ *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)**⁵⁵⁷

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.

⁵⁵⁷ *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

2. *In re 2014 Avon Products, Inc. ERISA Litigation (S.D.N.Y. 2015)*⁵⁵⁸

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 2014⁵⁵⁹ and March 2015,⁵⁶⁰ 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. However, final judgment has not yet been entered as of December 2016.

See DOJ Digest Number B-156.

See SEC Digest Number D-132.

See Parallel Litigation Digest Numbers H-A13 and H-F13.

⁵⁵⁸ *In re 2014 Avon Prods., Inc. ERISA Litig.*, No. 1:14-cv-10083 (S.D.N.Y. 2015).

⁵⁵⁹ *Poovathur v. Avon Prods., Inc., et al.*, No. 1:15-cv-10083 (S.D.N.Y. 2015).

⁵⁶⁰ *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)⁵⁶¹

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.

⁵⁶¹ *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

32. **EIG Energy Fund XIV, L.P., et al v. Petroleo Brasileiro S.A. (D.D.C. 2016)**⁵⁶²

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. These motions to dismiss have been fully briefed, but are still pending as of December 2016.

See DOJ Digest Number B-178.

See Ongoing Investigation Number F-77.

See Parallel Litigation Digest Numbers H-A19 and H-A31.

⁵⁶² *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. \(S.D.N.Y. 2015\)](#)⁵⁶³

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 February 14, 2017.

See Ongoing Investigation Number F-77.

See Parallel Litigation Digest Numbers H-A19 and H-A32.

⁵⁶³ *Huxley Capital Corp. v. OAS, S.A., et al.*, No. 15-cv-01637 (S.D.N.Y. 2015).

H. Parallel Litigation

C. Commercial Cases

30. **Petróleos Mexicanos, et al. v. Hewlett-Packard Company, et al. (N.D. Cal. 2014)**⁵⁶⁴

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 statute (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.

⁵⁶⁴ *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. \(S.D.N.Y. 2014\)](#)⁵⁶⁵

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. Similarly, 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-54.

See Parallel Litigation Digest Number H-E7.

⁵⁶⁵ *Rio Tinto v. Vale, S.A., et al.*, No. 14-cv-3042 (S.D.N.Y.2014).

H. Parallel Litigation

C. Commercial Cases

28. [Wynn Resorts, Ltd. v. Okada \(D. Nev. Clark County 2012\)](#)⁵⁶⁶ [Okada v. Wynn Resorts, Ltd. \(D. Nev. 2013\)](#)⁵⁶⁷

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. Discovery is ongoing in *Wynn Resorts* and the jury trial is scheduled for February 6, 2017.

The *Okada* litigation was terminated when, on March 4, 2013, Okada voluntarily dismissed his case without prejudice.

See Ongoing Investigation Number F-42.

⁵⁶⁶ *Wynn Resorts, Ltd. v. Okada*, No. A-12-656710-B (D. Nev. Clark Cnty. 2012).

⁵⁶⁷ *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)**⁵⁶⁸ **Petróleos Mexicanos, et al. v. CONPROCA S.A. de C.V., et al. (S.D.N.Y. 2012)**⁵⁶⁹

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-Refinación (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 initiated 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.

⁵⁶⁸ *Conproca S.A. de C.V. v. Petróleos Mexicanos*, No. 11-cv-9165 (S.D.N.Y. 2011).

⁵⁶⁹ *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.)⁵⁷⁰**

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.

⁵⁷⁰ *NewMarket Corp. and Afton Chemical Corp. v. Innospec Inc. & Alcor Chemie Vertriebs GmbH*, No. 3:10-cv-00503 (E.D. Va. 2010).

H. Parallel Litigation

C. Commercial Cases

25. **Huck v. Pfizer (S.D. Cal. 2008)**⁵⁷¹

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.

⁵⁷¹ *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)**⁵⁷²

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.

⁵⁷² *Hidalgo, et al v. Siemens Aktiengesellschaft et al.*, No. 1:11-cv-20107 (S.D. Fla. 2011).

H. Parallel Litigation

C. Commercial Cases

23. [Omega Advisors, Inc. v. Federal Insurance Company \(D.N.J. 2010\)](#)⁵⁷³

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.

⁵⁷³ *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)**⁵⁷⁴

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.

⁵⁷⁴ See *RSM Prod. Corp., et al. v. Fridman, et al.*, 2009 U.S. Dist. LEXIS 12898 (S.D.N.Y., Feb. 19, 2009).

H. Parallel Litigation

C. Commercial Cases

21. [eLandia v. Granados and Retail Americas VoIP, LLC \(Fla. Cir. Ct. 2008\)](#)⁵⁷⁵

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.

⁵⁷⁵ [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. \(S.D.N.Y. 2008\)](#)⁵⁷⁶

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 United 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.

⁵⁷⁶ *Karim, et al. v. AWB Ltd., et al.*, No. 06-cv-15400 (S.D.N.Y., Oct. 9, 2008).

H. Parallel Litigation

C. Commercial Cases

19. [Shoaga v. Maersk, Inc., et al. \(N.D. Cal. 2008\)](#)⁵⁷⁷

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, holding that there was no private right of action for a violation of the FCPA.

⁵⁷⁷ *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 \(S.D. Fla. 2008\)](#)⁵⁷⁸

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.

⁵⁷⁸ *Supreme Fuels Trading FZE v. Sargeant*, No. 08-cv-81215 (S.D. Fla. 2008).

H. Parallel Litigation

C. Commercial Cases

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)**⁵⁷⁹

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.

⁵⁷⁹ *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)**⁵⁸⁰

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.

⁵⁸⁰ *Argo-Tech Corp. v. Yamada Corp., et al.*, No. 08-cv-0721 (N.D. Ohio 2008).

H. Parallel Litigation

C. Commercial Cases

15. [Hijazi Medical Supplies v. AGA Medical Corp. \(D. Minn. 2007\)](#)⁵⁸¹

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.

⁵⁸¹ *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)**⁵⁸²

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.

⁵⁸² *Castellanos v. Pfizer, Inc.*, No. 07-cv-60646 (S.D. Fla. 2008).

H. Parallel Litigation

C. Commercial Cases

13. [Grace & Digital Info. Tech., Ltd. v. Fidelity Nat'l Financial, Inc., et al. \(M.D. Fla. 2006\)](#)⁵⁸³

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.

⁵⁸³ *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)⁵⁸⁴

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.

⁵⁸⁴ *Metro Commc’n Corp., BVI v. Advanced Mobilecomm Tech. Inc., et al.*, 854 A.2d 121, 144 (Del. Ch. 2004).

H. Parallel Litigation

C. Commercial Cases

11. **National Group for Communications & Computers, Ltd. v. Lucent Technologies, Inc., et al. (S.D.N.Y. 2003)**⁵⁸⁵

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.

⁵⁸⁵ *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)**⁵⁸⁶

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 Technologies 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.

⁵⁸⁶ *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).

H. Parallel Litigation

C. Commercial Cases

9. [Rotec Industries, Inc. v. Mitsubishi Corp., et al. \(D. Or. 2001\)](#)⁵⁸⁷

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. 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.

⁵⁸⁷ *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)**⁵⁸⁸

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.

⁵⁸⁸ *Sci. Drilling Int'l, Inc. v. Gyrodata Corp.*, 215 F.3d 1351 (C.A. Fed. Tex.) 1999 WL 674511.

H. Parallel Litigation

C. Commercial Cases

7. [J.S. Service Center Corp., et al. v. G.E. Technical Services Co., et al. \(S.D.N.Y. 1996\)](#)⁵⁸⁹

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. Sercenco 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.

⁵⁸⁹ *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)⁵⁹⁰

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.

⁵⁹⁰ *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).

H. Parallel Litigation

C. Commercial Cases

5. **Dooley v. United Technologies Corp. (D.D.C. 1992)**⁵⁹¹

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.

⁵⁹¹ *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. \(S.D.N.Y. 1991\)](#)⁵⁹²

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.

⁵⁹² *Citicorp Int’l Trading Co., Inc. v. W. Oil & Refining Co., Inc.*, 771 F. Supp. 600 (S.D.N.Y. 1991).

H. Parallel Litigation

C. Commercial Cases

3. **W.S. Kirkpatrick & Co., Inc., et al. v. Environmental Tectonics Corp., Int'l (1990)**⁵⁹³

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.

⁵⁹³ *W.S. Kirkpatrick & Co., Inc., et al. v. Env'tl. 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)**⁵⁹⁴

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.

⁵⁹⁴ *Lamb v. Phillip Morris, Inc., et al.*, 915 F.2d 1024 (6th Cir. 1990).

H. Parallel Litigation

C. Commercial Cases

1. **Instituto Nacional de Comercializacion Agricola (Indeca) v. Continental Illinois Nat. Bank & Trust Co., et al. (N.D. Ill. 1983)**⁵⁹⁵

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.

⁵⁹⁵ *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

16. [Jacobs v. Las Vegas Sands, et al. \(D. Nev. Clark Cnty. 2010\)](#)⁵⁹⁶

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 Jacobs, 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 earlier this year, 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 Ongoing Investigations Number F-17.

See Parallel Litigation Digest Number H-F16.

⁵⁹⁶ *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 \(N.J. Super. 2016\)](#)⁵⁹⁷ [Louis Berger International, Inc., et al. v. James McClung \(N.J. Super. 2016\)](#)⁵⁹⁸

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 James McClung is ongoing.

See DOJ Digest Number B-161

⁵⁹⁷ *The Louis Berger Group, Inc. v. Hirsch*, No. L-1293-16 (N.J. Super. 2016).

⁵⁹⁸ *Louis Berger International Inc., et al. v. McClung*, No. 1-1474-16 (N.J. Super. 2016).

H. Parallel Litigation

D. Employment Cases

14. [Hall v. Teva Pharmaceutical Industries, Ltd. \(S.D. Fla. 2015\)](#)⁵⁹⁹

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.

See DOJ Digest Number B-179.

See SEC Digest Number D-165.

See Ongoing Investigation Number F-21.

⁵⁹⁹ *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)**⁶⁰⁰

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, remains intact. The jury trial is scheduled to begin in January 2017.

See DOJ Digest Number B-154.

See SEC Digest Number D-129.

See Parallel Litigation Digest Number H-F28 and H-F17.

⁶⁰⁰ *Wadler v. Bio-Rad, Inc., et al.*, No. 3:15-cv-2356 (N.D. Cal. 2015).

H. Parallel Litigation

D. Employment Cases

12. **Meng-Lin Liu v. Siemens A.G. (S.D.N.Y. 2013)**⁶⁰¹

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.

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.

⁶⁰¹ *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)**⁶⁰²

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.

See SEC Digest Number D-75.

⁶⁰² *Asadi v. G.E. Energy (USA), LLC*, No. 12-cv-00345 (S.D. Tex. 2012).

H. Parallel Litigation

D. Employment Cases

10. **Jewett v. IDT Corporation (D.N.J. 2011)**⁶⁰³

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.

⁶⁰³ *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. \(S.D.N.Y. 2009\)](#)⁶⁰⁴

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.

⁶⁰⁴ *Lebron v. AIG, Inc., et al.*, No. 09-CV-4285 (S.D.N.Y. May 1, 2009).

H. Parallel Litigation

D. Employment Cases

8. General Electric Co. v. Koeck (E.D. Va. 2008)⁶⁰⁵

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.

⁶⁰⁵ *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. \(N.D. Ind. 2005\)](#)⁶⁰⁶

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.

⁶⁰⁶ *Haddad v. ITT Ind. Inc.*, No. 1:05-cv-00370 (N.D. Ind. 2005).

H. Parallel Litigation

D. Employment Cases

6. **Bazzetta v. DaimlerChrysler Corp. (E.D. Mich. 2005)**⁶⁰⁷

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.

⁶⁰⁷ *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)**⁶⁰⁸

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 conveniens* grounds and Duha argued that the FCPA tilted the "public interest" factor of the *forum non conveniens* 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 conveniens* 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.

⁶⁰⁸ *Duha v. Agrium, Inc., et al.*, No. 03 Civ. 10027 (E.D. Mich. 2003).

H. Parallel Litigation

D. Employment Cases

4. **Depuydt v. FMC Corp. (N.D. Cal. 1995)**⁶⁰⁹

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.

⁶⁰⁹ *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)**⁶¹⁰

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.

⁶¹⁰ *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).

H. Parallel Litigation

D. Employment Cases

2. **Williams v. Hall, et al.; McKay v. Ashland Oil, Inc., et al. (E.D. Ky. 1988)**⁶¹¹

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.

⁶¹¹ *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)**⁶¹²

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.

⁶¹² *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

8. **The Libyan Investment Authority v. Goldman Sachs International (2016)**⁶¹³

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.

⁶¹³ *The Libyan Investment Authority v. Goldman Sachs International* [2016] EWHC 2530 (Ch), HC-2014-000197.

H. Parallel Litigation

E. Cases Involving Foreign Sovereigns

7. **BSG Resources Limited v. The Republic of Guinea (2014)**⁶¹⁴

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. As of December 2016, the arbitration is ongoing.

See DOJ Digest Number B-140.

See Ongoing Investigation Number F-54.

See Parallel Litigation Digest Number H-C29.

⁶¹⁴ *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)**⁶¹⁵

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.

⁶¹⁵ *Aluminum Bahrain B.S.C. v. Sojitz Corp., et al.*, No. 4:09-cv-04032 (S.D. Tex. 2009).

H. Parallel Litigation

E. Cases Involving Foreign Sovereigns

5. The Republic of Iraq v. ABB AG, et al. (S.D.N.Y. 2008)⁶¹⁶

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.

⁶¹⁶ *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 \(W.D. Pa. 2008\)](#)⁶¹⁷

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 the Alba’s case against Dahdaleh. 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.

⁶¹⁷ *Aluminum Bahrain B.S.C. v. Alcoa, Inc.*, No. 2:08-cv-00299 (W.D. Pa. 2008).

H. Parallel Litigation

E. Cases Involving Foreign Sovereigns

3. Dominican Republic v. AES Corp. (E.D. Va. 2006)⁶¹⁸

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.

⁶¹⁸ *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 Kenya⁶¹⁹

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.

⁶¹⁹ *World Duty Free Co. v. The Republic of Kenya* (ICSID Case No. Arb/00/7, Oct. 4, 2006).

H. Parallel Litigation

E. Cases Involving Foreign Sovereigns

1. **Adler, et al. v. Federal Republic of Nigeria, et al. (9th Cir. 2000)**⁶²⁰

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.

⁶²⁰ *Adler, et al. v. Fed. Republic of Nigeria, et al.*, 219 F.3d 869 (9th Cir. 2000).

H. Parallel Litigation

F. Derivative Cases

30. [Reese v. Andreotti \(N.Y. Sup. Ct. 2016\)](#)⁶²¹

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. The litigation currently remains pending.

See SEC Digest Number D-141.

⁶²¹ *Reese v. Andreotti*, No. 654132/2016 (N.Y. Sup. Ct. 2016).

H. Parallel Litigation

F. Derivative Cases

29. [Louisiana Municipal Police Employees' Retirement System v. Wynn et al \(D. Nev. 2012\)](#)⁶²²

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, 2016.⁶²³

See Ongoing Investigation Number F-42.
See Parallel Litigation Digest Number H-C28.

⁶²² *Louisiana Municipal Police Employees' Retirement System v. Wynn.*, No. 2:12-cv-00509 (D. Nev. 2012).

⁶²³ *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. \(Del. Ch. 2015\)](#)⁶²⁴ [In Re Bio-Rad Laboratories, Inc. Stockholder Litigation \(Del. Ch. 2015\)](#)⁶²⁵

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. The consolidated shareholder derivative suit is pending in the Delaware Court of Chancery and is in the preliminary stages of litigation.

See DOJ Digest Number B-154.

See SEC Digest Number D-129.

See Parallel Litigation Digest Number H-D13 and H-F17.

⁶²⁴ *Int’l Brotherhood of Elec. Workers Local 38 Pension Fund v. Bio-Rad Labs., Inc.*, No. 10930 (Del. Ch. 2015).

⁶²⁵ *In re Bio-Rad Labs., Inc. Stockholder Litig.*, No. 11387 (Del. Ch. 2015).

H. Parallel Litigation

F. Derivative Cases

27. **Copeland v. Apotheker, et al. (N.D. Cal. 2014)**⁶²⁶

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.

See DOJ Digest Number B-153.

See SEC Digest Number D-126.

See Parallel Litigation Digest Number H-C30.

⁶²⁶ *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)**⁶²⁷
Menaldi v. Och-Ziff Capital Management, et al. (S.D.N.Y. 2014)⁶²⁸
Stokes v. Och, et al. (Sup. Ct., N.Y. Cnty. 2014)⁶²⁹
Kumari v. Och, et al. (N.Y. Sup. Ct. 2015)⁶³⁰

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.

The court in *Menaldi* granted in part defendants' motion to dismiss in February 2016. The defendants in *Kumari* filed a motion to dismiss on October 23, 2015, which was granted in September 2016. The case is now closed.

See DOJ Digest Number B-173.
See SEC Digest Number D-160.
See Ongoing Investigation Number F-61.

⁶²⁷ *Jha v. Och, et al.*, No. 1:14-cv-06332 (S.D.N.Y. 2014).

⁶²⁸ *Menaldi v. Och-Ziff Capital Mgmt., et al.*, No. 1:14-cv-03251 (S.D.N.Y. 2014).

⁶²⁹ *Stokes v. Och, et al.*, No. 651663/2014 (Sup. Ct., N.Y. Cnty. 2014).

⁶³⁰ *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)**⁶³¹

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-28.

⁶³¹ *Williams v. Nuti, et al.*, No. 1:13-cv-01400 (N.D. Ga. 2013).

H. Parallel Litigation

F. Derivative Cases

24. The George Leon Family Trust v. Coleman, et al. (D.N.J. 2012)⁶³²

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.

⁶³² *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)**⁶³³

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.

⁶³³ *Rubery v. Kleinfeld*, No. 2:12-cv-00844 (W.D. Pa. 2012).

H. Parallel Litigation

F. Derivative Cases

22. [Cottrell v. Duke \(W.D. Ark 2012\)](#)⁶³⁴
[Emory v. Duke \(W.D. Ark 2012\)](#)⁶³⁵
[Richman v. Alvarez \(W.D. Ark 2012\)](#)⁶³⁶
[Brazin v. Wal-Mart Stores Inc. \(Del. Ch. 2012\)](#)⁶³⁷
[Cohen v. Alvarez \(Del. Ch. 2012\)](#)⁶³⁸
[Knowles v. Alvarez \(Del. Ch. 2012\)](#)⁶³⁹
[California State Teachers Retirement System v. Alvarez \(Del. Ch. 2012\)](#)⁶⁴⁰
[Klein v. Robson \(Del. Ch. 2012\)](#)⁶⁴¹
[Austin v. Walton, et al., \(Ark. Cir. Ct., Pope Cnty. 2014\)](#)⁶⁴²

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.

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, 2015.⁶⁴³ 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.

See Ongoing Investigation Number F-19.
 See Parallel Litigation Digest Number H-A14.

⁶³⁴ *Cottrell v. Duke*, No. 4:12-cv-04041 (W.D. Ark 2012).

⁶³⁵ *Emory v. Duke*, No. 5:12-cv-05171 (W.D. Ark 2012).

⁶³⁶ *Richman v. Alvarez*, No. 4:12-cv-04069 (W.D. Ark 2012).

⁶³⁷ *Brazin v. Wal-Mart Stores*, No. 7489 (Del. Ch. 2012).

⁶³⁸ *Cohen v. Alvarez*, No. 7470 (Del. Ch. 2012).

⁶³⁹ *Knowles v. Alvarez*, No. 7630 (Del. Ch. 2012).

⁶⁴⁰ *Cal. State Teachers Ret. Sys. v. Alvarez*, No. 7490 (Del. Ch. 2012).

⁶⁴¹ *Klein v. Robson*, No. 7455 (Del. Ch. 2012).

⁶⁴² *Austin v. Walton*, No. CV-2012-201 (Ark. Cir. Ct., Pope Cnty. 2014).

⁶⁴³ *In re Wal-Mart Stores*, No. 7445 (Del. Ch. 2012).

H. Parallel Litigation

F. Derivative Cases

21. [Copeland v. Prince, et al. \(D.N.J. 2011\)](#)⁶⁴⁴ [Katz v. Weldon, et al. \(D.N.J. 2011\)](#)⁶⁴⁵

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.

⁶⁴⁴ *Copeland v. Prince*, No. 3:11-cv-04993 (D.N.J. 2011).

⁶⁴⁵ *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)**⁶⁴⁶

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-35.

⁶⁴⁶ *Iron Workers Mid-South Pension Fund v. Murdoch et al.*, No. 1:11-cv-05556 (S.D.N.Y. 2011).

H. Parallel Litigation

F. Derivative Cases

19. **Holt v. Golden, et al. (D. Mass. 2011)**⁶⁴⁷

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.

⁶⁴⁷ *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)**⁶⁴⁸

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.

⁶⁴⁸ *Walbrun v. Bates, et al.*, No. 2011-25582 (Tex. Dist. Ct., Harris Cnty., 2011).

H. Parallel Litigation

F. Derivative Cases

17. [City of Riviera Beach et al. v. Schwartz et al. \(Cal. Super. Ct. 2011\)](#)⁶⁴⁹

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.

⁶⁴⁹ *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. \(Nev. Dist. Ct., Clark Cnty. 2011\)](#)⁶⁵⁰ [Moradi, et al. v. Adelson, et al. \(D. Nev. 2011\)](#)⁶⁵¹

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. As of December 2016, the court’s stay order remains in effect.

In the federal court action, for similar reasons discussed in the state-court action, the court has also stayed litigation. As of December 2016, the court’s stay order remains in effect. The parties’ most recent joint status report was filed on December 15, 2016.

See SEC Digest Number D-150.

See Ongoing Investigation Number F-17.

See Parallel Litigation Digest Number H-D16.

⁶⁵⁰ *Kohanim v. Adelson*, No. 11-636656 (Nev. Dist. Ct., Clark Cnty. 2011).

⁶⁵¹ *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)**⁶⁵²

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.

⁶⁵² *Strong v. Taylor, et al*, No. 2:11-cv-392 (E.D. La. 2011).

H. Parallel Litigation

F. Derivative Cases

14. *Freuler v. Parker, et al.* (S.D. Tex. 2010)⁶⁵³

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.

⁶⁵³ *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. \(S.D.N.Y. 2010\)](#)⁶⁵⁴
[IBEW Local 1919 Pension Fund v. Cornwell, et al. \(S.D.N.Y. 2010\)](#)⁶⁵⁵
[Murray C. White v. Andrea Jung, et al. \(S.D.N.Y. 2010\)](#)⁶⁵⁶

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.

⁶⁵⁴ *Cnty. of York Emps. Ret. Plan v. Cornwell et al.*, No. 1:10-cv-05933 (S.D.N.Y. 2010).

⁶⁵⁵ *IBEW Local 1919 Pension Fund v. Cornwell et al.*, No. 1:10-cv-06256 (S.D.N.Y. 2010).

⁶⁵⁶ *White v. Jung, et al.*, 1:10-cv-05560 (S.D.N.Y. 2010).

H. Parallel Litigation

F. Derivative Cases

12. [Rosner v. Brady, et al. \(Tex. Dist. Ct., Harris Cnty. 2010\)](#)⁶⁵⁷
[Neff v. Brady, et al. \(Tex. Dist. Ct., Harris Cnty. 2010\)](#)⁶⁵⁸
[Hess v. Duroc-Danner, et al. \(Tex. Dist. Ct., Harris Cnty. 2010\)](#)⁶⁵⁹
[Erste-Sparinvest KAG v. Duroc-Danner, et al. \(Tex. Dist. Ct., Harris Cnty. 2014\)](#)⁶⁶⁰

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.

⁶⁵⁷ *Rosner v. Brady*, No. 2010-47343 (Tex. Dist. Ct., Harris Cnty., 2010).

⁶⁵⁸ *Neff v. Brady*, No. 2010-40764 (Tex. Dist. Ct., Harris Cnty., 2010).

⁶⁵⁹ *Hess v. Duroc-Danner*, No. 2010-40765 (Tex. Dist. Ct., Harris Cnty., 2010).

⁶⁶⁰ *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)**⁶⁶¹

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.

⁶⁶¹ *Arnold v. Bragg, et al.*, No. 2009-66082 (Tex. Dist. Ct., Harris County, 2009).

H. Parallel Litigation

F. Derivative Cases

10. **Policemen and Firemen Retirement System of the City of Detroit v. Halliburton Company and KBR, Inc. (S.D. Tex. 2009)**⁶⁶²

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.

⁶⁶² *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)**⁶⁶³

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.

⁶⁶³ *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).

H. Parallel Litigation

F. Derivative Cases

8. **Bezirdjian v. O'Reilly, et al. (Ca. Super. Ct. 2007)**⁶⁶⁴

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.

⁶⁶⁴ *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 \(W.D. Pa. 2007\)](#)⁶⁶⁵

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.

⁶⁶⁵ *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).

H. Parallel Litigation

F. Derivative Cases

6. *Alverson v. Caldwell, et al. (M.D. Fla. 2008)*⁶⁶⁶

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.

⁶⁶⁶ *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)**⁶⁶⁷

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.

⁶⁶⁷ *City of Harper Woods Employees' Retirement Sys.v. Olver*, No. 07-cv-1646 (D.D.C. 2008).

H. Parallel Litigation

F. Derivative Cases

4. Sheetmetal Workers' National Pension Fund, et al. v. Deaton, et al. (S.D. Tex. 2007)⁶⁶⁸

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.

⁶⁶⁸ *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)**⁶⁶⁹

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.

⁶⁶⁹ *Shields, derivatively and on Behalf of Sundstrand Corporation v. Erickson*, 710 F. Supp. 686 (N.D. Ill. 1989).

H. Parallel Litigation

F. Derivative Cases

2. *Howes v. Atkins (E.D. Ky. 1987)*⁶⁷⁰

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.

⁶⁷⁰ *Howes v. Atkins*, 668 F. Supp. 1021 (E.D. Ky. 1987).

H. Parallel Litigation

F. Derivative Cases

1. [Lewis v. Sporck, et al. \(N.D. Cal. 1985\)](#)⁶⁷¹

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.

⁶⁷¹ *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 \(Bkrtcy. S.D.N.Y. 2006\)](#)⁶⁷² [In re Mayra Diaz Kalisch \(Bkrtcy. S.D.N.Y. 2006\)](#)⁶⁷³

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.

⁶⁷² *In re Kalisch* (06-10706) (Bkrtcy. S.D.N.Y. 2006).

⁶⁷³ *In re Kalisch* (07-01484) (Bkrtcy. S.D.N.Y. 2007).

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)**⁶⁷⁴

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 remains pending as of December 2016.

⁶⁷⁴ *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).

H. Parallel Litigation

H. Forfeiture Cases

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.**⁶⁷⁵

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. The stay is currently scheduled to expire on January 31, 2017.

See DOJ Digest Number B-166.

See SEC Digest Number D-146.

See Ongoing Investigation Number F-64.

⁶⁷⁵ *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)**⁶⁷⁶

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.

⁶⁷⁶ *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).

H. Parallel Litigation

H. Forfeiture Cases

1. **United States v. All Assets Held in the Name of Zasz Trading and Consulting PTE Ltd. (D.D.C. 2009)**⁶⁷⁷

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.

⁶⁷⁷ 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

2. [U.S. v. Rincon-Fernandez, et al. \(S.D. Tex. 2015\)](#)⁶⁷⁸

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. The defendants are scheduled to be sentenced in July 2017. Bariven’s motions for Recognition of Its Rights as a Victim and Entitlement to Restitution remain pending as of December 2016.

See DOJ Digest Number B-164.

⁶⁷⁸ *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)**⁶⁷⁹

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.

⁶⁷⁹ *Watts Water Techs. Inc. v. Sidley Austin, LLP*, Case No. 4847-12 (D.C. Super. Ct. 2012).



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